

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 1718

INTRODUCER: Senator Crist

SUBJECT: Drug Paraphernalia/Use or Possession

DATE: March 29, 2007

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | <u>Favorable</u> |
| 2. | _____ | _____ | <u>JU</u> | _____ |
| 3. | _____ | _____ | <u>JA</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill provides that it is a second degree felony to use, or possess with intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, or prepare methamphetamine in violation of ch. 893, F.S. (the “Florida Comprehensive Drug Abuse Prevention and Control Act”). This new offense is ranked in Level 7 of the Criminal Punishment Code offense severity ranking chart.

This bill substantially amends the following sections of the Florida Statutes: 893.147 and 921.0022.

II. Present Situation:

Florida law provides a tripartite definition of the term “drug paraphernalia.” First, s. 893.145, F.S., defines generally what the term means. Second, this section also provides a non-exclusive list of items or objects that are included within the statute’s definition of “drug paraphernalia.” Third, s. 893.146, F.S., provides a non-exclusive list of factors for determining whether an item or object is drug paraphernalia.

Section 893.145, F.S., defines “drug paraphernalia” as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S. (proscribing the inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances).

Further, s. 893.145, F.S., provides the following non-exclusive list of items that fall within the statutory definition of “drug paraphernalia”:

- Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
- Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
- Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
- Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoons and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers; a cartridge or canister, which means a small metal device used to contain nitrous oxide; a charger, sometimes referred to as a “cracker,” which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container; a charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister; a whip-it, which means a device that may be used to expel nitrous oxide; a tank; a balloon; a hose or tube; a 2-liter-type soda bottle; and duct tape.¹

¹ This section further provides that drug paraphernalia is contraband and is subject to civil forfeiture.

Section 893.146, F.S., provides that, in determining whether an object is drug paraphernalia, a court or other authority or jury must consider, in addition to all other logically relevant factors, the following factors:

- Statements by an owner or by anyone in control of the object concerning its use.
- The proximity of the object, in time and space, to a direct violation of this act.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.
- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- Instructions, oral or written, provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- Any advertising concerning its use.
- The manner in which the object is displayed for sale.
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.

Section 893.147(1), F.S., provides that it is a first degree misdemeanor to use or possess, with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.²

Section 893.147(2), F.S., provides that it is a third degree felony to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used for any of the acts described above.³ However, s. 893.147(3)(a), F.S., provides that if the person violates s. 893.147(2), F.S., by delivering drug paraphernalia to a minor, the person commits a second degree felony.

² “To prove possession of drug paraphernalia, the state must show that the appellant had in his possession drug paraphernalia and that he had knowledge of its presence.” *Lawson v. State*, 666 So.2d 193, 194 (Fla. 2d DCA 1995).

³ “The statute does not require that a person unequivocally know that the paraphernalia will be used for an illicit purpose; rather the state must only show that the defendant knew or reasonably should have known that the drug paraphernalia would be used for such purposes. It is important to note that the intent at issue in the statute is that of the seller/defendant, not that of the buyer.” *Baldwin v. State*, 498 So.2d 1385, 1386 (Fla. 5th DCA 1986).

Section 893.147(3)(b), F.S., provides that it is a first degree misdemeanor to sell or otherwise deliver hypodermic syringes, needles, or other such objects to a minor, with some lawful dispensing exceptions.

Section 893.147(4), F.S., provides that it is a third degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to transport a controlled substance in violation of ch. 893, F.S., or contraband, as defined in s. 932.701(2)(a)1., F.S.

Finally, s. 893.147(5), F.S., provides that it is a first degree misdemeanor to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

Proving requisite intent is often difficult because some items sold have multiple and legal uses⁴ or contain features that may suggest a use other than an illegal use or support a claim that the item is not being sold for an illegal use.

III. Effect of Proposed Changes:

The bill amends s. 893.147, F.S., to provide that it is a second degree felony to use, or possess with intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, or prepare methamphetamine in violation of ch. 893, F.S. (the “Florida Comprehensive Drug Abuse Prevention and Control Act”).

The bill also amends s. 921.0022, F.S., the Criminal Punishment Code offense severity ranking chart, to rank this new offense in Level 7. An offender convicted of this offense alone who has no prior criminal history would score a lowest permissible sentence of imprisonment, which would have to be imposed absent mitigation of sentence. The judge could sentence above the lowest permissible sentence score up to the maximum penalty for a second degree felony, which is 15 years in state prison.

The bill takes effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ In *Subuh v. State*, 732 So.2d 40, 44 (Fla. 2d DCA 1999), the court noted that a glass pipe sold by the defendant and which police claimed was a crack pipe was “very similar to the ‘glass tube’ or ‘pipette’ commonly found in any chemistry laboratory or glass ‘straw’ formerly used in hospitals for patients to drink liquids, except this one was shorter.” The court stated that “[a]lthough we are hard pressed to think of a probable lawful use for this tube when purchased from this location, there are many lawful uses for glass tubing.” *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation, had not estimated the impact of SB 1718 at the time this analysis was completed. The Department of Corrections preliminary estimate is that the bill may have an impact on the prison and probation population.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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