

**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 1436

INTRODUCER: Senator Clemens

SUBJECT: Controlled Substance Offenses

DATE: April 14, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	<b>Pre-meeting</b>
2.			JU	
3.			ACJ	
4.			AP	

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**I. Summary:**

SB 1436 revises weight ranges relevant to mandatory minimum terms for trafficking in cocaine, and reduces mandatory minimum terms of imprisonment for trafficking in cannabis, cocaine, hydrocodone, and oxycodone.

The bill also repeals the mandatory minimum term of imprisonment and mandatory fine for trafficking in hydrocodone (14 grams or more, but less than 28 grams) and trafficking in oxycodone (7 grams or more, but less than 14 grams). The lowest permissible sentence for these offenses will be determined by the Criminal Punishment Code (Code), not by a mandatory minimum term of imprisonment.

The bill also provides that the sentencing court may depart from a mandatory minimum sentence (term of imprisonment or, if applicable, a fine) for trafficking in 200 grams or less of hydrocodone or 100 grams or less of oxycodone if the court finds that imposition of a mandatory minimum sentence is not necessary for the protection of the public. A departure may not be lower than the lowest permissible sentence calculated under the Code.

Finally, the bill enhances a Code discretionary sentence multiplier for a Level 7 or Level 8 drug trafficking primary offense and expands the authority of the state attorney to move the court to reduce or suspend the sentence of a person convicted of a Level 7 or Level 8 drug trafficking offense.

The Criminal Justice Impact Conference 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:

### Drug Trafficking

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession of, certain controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of controlled substances. The quantity of the substance must meet a specified weight threshold. Most drug trafficking offenses are first degree felonies<sup>1</sup> and are subject to a mandatory minimum term and a mandatory fine, which is determined by the weight range applicable to the quantity of the substance involved in the trafficking.

### Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>2</sup> (Code) as Florida's "primary sentencing policy."<sup>3</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>4</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>5</sup> 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. Absent mitigation,<sup>6</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>7</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

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<sup>1</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>2</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>3</sup> *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), 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 January 24, 2017).

<sup>4</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>5</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>6</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>7</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.

minimum sentence takes precedence.”<sup>8</sup> Generally, the sentencing range under the Code is 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: the mandatory minimum sentence up to and including the statutory maximum penalty.

There are limited circumstances in which departure from a mandatory minimum term is authorized: the defendant is a youthful offender;<sup>9</sup> the state attorney waives a “10/20/Life” mandatory minimum term;<sup>10</sup> the state attorney moves to reduce or suspend a sentence based on substantial assistance rendered;<sup>11</sup> and a departure 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).<sup>12</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 893.135, F.S., the drug trafficking statute.

#### **Reducing Mandatory Minimum Terms for Trafficking in Cannabis**

Section 893.135(1)(a), F.S., punishes “trafficking in cannabis.” Section 893.135(1)(a)1.-3., F.S., currently provides that trafficking 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, is punishable by a *3-year* mandatory minimum term of imprisonment;
- 2,000 pounds or more, but less than 10,000 pounds, of cannabis, or 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, is punishable by a *7-year* mandatory minimum term of imprisonment; and
- 10,000 pounds or more of cannabis, or 10,000 or more cannabis plants, is punishable by a *15-year* mandatory minimum term of imprisonment.

Section 893.135(1)(a)1.-3., F.S., is amended to reduce mandatory minimum terms for trafficking in cannabis. Under the bill, trafficking 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, is punishable by a *2-year* mandatory minimum term of imprisonment;
- 2,000 pounds or more, but less than 10,000 pounds, of cannabis, or 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, is punishable by a *5-year* mandatory minimum term of imprisonment; and
- 10,000 pounds or more of cannabis, or 10,000 or more cannabis plants, is punishable by a *10-year* mandatory minimum term of imprisonment.

<sup>8</sup> Fla. R. Crim. P. 3.704(d)(26). See *State v. Vanderhoff*, 14 So.3d 1185, 1189 (Fla. 5th DCA 2009) (“the parties incorrectly assumed that a mitigating factor that would justify a downward departure under the Criminal Punishment Code, could also allow the trial court to waive a mandatory sentence”).

<sup>9</sup> Section 958.04, F.S.

<sup>10</sup> Section 27.366, F.S.

<sup>11</sup> Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S.

<sup>12</sup> Section 316.027(2)(g), F.S.

### **Increasing Weight Thresholds and Reducing Mandatory Minimum Terms for Trafficking in Cocaine**

Section 893.135(1)(b), F.S., punishes “trafficking in cocaine.” Section 893.135(1)(b)1.a.-c., F.S., currently provides that trafficking in:

- 28 grams or more, but less than 200 grams, of cocaine is punishable by a 3-year mandatory minimum term of imprisonment;
- 200 grams or more, but less than 400 grams, of cocaine is punishable by a 7-year mandatory minimum term of imprisonment; and
- 400 grams or more, but less than 150 kilograms, of cocaine is punishable by a 15-year mandatory minimum term of imprisonment.

Section 893.135(1)(b)1.a.-c., F.S., is amended to revise weight ranges relevant to mandatory minimum terms of imprisonment for trafficking in cocaine and to reduce such mandatory minimum terms. Under the bill, trafficking in:

- 50 grams or more, but less than 300 grams, of cocaine is punishable by a 2-year mandatory minimum term of imprisonment;
- 300 grams or more, but less than 500 grams, of cocaine is punishable by a 5-year mandatory minimum term of imprisonment; and
- 500 grams or more, but less than 150 kilograms, of cocaine is punishable by a 10-year mandatory minimum term of imprisonment.

### **Removing a 3-Year Mandatory Minimum Term and Mandatory Fine for Trafficking in Hydrocodone and Reducing Other Mandatory Minimum Terms**

Section 893.135(1)(c)2., F.S., punishes “trafficking in hydrocodone.” Section 893.135(1)(c)2.a., F.S., currently provides that trafficking in 14 grams or more, but less than 28 grams, of hydrocodone is subject to a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000. The bill repeals s. 893.135(1)(c)2.a., F.S.; therefore, the lowest permissible sentence for trafficking in 14 grams or more, but less than 28 grams, of hydrocodone will be determined by the Criminal Punishment Code (Code), not by a mandatory minimum term of imprisonment. Further, a fine will no longer be mandatory, and if imposed, will be a fine as provided in s. 775.083, F.S. Pursuant to s. 775.083, F.S., a court may impose a fine of up to \$10,000 for a first degree felony.

Section 893.135(1)(c)2.b.-d., F.S., currently provides that trafficking in:

- 28 grams or more, but less than 50 grams, of hydrocodone is punishable by a 7-year mandatory minimum term of imprisonment;
- 50 grams or more, but less than 200 grams, of hydrocodone is punishable by a 15-year mandatory minimum term of imprisonment; and
- 200 grams or more, but less than 30 kilograms, of hydrocodone is punishable by a 25-year mandatory minimum term of imprisonment.

Section 893.135(1)(c)2.b.-d., F.S., is amended to reduce mandatory minimum terms of imprisonment for trafficking in hydrocodone.<sup>13</sup> Under the bill, trafficking in:

- 28 grams or more, but less than 50 grams, of hydrocodone is punishable by a *5-year* mandatory minimum term of imprisonment;
- 50 grams or more, but less than 200 grams, of hydrocodone is punishable by a *10-year* mandatory minimum term of imprisonment; and
- 200 grams or more, but less than 30 kilograms, of hydrocodone is punishable by a *15-year* mandatory minimum term of imprisonment.

### **Removing a 3-Year Mandatory Minimum Term and Mandatory Fine for Trafficking in Oxycodone and Reducing Other Mandatory Minimum Terms**

Section 893.135(1)(c)3., F.S., punishes “trafficking in oxycodone.” Section 893.135(1)(c)3.a., currently provides that trafficking in 7 grams or more, but less than 14 grams, of oxycodone is subject to a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000. The bill repeals s. 893.135(1)(c)3.a., F.S.; therefore, the lowest permissible sentence for trafficking in 7 grams or more, but less than 14 grams, of oxycodone will be determined by the Criminal Punishment Code (Code), not by a mandatory minimum term of imprisonment. Further, a fine will no longer be mandatory, and if imposed, will be a fine as provided in s. 775.083, F.S.

Section 893.135(1)(c)3.b.-d., F.S., currently provides that trafficking in:

- 14 grams or more, but less than 25 grams, of oxycodone is punishable by a *7-year* mandatory minimum term of imprisonment;
- 25 grams or more, but less than 100 grams, of oxycodone is punishable by a *15-year* mandatory minimum term of imprisonment; and
- 100 grams or more, but less than 30 kilograms, of oxycodone is punishable by a *25-year* mandatory minimum term of imprisonment.

Section 893.135(1)(c)3.b.-d., F.S., is amended to reduce mandatory minimum terms of imprisonment for trafficking in oxycodone.<sup>14</sup> Under the bill, trafficking in:

- 14 grams or more, but less than 25 grams, of oxycodone is punishable by a *5-year* mandatory minimum term of imprisonment;
- 25 grams or more, but less than 100 grams, of oxycodone is punishable by a *10-year* mandatory minimum term of imprisonment; and
- 100 grams or more, but less than 30 kilograms, of oxycodone is punishable by a *15-year* mandatory minimum term of imprisonment.

### **Authorizing Departure from a Mandatory Minimum Term and Mandatory Fine for Trafficking in Hydrocodone or Oxycodone**

The bill also amends s. 893.135(1)(c)2., F.S., and s. 893.135(1)(c)3., F.S., to authorize a defendant to move for departure from the mandatory minimum term, and if applicable, any mandatory fine.<sup>15</sup> The defendant may make this motion if he or she trafficked in less than 200

<sup>13</sup> Section 893.135(1)(c)2.b.-d., F.S., is also renumbered as s. 893.135(1)(c)2.a.-c., F.S.

<sup>14</sup> Section 893.135(1)(c)3.b.-d., F.S., is also renumbered as s. 893.135(1)(c)3.a.-c., F.S.

<sup>15</sup> The departure provisions are created in new s. 893.135(1)(c)2.d., F.S., and new s. 893.135(1)(c)3.d., F.S.

grams of hydrocodone or less than 100 grams of oxycodone. The state attorney may file an objection to the motion. The sentencing court may depart from the mandatory minimum sentence if the courts finds that imposition of the mandatory sentence is not necessary for the protection of the public. However, the departure sentence may not be lower than the lowest permissible sentence as calculated according the total sentence points under the Code.

**Section 2** of the bill amends s. 921.0024, F.S., the Code worksheet (or scoresheet). Section 921.0024(2)(b), F.S., currently provides, in part, that if the primary offense is drug trafficking under s. 893.135, F.S., the subtotal sentence points are multiplied, at the discretion of the court, for a Level 7 or Level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a Level 7 or Level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4), F.S.<sup>16</sup>

Section 921.0024(2)(b), F.S., is amended to increase the discretionary sentencing point multiplier for drug trafficking from 1.5 to 2.0. The bill also removes the words “if the offender provides substantial assistance as described in s. 893.135.” Currently, this is the only ground supporting a state attorney’s motion to reduce or suspend a Level 7 or Level 8 drug trafficking offense. As a result of this change, the state attorney may offer any ground in support of this motion.

**Section 3** of the bill amends s. 921.0022, F.S., the Code offense severity ranking chart, to make technical, conforming changes. Although references to trafficking in hydrocodone (14 grams or more, but less than 28 grams) and trafficking in oxycodone (7 grams or more, but less than 14 grams) are removed from Level 7 of the chart, trafficking in the quantities noted would continue to be a Level 7 offense, because trafficking in these substances in these quantities is a first degree felony and a first degree felony not ranked in the chart is assigned a Level 7 ranking pursuant to s. 921.0023, F.S.

**Section 4** provides that the bill takes effect October 1, 2017.

#### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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<sup>16</sup> Section 893.135(4), F.S, provides that the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of s. 893.135, F.S., if the person provides substantial assistance in the identification, arrest, or conviction of any of that person’s accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency must be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

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, of legislation, estimates that the bill will have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds).<sup>17</sup>

Per the Department of Corrections (DOC), in FY 2015-2016, there were 751 (adj.)<sup>18</sup> offenders sentenced for the offenses of trafficking in cannabis, cocaine, hydrocodone, and oxycodone amended by the bill, and 558 (adj.) were sentenced to prison (mean sentence length of 64.4 months and an incarceration rate of 74.3 percent adj. and 74.2 percent unadj.). There were 1,335 (adj.) offenders sentenced for other trafficking offenses, and 1,007 (adj.) of these offenders were sentenced to prison (mean sentence length of 72.7 months and an incarceration rate of 75.4 percent adj. and 75.4 percent unadj.).

It is unknown how many of these offenses fall under the new drug thresholds created by the bill. Further, most of these offenses had some offenders who did not receive prison sanctions, and when sanctions were enforced, sentences were given below the mandatory minimum. Therefore, it cannot be determined how these changes would affect current court practices.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>17</sup> “Narrative Analyses of Adopted Impacts” (updated through March 31, 2017), Criminal Justice Impact Conference, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited on April 6, 2017). All information in this section of the analysis is from this source.

<sup>18</sup> The abbreviation “adj.” means “adjusted.” The abbreviation “unadj.” means “unadjusted.” Sentencing data from the DOC is incomplete, which means that the numbers the Legislature’s Office of Economic and Demographic Research (EDR) receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.135, 921.0022, and 921.0024.

**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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