

**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 Appropriations

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BILL: CS/CS/SB 150

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Steube and others

SUBJECT: Controlled Substances

DATE: April 24, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 150 addresses scheduling for controlled substances and punishment for controlled substance offenses. The bill also provides for prison diversion of certain nonviolent offenders who are convicted of a drug possession offense or whose criminal behavior is related to substance abuse.

Specifically, the bill:

- Provides that a person 18 years of age or older commits felony murder if he or she unlawfully distributes any specified controlled substance, including a specified fentanyl-related substance, and the distribution is proven to be the proximate cause of death of the user;
- Includes in Schedule I a class of fentanyl derivatives and five substances that were originally developed for legitimate research but that have now emerged in the illicit drug market;
- Punishes unlawful possession of 10 grams or more of certain Schedule II substances, including certain fentanyl-related substances;
- Adds codeine, an isomer of hydrocodone, to a current provision punishing trafficking in hydrocodone, and adds additional phenethylamines and phencyclidines to current provisions punishing trafficking in phencyclidine and phenethylamine;
- Punishes trafficking in fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines, through imposing mandatory minimum terms of imprisonment and mandatory fines;
- Authorizes a court to depart from a mandatory minimum sentence for drug trafficking after evaluating the defendant's crime, history, character, and chances for successful rehabilitation,

if the court finds compelling reasons on the record that the mandatory minimum sentence is unnecessary to protect the public;

- Authorizes certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses;
- Provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (chapter 893, Florida Statutes), or any portion thereof, include all subsequent amendments to the act;
- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless the sentence could cause harm to the public;
- Restores a circumstance for mitigating (reducing) a sentence based on substance abuse or addiction and amenability to treatment; and
- Requires diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment.

The Criminal Justice Impact Conference (CJIC) has not yet reviewed the provisions of the bill involving felony murder by drug distribution, controlled substances scheduling, and controlled substance offenses. However, those provisions are identical to provisions in CS/HB 477, which the Criminal Justice Impact Conference (CJIC) estimates will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The Criminal Justice Impact Conference (CJIC) has not reviewed the provision of the bill authorizing a court to depart from a mandatory minimum sentence for a drug trafficking offense. However, the Criminal Justice Impact Conference (CJIC) reviewed SB 1436, which, in part, authorizes departures for trafficking in hydrocodone and oxycodone, and estimates that bill would have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

The Criminal Justice Impact Conference (CJIC) has not reviewed prison diversion provisions of the bill. However, these provisions are identical to provisions in CS/SB 290. The Criminal Justice Impact Conference (CJIC) estimates that prison diversion for certain drug possession offenders will result in a cumulative decrease of 1,001 prison beds over 5 years (Fiscal Year 2017-2018 to Fiscal Year 2021-2022) with a cumulative cost avoidance of \$131,965,742. Other prison diversion provisions are estimated to have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). The actual impact associated with passage of the bill will differ depending on a number of factors including the existing inventory of prison beds. See Section V. Fiscal Impact Statement.

The Office of the State Courts Administrator estimates the prison diversion provisions of CS/SB 290 will have an indeterminate fiscal impact due to an anticipated increase in judicial time and workload as a result of increased sentencing hearing time. See Section V. Fiscal Impact Statement.

The Department of Corrections has also provided preliminary impact estimates for prison diversion provisions of CS/SB 290. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2017.

## II. Present Situation:

### Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the statute. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”<sup>1</sup> of the substance and whether there is a currently accepted medical use for the substance.<sup>2</sup> The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and have no currently accepted medical use in the United States. This schedule includes cannabis and heroin.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States. This schedule includes cocaine, codeine, and fentanyl.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States. This schedule includes stimulants and anabolic steroids.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States. This schedule includes benzodiazepines and barbiturates.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States. This schedule includes mixtures that contain small quantities of opiates and codeine.

### Punishment of Prohibited Drug Acts

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., depends on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.<sup>3</sup> However, if that substance is sold within 1,000 feet of a child care facility or secondary school, the violation is a second-degree felony.<sup>4</sup>

Drug trafficking, 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

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<sup>1</sup> Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>2</sup> See s. 893.03, F.S.

<sup>3</sup> Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. *Id.*

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>5</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.

### **Fentanyl and Related Drugs**

Fentanyl is a Schedule II controlled substance.<sup>6</sup> Some fentanyl analogs<sup>7</sup> or derivatives<sup>8</sup>, such as alfentanil,<sup>9</sup> carfentanil,<sup>10</sup> and sufentanil<sup>11</sup> are also Schedule II controlled substances.<sup>12</sup> It is a second degree felony to possess alfentanil, carfentanil, or fentanyl with the intent to sell, manufacture, or deliver them, or to unlawfully sell, manufacture, or deliver any of these substances.<sup>13</sup>

The National Institute on Drug Abuse provides that “Fentanyl is a powerful synthetic opioid analgesic that is similar to morphine but is 50 to 100 times more potent.”<sup>14</sup> When prescribed by a physician, fentanyl is typically used to treat patients with severe pain or to manage pain after

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<sup>5</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. *Id.*

<sup>6</sup> Section 893.03(2)(b)9., F.S.

<sup>7</sup> “An analog is a drug whose structure is related to that of another drug but whose chemical and biological properties may be quite different.” Chemistry-Dictionary.com, <http://www.chemistry-dictionary.com/definition/analog.php> (last visited on March 28, 2017).

<sup>8</sup> A “derivative” is “a chemical compound that may be produced from another compound of similar structure in one or more steps, as in replacement of H by an alkyl, acyl, or amino group.” Drugs.com, <https://www.drugs.com/dict/derivative.html> (last visited Apr. 14, 2017).

<sup>9</sup> Alfentanil is “a short-acting opioid anesthetic and analgesic derivative of [fentanyl]. It produces an early peak analgesic effect and fast recovery of consciousness. Alfentanil is effective as an anesthetic during surgery, for supplementation of analgesia during surgical procedures, and as an analgesic for critically ill patients.” “Alfentanil,” MeSH, National Center for Biotechnology Information, U.S. National Library of Medicine, <https://www.ncbi.nlm.nih.gov/mesh/?term=alfentanil> (last visited Apr. 14, 2017).

<sup>10</sup> Carfentanil is a fentanyl derivative. “Fentanyl drug profile,” European Monitoring Centre for Drug and Drug Addiction, <http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl> (last visited Apr. 14, 2017). The drug “is one of the most potent opioids known (also the most potent opioid used commercially).” “Carfentanil,” National Center for Biotechnology Information, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/carfentanil#section=Top> (last visited Apr. 14, 2017). The drug “has a quantitative potency approximately 10,000 times that of morphine and 100 times that of fentanyl, with activity in humans starting at about 1 microgram. It is marketed ... as a general anesthetic agent for large animals. Carfentanil is intended for large-animal use only as its extreme potency makes it inappropriate for use in humans. Currently sufentanil, approximately 10-20 times less potent (500 to 1000 times the efficacy of morphine per weight) than carfentanil, is the maximum strength fentanyl analog for use in humans.” *Id.*

<sup>11</sup> Sufentanil is a fentanyl derivative. “Fentanyl drug profile,” European Monitoring Centre for Drug and Drug Addiction, <http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl> (last visited Apr. 14, 2017). The drug “is an opioid analgesic that is used as an adjunct in anesthesia, in balanced anesthesia, and as a primary anesthetic agent.” “Sufentanil,” National Center for Biotechnology Information, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/41693> (last visited Apr. 14, 2017).

<sup>12</sup> Section 893.03(2)(b)1., 6., and 29., F.S.

<sup>13</sup> Section 893.13(1)(a)1., F.S.

<sup>14</sup> “DrugFacts” (revised June 2016), National Institute on Drug Abuse, <https://www.drugabuse.gov/publications/drugfacts/fentanyl> (last visited Apr. 14, 2017). “The estimated lethal dose of fentanyl in humans is 2 mg.” “Fentanyl drug profile,” European Monitoring Centre for Drug and Drug Addiction, <http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl> (last visited Apr. 14, 2017).

surgery and is administered via injection, transdermal patch, or in lozenges.<sup>15</sup> Although prescription fentanyl can be misused, most overdoses and related deaths have been linked to illicitly-manufactured fentanyl, including fentanyl analogs.<sup>16</sup> Illicitly-manufactured fentanyl is produced in clandestine laboratories and may be sold as a powder, spiked on blotter paper, mixed with heroin, or sold as tablets made to look like other, less potent opioids.<sup>17</sup> Fentanyl and its analogs may be mixed into other drugs and sold without the customer's knowledge of the presence of fentanyl.<sup>18</sup>

According to a recent report by the Centers for Disease Control and Prevention, during 2013–2014, fentanyl submissions<sup>19</sup> increased 494 percent in Florida (from 33 to 196), concurrent with a 115 percent increase in fentanyl deaths in Florida (from 185 to 397).<sup>20</sup> Fentanyl analogs were specifically implicated in 49 drug overdose deaths in Florida between January and June 2015.<sup>21</sup> According to the 2015 Annual Report (dated September 2016) of the Florida Medical Examiners, there were 911 deaths in which fentanyl was present (206) or deemed the cause of death (705).<sup>22</sup> Further, 99 of the deaths associated with fentanyl were ones in which the deceased had only that drug in their system, while the rest were in combination with another drug.<sup>23</sup>

### **Illicit Use of Compounds Developed for Forensic and Research Applications**

Compounds are often developed for legitimate forensic and research applications. However, some of these compounds later emerge in the illicit drug market. The following substances are examples of those substances:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide.
- W-18, 4-chloro-N- [1-[ 2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide.
- AH-7921, 3, 4-dichloro-N- [[(1-dimethylamino) cyclohexyl]methyl] -benzamide.
- U47700, trans-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide.
- MT-45,1-cyclohexyl-4- (1,2-diphenylethyl) -piperazine, dihydrochloride.

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<sup>15</sup> *Id.*

<sup>16</sup> “Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015,” *Morbidity and Mortality Weekly Report* (August 26, 2016), Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited Apr. 14, 2017).

<sup>17</sup> “DrugFacts” (revised June 2016), National Institute on Drug Abuse, <https://www.drugabuse.gov/publications/drugfacts/fentanyl> (last visited Apr. 14, 2017).

<sup>18</sup> For example, the National Institute on Drug Abuse has noted that “it is likely that carfentanil is being added to mixtures of heroin and other street drugs.” “Alert Issued in Ohio for Human Use of Animal Sedative Carfentanil, with Cases Also Seen in Florida” (August 23, 2016), National Institute on Drug Abuse, <https://www.drugabuse.gov/drugs-abuse/emerging-trends-alerts> (last visited Apr. 14, 2017).

<sup>19</sup> In this context, “submissions” means “drug products obtained by law enforcement that tested positive for fentanyl.” *Id.*

<sup>20</sup> “Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015,” *Morbidity and Mortality Weekly Report* (August 26, 2016), Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited Apr. 14, 2017).

<sup>21</sup> *Id.*

<sup>22</sup> *Drugs Identified in Deceased Persons* (2015 Annual Report) (September 2016), p. 3, Florida Medical Examiners Commission, <http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms.aspx> (last visited Apr. 14, 2017).

<sup>23</sup> *Id.* at p. 30.

W-15 and W-18 are “two of a series of drugs with analgesic properties of unknown origin synthesized in Canada in 1981.”<sup>24</sup> AH-7921 is an experimental opioid agonist<sup>25</sup> developed and patented by the former pharmaceutical company Allen & Hanburys.<sup>26</sup> U-47700 “is an opioid analgesic drug developed by the pharmaceutical company Upjohn in the 1970s and is structurally related to AH-7921[.]”<sup>27</sup> “MT-45 is a piperazine derivate originally synthesized by a pharmaceutical company in the 1970s.”<sup>28</sup>

U-47700 is currently a Schedule I controlled substance pursuant to emergency rule<sup>29</sup> of the Florida Attorney General’s Office.<sup>30</sup>

### **Emergency Treatment for Suspected Opioid Overdose**

In addition to being deadly to drug users, fentanyl-related drugs pose a dangerous threat to first responders and law enforcement officers, because a lethal dose can be accidentally inhaled or absorbed through the skin.<sup>31</sup> The U.S. Drug Enforcement Administration has warned laboratory personnel to take measures to protect themselves from accidental exposure and to immediately administer Naloxone, a drug used to treat opioid overdoses, in the event of exposure.<sup>32</sup>

Section 381.887, F.S., authorizes certain emergency responders<sup>33</sup> to possess, store, and administer emergency opioid antagonists as clinically indicated. Crime laboratory personnel are not referenced in the statute.

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<sup>24</sup> Mohr, A., Friscia, M., Papsun, D., Kacinko, S., Buzby, D., and Logan, B., “Analysis of Novel Synthetic Opioids U-47700, U-50488 and Furanyl Fentanyl by LC–MS/MS in Postmortem Casework” (2016) 40(9): 709, 716 (footnote and citation omitted), *Journal of Analytical Toxicology*, <https://academic.oup.com/jat/article/40/9/709/2527448/Analysis-of-Novel-Synthetic-Opioids-U-47700-U> (last visited Apr. 14, 2017). “Emerging evidence suggests that W-18 is not an opioid.” “Novel Synthetic Opioids in Counterfeit Pharmaceuticals and other Illicit Street Drugs” (June 2016), *CCENDU Bulletin*, Canadian Centre on Substance Abuse, <http://www.ohrdp.ca/ccendu-bulletin-novel-synthetic-opioids-in-counterfeit-pharmaceuticals-and-other-illicit-street-drugs/> (last visited Apr. 14, 2017).

<sup>25</sup> Medicine Net defines the term “agonist” as a substance that acts like another substance and therefore stimulates an action, <http://www.medicinenet.com/script/main/art.asp?articlekey=7835> (last visited Apr. 14, 2017).

<sup>26</sup> Kjellgren, A., Jacobsson K., and Soussan C., “The Quest for Well-Being and Pleasure: Experiences of the Novel Synthetic Opioids AH-7921 and MT-45, as Reported by Anonymous Users Online” (2016) 7(4): 1 (footnote and citation omitted), *Journal of Addiction Research & Therapy*, <https://www.omicsonline.org/open-access/the-quest-for-wellbeing-and-pleasure-experiences-of-the-novel-syntheticopioids-ah7921-and-mt45-as-reported-by-anonymous-users-onli-2155-6105-1000287.php?aid=77568> (last visited Apr. 14, 2017).

<sup>27</sup> See footnote 24.

<sup>28</sup> *Id.* (footnote and citation omitted).

<sup>29</sup> Section 893.035(7), F.S.

<sup>30</sup> Notice of Emergency Rule, 2ER16-1 (“Addition of U-47700 (3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide) [t]o Schedule I, Subsection 893.03(1)(a), F.S.”) and Certification of Department of Legal Affairs Emergency Rule Filed with the Department of State (filed September 27, 2016), Department of Legal Affairs (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

<sup>31</sup> “DEA Issues Carfentanil Warning to Police and Public” (September 22, 2016), U.S. Drug Enforcement Administration, <https://www.dea.gov/divisions/hq/2016/hq092216.shtml> (last visited Apr. 14, 2017).

<sup>32</sup> *Id.*

<sup>33</sup> Emergency responders include, but are not limited to, law enforcement officers, paramedics, and emergency medical technicians. Section 381.887(4), F.S.

## Synthetic Cannabinoids, Cathinones, and Phenethylamines

Section 893.03(1)(c), F.S., lists numerous substances described as “hallucinogenic substances.” Many of them appear to be synthetic cannabinoids, cathinone derivatives, and phenethylamines. “Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but ... they are cannabinoid-like in their activity.”<sup>34</sup>

Cathinone is a Schedule I controlled substance.<sup>35</sup> The “molecular architecture” of cathinone “can be altered to produce a series of different compounds which are closely structurally related to cathinone. Together these are known as the ‘cathinones’ or ‘cathinone derivatives.’”<sup>36</sup>

“Phenethylamines” is a broad category of “psychoactive substances.”<sup>37</sup> Probably the most well-known phenethylamine is 3,4-Methylenedioxymethamphetamine (MDMA), which is often referred to by the street name “Ecstasy.” Phenethylamines include “the ‘2C’ series of hallucinogenic phenethylamines” (referring to “the chemical structure consisting of two carbon atoms between the phenyl and amine moieties”).<sup>38</sup> A new group of 2C compounds, referred to as the “N-methoxybenzyl-substituted phenethylamines (NBOMe)” have emerged on the illicit drug market.<sup>39</sup> These compounds were “[i]nitially synthesized for research purposes,” and “are thought to be more potent than some of the conventional hallucinogens.”<sup>40</sup>

## Felony Murder by Drug Distribution

Section 782.04(1)(a)3., F.S., provides that if a person 18 years of age or older unlawfully distributes certain controlled substances that are later proven to be the proximate cause of the death of a drug user, the distributor commits murder in the first degree, a capital felony.<sup>41</sup> The controlled substances currently included in this subparagraph are:

- A substance controlled under s. 893.03(1), F.S.;
- Cocaine;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium; and
- Methadone.

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<sup>34</sup> “Synthetic Cannabinoids Drug Information,” Redwood Toxicology Laboratory, [https://www.redwoodtoxicology.com/resources/drug\\_info/synthetic\\_cannabinoids](https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids) (last visited Apr. 14, 2017).

<sup>35</sup> Section 893.03(1)(c)8, F.S.

<sup>36</sup> *Consideration of the cathinones* (March 2010), p. 6, Advisory Council on the Misuse of Drugs, United Kingdom, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/119173/acmd-cathinodes-report-2010.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/119173/acmd-cathinodes-report-2010.pdf) (last visited Apr. 14, 2017).

<sup>37</sup> Sanders B., Lankenau S., Bloom J., and Hathazi D., “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth” (2008) 43(3-4): 389, *Substance Use & Misuse*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited Apr. 14, 2017).

<sup>38</sup> “NBOMe Drugs,” *CALL US* ... (official newsletter) (Spring 2015) 13(2), California Poison Control System, <http://www.calpoison.org/hcp/2015/callusvol13no2.htm> (last visited Apr. 14, 2017).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> A capital felony is generally punishable by life imprisonment or a death sentence as provided in s. 921.141, F.S. “First-degree murder by drug distribution has been a recognized offense since 1972. See ch. 76-141, § 1, Laws of Fla.; ch. 72-724, § 3, Laws of Fla.” *Pena v. State*, 829 So. 2d 289, 291 (Fla. 2d 2002), approved *Pena v. State*, 901 So. 2d 781 (Fla. 2005), rehearing denied *Pena v. State*, 2005 Fla. LEXIS 994 (Fla. Apr. 25, 2005).

Under s. 782.04(1)(a)3., F.S., a defendant does not need to intend an act of homicide, have knowledge of a drug overdose, or be present when it occurs. In order to be guilty of this offense, the defendant need only intend to unlawfully distribute one of the prohibited drugs that results in a death caused by the drug.<sup>42</sup>

### **Criminal Punishment Code**

In 1997, the Legislature enacted the Criminal Punishment Code<sup>43</sup> (Code) as Florida's "primary sentencing policy."<sup>44</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>45</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>46</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. 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>47</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>48</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 minimum sentence takes precedence."<sup>49</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 to the mandatory minimum sentence up to and including the statutory maximum penalty.

Limited circumstances allow for departure from a mandatory minimum term: the defendant is a youthful offender;<sup>50</sup> the state attorney waives a "10/20/Life" mandatory minimum term;<sup>51</sup> the

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<sup>42</sup> *Pena v. State*, 829 So. 2d at 294.

<sup>43</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>44</sup> *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, [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 Apr. 14, 2017).

<sup>45</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>46</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>47</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>48</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.

<sup>49</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>50</sup> Section 958.04, F.S.

<sup>51</sup> Section 27.366, F.S.

state attorney moves to reduce or suspend a sentence based on substantial assistance rendered,<sup>52</sup> and a defendant commits 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>53</sup>

Section 893.135, F.S., contains the most mandatory minimum terms (47) for felonies.

### **Departure from a Code Sentence When Total Sentence Points are 22 Points or Fewer**

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony,<sup>54</sup> and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could cause public harm, the court may sentence the offender to a state correctional facility.

### **Sentence Mitigating Circumstances**

As previously noted, the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S. However, the court may “depart downward” from the scored lowest permissible sentence if the court finds there is a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.<sup>55</sup>

Relevant to the bill, pre-Code sentencing guidelines provided for the following mitigating circumstance: “The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.”<sup>56</sup>

With the enactment of the Code, this mitigating circumstance was modified.<sup>57</sup> As modified, the mitigating circumstance read: “The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.”<sup>58</sup> The Code also specified that the defendant’s “substance abuse or addiction, including intoxication,<sup>59</sup> at the time of the offense” was not a mitigating

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<sup>52</sup> Sections 790.163(2), 790.164(2), and 893.135(4), F.S.

<sup>53</sup> Section 316.027(2)(g), F.S.

<sup>54</sup> Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>55</sup> Section 921.0026(4)(d), F.S., specifies that mitigating circumstances include, but are not limited to, the mitigating circumstances specified in that section.

<sup>56</sup> Section 921.0016, F.S. (1996). In 1993, the Legislature codified this mitigating factor which was created by the Florida Supreme Court in 1987. Chapter 93-406, s. 13, L.O.F.; *Barbera v. State*, 505 So.2d 413 (Fla. 1987). In *Barbera*, the court was persuaded that intoxication and drug dependency could mitigate a sentence because the defense of intoxication could be used by a jury to justify convicting a defendant of a lesser offense. In 1999, the Legislature eliminated the voluntary intoxication defense. Chapter 99-174, L.O.F.; s. 775.051, F.S.

<sup>57</sup> Chapter 97-194, s. 8, L.O.F.

<sup>58</sup> Section 921.0026(2)(d), F.S. (1997).

<sup>59</sup> While s. 775.051, F.S., provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances (except those legally prescribed) is not a defense to any offense, this does not

factor and did “not, under any circumstance, justify a downward departure from the permissible sentencing range.”<sup>60</sup>

In 2009, the Legislature created a mitigating circumstance in which substance abuse or addiction could be considered: “The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.”<sup>61</sup> The only subsequent change to this mitigating circumstance occurred in 2011 when the Legislature increased total sentence points from 52 points to 60 points.<sup>62</sup> Further, since the 2009 change, the law specifies that, except for this mitigating circumstance, the defendant’s substance abuse or addiction, including intoxication, is not a mitigating factor.<sup>63</sup>

### **Drug Court Diversion for Certain Nonviolent Felony Offenders**

Section 948.01, F.S., in part, authorizes a court to place a defendant into a postadjudicatory treatment-based drug court program if the defendant’s offense is a nonviolent felony<sup>64</sup> committed on or after July 1, 2009, the defendant’s Code scoresheet total sentence points under s. 921.0024, F.S., are 60 points or fewer, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3), F.S.<sup>65</sup>

The satisfactory completion of the program is a required condition of the defendant’s probation or community control. The defendant must be fully advised of the purpose of the program and must agree to enter the program. The original sentencing court must relinquish jurisdiction of the defendant’s case to the postadjudicatory drug court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant’s termination from the program for failure to comply with the terms thereof, or the defendant’s sentence is completed.

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necessarily preclude the Legislature from addressing substance abuse or addiction, including intoxication, as a mitigating circumstance. For example, while a defendant may not raise as a defense that the victim was a willing participant in the crime, the Legislature has authorized mitigation of a Code sentence based on this circumstance. Section 921.0026(2)(f), F.S.; *State v. Rife*, 789 So.2d 288 (Fla. 2001).

<sup>60</sup> Section 921.0026(3), F.S. (1997).

<sup>61</sup> Section 921.0026(2)(m) and (3), F.S.; ch. 2009-64, s. 2, L.O.F. The term “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S., which defines “nonviolent felony” as a third-degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

<sup>62</sup> Chapter 2011-33, s. 2, L.O.F.

<sup>63</sup> Section 921.0026(3), F.S. Further, while current law provides for a mitigating circumstance based on the defendant requiring specialized treatment for a mental disorder if the defendant is amenable to treatment, that mental disorder cannot be related to substance abuse or addiction or for a physical disability. Section 921.0026(2)(d), F.S.

<sup>64</sup> “Nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S.

<sup>65</sup> Section 948.01(7), F.S. Section 397.334(3)(a), F.S., provides that entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, F.S., s. 948.06, F.S., or s. 948.20, F.S., must be based upon the sentencing court’s assessment of the defendant’s criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant’s agreement to enter the program.

### **III. Effect of Proposed Changes:**

The bill, which takes effect October 1, 2017, addresses scheduling for controlled substances and punishment for controlled substance offenses. The bill also provides for prison diversion of certain nonviolent offenders who are amenable to treatment and are convicted of a drug possession offense or whose criminal behavior is related to substance abuse. A full description of the provisions of the bill is provided below.

#### **Emergency Treatment for Suspected Opioid Overdose (Section 1)**

Section 1 amends s. 381.887, F.S., authorize certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists as clinically indicated. These crime laboratory personnel include, but are not limited to:

- Analysts;
- Evidence intake personnel; and
- Their supervisors.

Crime laboratory personnel will be authorized to administer the medication without a prescription, allowing them to respond in the event of accidental exposure in the course of their job performance.

#### **Felony Murder by Drug Distribution (Section 2)**

Section 2 amends s. 782.04(1)(a)3., F.S., to add four substances to the offense of felony murder by drug distribution. As a result of this change, a person 18 years of age or older commits felony murder if he or she unlawfully distributes any of the following substances and the distribution of the substance is proven to be the proximate cause of the death of the user of the substance:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil; or
- A controlled substance analog, as described in s. 893.0356, F.S.,<sup>66</sup> of any described substance (or a substance currently listed this subparagraph),<sup>67</sup> and mixtures containing any of those substances.

#### **Cross-References to the Florida Comprehensive Drug Abuse Prevention and Control Act (Section 3)**

Section 3 creates s. 893.015, F.S., to specify that the purpose of ch. 893, F.S., is to comprehensively address drug abuse prevention and control in this state, and, as such, unless

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<sup>66</sup> A “controlled substance analog” is a substance which, due to its chemical structure and potential for abuse, if the substance: (1) is substantially similar to that of a Schedule I or Schedule II controlled substance; and (2) has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II. Section 893.0356(2)(a), F.S.

<sup>67</sup> Those substances are: a substance controlled under s. 893.03(1)(c), F.S.; cocaine; opium or any synthetic or natural salt, compound, or derivative, or preparation of opium; and methadone.

expressly provided otherwise, a specific reference to ch. 893, F.S., or any section thereof incorporates all subsequent amendments to ch. 893, F.S., or any section thereof.<sup>68</sup>

#### **Scheduling of Controlled Substances (Section 4)**

Section 4 amends s. 893.03(1)(a), F.S., to add fentanyl derivatives to Schedule I, including:

- A general class by chemical structure (a 4-anilidopiperidine structure or “core”) and a description of chemical substitutions that can be made to the structure to remain an illicit member of the structure family;<sup>69</sup>
- Twenty-three substances specifically identified as fentanyl derivatives; and
- An exclusion for alfentanil, carfentanil, fentanyl, and sufentanil so as to not alter their current placement in Schedule II.

Section 4 amends s. 893.03(1)(c), F.S., to add five new substances to Schedule I. These substances, which have emerged in the illicit drug market, were originally developed for forensic and research applications:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide;
- W-18, 4-chloro-N- [1- [2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide;
- AH-7921, 3, 4-dichloro-N- [1-(dimethylamino) cyclohexyl] methyl] -benzamide;
- U47700, trans-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide; and
- MT-45, 1-cyclohexyl-4- (1, 2-diphenylethyl) -piperazine, dihydrochloride.

#### **Unlawful Drug Acts Involving Certain Schedule II Controlled Substances (Section 5)**

Section 5 amends s. 893.13(6)(c), F.S., which currently provides that it is a first degree felony to possess more than 10 grams of certain Schedule I controlled substances, to include certain Schedule II substances (substances listed in s. 893.03(2)(b), F.S., which include fentanyl and fentanyl derivatives).

#### **Trafficking in Codeine (Section 6)**

Section 6 amends s. 893.135(1)(c)2., F.S., which currently punishes “trafficking in hydrocodone,” to add a specific scheduling reference for hydrocodone and to:

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<sup>68</sup> “Legislative enactments frequently incorporate portions of the Florida Statutes by reference. A cross-reference to a general body of law (without reference to a specific statute) incorporates the referenced law and any subsequent amendments to or repeal of the referenced law.” Preface to the official 2016 Florida Statutes, p. viii (case citations omitted). “In contrast, as a general rule, a cross-reference to a specific statute incorporates only the language of the referenced statute as it existed at that time, unaffected by any subsequent amendments to or repeal of the incorporated statute.” *Id.* To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments. Such chapters of law include ch. 435, F.S. (“Employment Screening”) and ch. 938, F.S. (“Court Costs.”). *See* ss. 435.01 and 938.31, F.S.

<sup>69</sup> For example “[w]ith or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring.”

- Add codeine,<sup>70</sup> a Schedule II substance<sup>71</sup> and an isomer<sup>72</sup> of hydrocodone,<sup>73</sup> to the controlled substances punishable under this subparagraph; and
- Remove “derivative, isomer, or salt of an isomer” related to hydrocodone from those punishable under this subparagraph.<sup>74</sup>

By adding codeine to the trafficking in hydrocodone provision, codeine becomes subject to current penalties for trafficking in hydrocodone. Currently, trafficking in 14 grams or more of hydrocodone is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 14 grams or more, but less than 28 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 28 grams or more, but less than 50 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$500,000, if the quantity involved is 50 grams or more, but less than 200 grams; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of \$750,000, if the quantity involved is 200 grams or more, but less than 30 kilograms.<sup>75</sup>

Further, trafficking in 30 kilograms or more of hydrocodone is “trafficking in illegal drugs,” a first degree felony punishable by life imprisonment.<sup>76</sup> However, a person commits the capital felony<sup>77</sup> of “trafficking in illegal drugs,” which is also punishable by a mandatory fine of \$500,000, if:

- The court determines that, in addition to committing the act:
  - The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or
  - The person’s conduct in committing that act led to a natural, though not inevitable, lethal result.<sup>78</sup>
- A person knowingly brings into Florida 60 kilograms or more of hydrocodone (or any another specified substance), knowing that the probable result of such importation would be the death of any person.<sup>79</sup>

<sup>70</sup> Codeine is an opioid, typically prescribed as a pain reliever and cough suppressant, which has a high potential for addiction. “The Effects of Codeine Use,” DrugAbuse.com, <http://drugabuse.com/library/the-effects-of-codeine-use/> (last visited Apr. 14, 2017).

<sup>71</sup> Section 893.03(2)(a)1.g., F.S.

<sup>72</sup> An isomer is “one of two or more compounds, radicals, or ions that contain the same number of atoms of the same elements but differ in structural arrangement and properties.” Merriam-Webster (online dictionary), <https://www.merriam-webster.com/dictionary/isomer> (last visited Apr. 14, 2017).

<sup>73</sup> Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement, to staff of the House Criminal Justice Subcommittee (February 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

<sup>74</sup> *Id.* This language is removed because codeine is the only known isomer of hydrocodone and is specifically scheduled in s. 893.03(2)(a)1.g., F.S.

<sup>75</sup> Section 893.135(1)(c)2.a.-d., F.S.

<sup>76</sup> Section 893.135(1)(c)4., F.S.

<sup>77</sup> A capital drug trafficking felony is punishable by life imprisonment or a death sentence as provided in s. 921.142, F.S.

<sup>78</sup> Section 893.135(1)(c)4., F.S. (“trafficking in illegal drugs”).

<sup>79</sup> Section 893.135(1)(c)5., F.S. (“capital importation of illegal drugs”).

**Trafficking in Oxycodone (Section 6)**

Section 6 amends s. 893.135(1)(c)3., F.S., which currently punishes “trafficking in oxycodone,” to add a specific scheduling reference for oxycodone and to remove the words “derivative, isomer, or salt of an isomer,” which currently appear in this subparagraph, because there have not been any drugs identified as a derivative, isomer, or salt of an isomer of oxycodone.<sup>80</sup>

**Trafficking in Fentanyl (Section 6)**

Section 6 creates s. 893.135(1)(c)4., F.S., which punishes “trafficking in fentanyl.” Trafficking in fentanyl, a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into the state, or knowingly being in actual or constructive possession of, 4 grams or more of:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- A fentanyl derivative as described in s. 893.03(1)(a)62., F.S. (added by Section 1 of the bill);
- A controlled substance analog, as described in s. 893.0356, F.S., of any described substance; or
- A mixture containing any described substance.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 4 grams or more, but less than 14 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 14 grams or more, but less than 28 grams; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of \$500,000, if the quantity involved is 28 grams or more.

**Trafficking in Phencyclidine (Section 6)**

Section 6 amends s. 893.135(1)(d), F.S., which currently punishes “trafficking in phencyclidine,” to add a specific scheduling reference for phencyclidine and to add the following substances to those currently punishable under this paragraph:

- A substance identified as a “substituted phenylcyclohexylamine” in s. 893.03(1)(c)195., F.S.;<sup>81</sup>

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<sup>80</sup> Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement to staff of the House Criminal Justice Subcommittee (February 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

<sup>81</sup> Phenylcyclohexylamine is a relative of phencyclidine. The term “substituted” is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure. There are many permutations. The term “substituted phenylcyclohexylamine” can have many different substitutions but the base structure is that of phenylcyclohexylamine. E-mail from staff of the Florida Department of Law Enforcement to staff of the Senate Committee

- Five analogs of phencyclidine described in s. 893(1)(c)13., 32., 38., 103., and 146., F.S.; and
- A mixture containing any described substance.

By adding these substances to the trafficking in phencyclidine provision, these substances become subject to current penalties for trafficking in phencyclidine. Currently, trafficking in 28 grams or more of phencyclidine is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 28 grams or more, but less than 200 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 200 grams or more, but less than 400 grams; and
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$250,000, if the quantity involved is 400 grams or more.<sup>82</sup>

Further, a person commits a capital felony, which is also punishable by a mandatory fine of \$250,000, if the person knowingly brings into Florida 800 grams or more of phencyclidine, knowing that the probable result of such importation would be the death of any person.<sup>83</sup>

### **Trafficking in Phenethylamines (Section 6)**

Section 6 amends s. 893.135(1)(k), F.S., which currently punishes “trafficking in phenethylamines.” This paragraph currently lists a number of phenethylamines described in s. 893.03(1)(c), F.S. The bill removes these listed substances and refers to them by their specific scheduling reference in s. 893.03(1)(c), F.S. The bill also adds the following substances:

- A substance described in s. 893.03(1)(c)21., 43.-45., 58., 72.-80., 81.-86., 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163., or 187.-189., F.S., which include phenethylamines and cathinones;
- A substituted cathinone described in s. 893.03(1)(c)191., F.S.;
- A substituted phenethylamine described in s. 893.03(1)(c)192., F.S.; and
- A mixture containing any described substance or containing the salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers of any described substance.

By adding these substances to the trafficking in phenethylamines provision, these substances become subject to current penalties for trafficking in phenethylamines. Trafficking in 10 grams or more of any listed substance is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 10 grams or more, but less than 200 grams.
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 200 grams or more, but less than 400 grams.

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on Criminal Justice (March 28, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

<sup>82</sup> Section 893.13(1)(d)1.a.-c., F.S.

<sup>83</sup> Section 893.13(1)(d)2., F.S.

- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$250,000, if the quantity involved is 400 grams or more.<sup>84</sup>

Further, a person commits a capital felony, which is also punishable by a mandatory fine of \$250,000, if the person knowingly manufactures or brings into Florida 30 kilograms or more of any previously-described substance, knowing that the probable result of such manufacture or importation would be the death of any person.<sup>85</sup>

### **Trafficking in Synthetic Cannabinoids (Section 6)**

Section 6 creates s. 893.135(1)(m), F.S., which punishes “trafficking in synthetic cannabinoids.” Trafficking in synthetic cannabinoids, which is a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into Florida, or knowingly being in actual or constructive possession of, 280 grams or more of:

- A substance described in s. 893.03(1)(c)30., 46.-50., 114.-142., 151.-156., 166.-173., or 176.-186., F.S. (synthetic cannabinoids);
- A synthetic cannabinoid described in s. 893.03(1)(c)190., F.S.; or
- A mixture containing any described substance.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 280 grams or more, but less than 500 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 500 grams or more, but less than 1,000 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$200,000, if the quantity involved is 1,000 grams or more, but less than 30 kilograms; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of \$750,000, if the quantity involved is 30 kilograms or more.

### **Trafficking in N-benzyl Phenethylamines (Section 6)**

Section 6 creates s. 893.135(1)(n), F.S., which punishes “trafficking in n-benzyl phenethylamines.” Trafficking in n-benzyl phenethylamines, which is a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into Florida, or knowingly being in actual or constructive possession of, 14 grams or more of:

- A substance described in s. 893.03(1)(c)164., 174., or 175., F.S. (n-benzyl phenethylamines);
- A n-benzyl phenethylamine compound, as described in s. 893.03(1)(c)193., F.S.; or
- A mixture containing any described substance.

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<sup>84</sup> Section 893.135(1)(k)2., F.S

<sup>85</sup> Section 893.135(1)(k)3., F.S

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000, if the quantity involved is 14 grams or more, but less than 100 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000, if the quantity involved is 100 grams or more, but less than 200 grams; and
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of \$500,000, if the quantity involved is 200 grams or more.

Further, a person commits a capital felony, which is also punishable by a mandatory fine of \$500,000, if the person knowingly manufactures or brings into Florida 400 grams or more of a n-benzyl phenethylamine compound, knowing that the probable result of such importation would be the death of any person.

### **Departure from a Drug Trafficking Mandatory Minimum Sentence (Section 6)**

Section 6 also creates s. 893.135(8), F.S., which authorizes a departure from a mandatory minimum sentence for drug trafficking. For an offense listed under s. 893.135, F.S., which is committed on or after October 1, 2017, and which carries a mandatory minimum sentence, a court may depart from the applicable mandatory minimum sentence if, in giving due regard to the nature of the defendant's crime, history, and character and chances for successful rehabilitation, the court finds compelling reasons on the record that imposition of the mandatory minimum is unnecessary for public safety. Each month, a court must submit to the Legislature's Office of Economic and Demographic Research the written reasons in each case in which the court departed from the mandatory minimum sentence.

### **Ranking Trafficking Offenses (Section 7)**

Section 7 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank trafficking offenses that are created by the bill (described below).

The following trafficking offenses are ranked in Level 7:

- Trafficking in fentanyl (4 grams or more, but less than 14 grams);
- Trafficking in synthetic cannabinoids (280 grams or more, but less than 500 grams);
- Trafficking in synthetic cannabinoids (500 grams or more, but less than 1,000 grams); and
- Trafficking in n-benzyl phenethylamines, (14 grams or more, but less than 100 grams).

The following trafficking offenses are ranked in Level 8:

- Trafficking in fentanyl (14 grams or more, but less than 28 grams);
- Trafficking in synthetic cannabinoids (1,000 grams or more, but less than 30 kilograms); and
- Trafficking in n-benzyl phenethylamines (100 grams or more, but less than 200 grams).

The following trafficking offenses are ranked in Level 9:

- Trafficking in fentanyl (28 grams or more);
- Trafficking in synthetic cannabinoids (30 kilograms or more); and
- Trafficking in n-benzyl phenethylamines (200 grams or more).

The bill also makes technical corrections to language describing some current trafficking offenses ranked in the chart.

### **Prison Diversion for Certain Drug Possession Offenders (Section 8)**

Section 8 requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless the sentence could cause harm to the public. Section 775.082(10), F.S., currently provides that a court must sentence a defendant to a nonstate prison sanction if the defendant is sentenced for a third degree felony that is not a forcible felony and total sentence points under the Code are 22 points or fewer, unless the court determines such sentence could cause harm to the public.

Section 8 amends s. 775.082, F.S., to provide that if a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2017, and if the total sentence points under the Code are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could cause harm to the public, the court may sentence the offender to a state correctional facility.

The section defines “possession of a controlled substance” as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

Staff notes that this diversion provision could apply to a defendant who has a prior record, which might include a prior violent offense. For example, a defendant with a current offense of possession of a controlled substance and a prior offense of aggravated assault would score fewer than 60 total points. However, under the bill, the court could opt against diversion if the court finds that diversion could cause harm to the public.

### **Sentence Mitigating Circumstances (Section 9)**

Section 9 restores a circumstance for mitigating (reducing) a Code sentence. This mitigating circumstance, which was authorized under the pre-Code sentencing guidelines until it was removed in 1997, was based on the defendant’s substance abuse or addiction and amenability to treatment.

The section amends s. 921.0026, F.S., to add the following circumstance for mitigation of a scored lowest permissible sentence under the Code: For an offense committed on or after October 1, 2017, the defendant requires specialized treatment for addiction, a mental disorder, or a physical disability, and the defendant is amenable to treatment.

### **Drug Court, Treatment, or Probation for Certain Nonviolent Felony Offenders (Section 10)**

Section 10 *requires* diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment. Section 948.01, F.S., in part, currently *authorizes* a court to place a defendant into a

postadjudicatory treatment-based drug court program if the defendant's offense is a nonviolent felony committed on or after July 1, 2009, total sentence points under the Code are 60 points or fewer, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3), F.S. (criteria for entry into a post adjudicatory treatment-based drug court program).

The section amends s. 948.01(7), F.S., to *require* a court to place a defendant into a postadjudicatory treatment-based drug court program, residential drug treatment, or drug offender probation if the defendant committed a nonviolent felony offense on or after October 1, 2017, the defendant's Code scoresheet total sentence points are 60 points or fewer, the defendant is amenable to substance abuse treatment, the defendant's criminal behavior is related to substance abuse or addiction, and the defendant otherwise qualifies under s. 397.334(3), F.S. The satisfactory completion of the program is a required condition of the defendant's probation or community control.

#### **Reenactments (Sections 11 to 29)**

Sections 11 to 29 reenact, respectively, ss. 775.08435, 921.002, 921.00265, 394.47892, 397.334, 910.035, 921.187, 943.04352, 39.806, 63.089, 95.11, 775.082, 775.0823, 921.16, 948.06, 948.062, 985.265, 1012.315, and 1012.467, F.S., for the purpose of incorporating amendments made by the bill to various statutes.

#### **Effective Date**

The bill takes effect October 1, 2017.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**Felony Murder by Drug Distribution, Controlled Substance Scheduling, and Controlled Substance Offenses (Sections 2, 4, and 5 to 7)**

The Criminal Justice Impact Conference (CJIC) has not reviewed the provisions of the bill involving felony murder by drug distribution (Section 2), controlled substances scheduling (Section 4), and controlled substance offenses (Sections 5 to 7). However, those provisions are identical to provisions in CS/HB 477, which the CJIC estimates will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds).<sup>86</sup>

One person was charged and sentenced to prison for drug-related first degree murder (sentence length of 24 months). In FY 2015-2016, one person was arrested for selling fentanyl, and two people received a conviction/adjudication withheld. DOC does not track the number of admissions to prison for fentanyl, so that population is not known. Per the FDLE, citing the Florida Medical Examiners’ 2015 Annual Report,<sup>87</sup> there were 911 deaths in which fentanyl was present or deemed the cause of death. Further, 99 of the deaths associated with fentanyl only had that in their system, while the rest were in combination with another drug.

In FY 2015-2016, there were 44<sup>88</sup> offenders sentenced for trafficking in hydrocodone and oxycodone, and 34 were sentenced to prison (mean sentence length of 70.5 months and an incarceration rate of 77.3 percent). However, the changes in the bill should not affect these offenses.

In FY 2015-2016, there were 487 offenders sentenced for trafficking offenses similar to fentanyl (heroin included) between 4 and 14 grams. There were 363 sentenced to prison (mean sentence length of 62.1 months and an incarceration rate of 74.6 percent). There were 126 offenders sentenced for trafficking between 14 and 28 grams, and 102 of these offenders were sentenced to prison (mean sentence length of 94.6 months and an incarceration rate of 81.0 percent). There were 81 offenders sentenced for trafficking between 28 grams and 30 kilograms, and 64 of these offenders were sentenced to prison (mean sentence length of 144.5 months and an incarceration rate of 79.0 percent). No offenders were sentenced for trafficking more than 30 kilograms.

In FY 2015-2016, there were two offenders sentenced for trafficking in phencyclidine between 28 and 200 grams, and both offenders received a prison sentence (mean sentence

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<sup>86</sup> E-mail, dated March 28, 2017, to staff of the Senate Committee on Criminal Justice from staff of the Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). All information in this section of the analysis regarding CJIC estimates of provisions of the bill addressing felony murder by drug distribution, controlled substance scheduling, controlled substance offenses, and departures from mandatory minimum sentences for drug trafficking offenses is from this source.

<sup>87</sup> *Drugs Identified in Deceased Persons* (2015 Annual Report) (September 2016), p. 3, Florida Medical Examiners Commission, available at <http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms.aspx> (last visited on April 14, 2017).

<sup>88</sup> The abbreviation “adj.” means “adjusted.” The abbreviation “unadj.” means “unadjusted.” Sentencing data from the DOC is incomplete, which means that the numbers the 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.

length of 96.0 months and an incarceration rate of 100 percent). There was one offender sentenced for trafficking between 400 and 800 grams, but that person did not receive a prison sentence.

The only other current trafficking offenses that exist out of s. 893.03(1)(c), F.S., are MDMA and phenethylamines, both of them combined in the DOC's data. Per the DOC, in FY 2015-2016, there were 41 offenders sentenced for trafficking between 10 and 200 grams of these drugs. There were 26 sentenced to prison (mean sentence length of 45.6 months and an incarceration rate of 63.4 percent). There were two offenders sentenced for trafficking between 200 and 400 grams of these drugs, and none of those offenders were sentenced to prison. There was also one offender sentenced for trafficking in over 400 grams of these drugs in FY 2015-2016, and that offender was sentenced to prison (sentence length of 84.0 months and incarceration rate of 100 percent). No offenders were sentenced above 30 kilograms.

### **Departure from a Drug Trafficking Mandatory Minimum Sentence (Section 6)**

The CJIC has not reviewed the part of Section 6 of the bill which authorizes a court to depart from a mandatory minimum sentence for a drug trafficking offense. However, the CJIC reviewed SB 1436, which, in part, authorizes departures for trafficking in hydrocodone and oxycodone, and estimates the bill will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds).

### **Prison Diversion (Sections 8 to 10)**

The CJIC has not reviewed Sections 8 to 10 of the bill, which address prison diversion. However, Sections 8 to 10 are identical to prison diversion provisions in CS/SB 290, which the CJIC did review (see below).<sup>89</sup>

The DOC provided preliminary estimates (see below) of the prison diversion provisions of CS/SB 290, which are identical to Sections 8 to 10 of this bill.<sup>90</sup> The DOC noted that if a significant number of defendants that otherwise would have been sentenced to prison are diverted to supervision under these provisions, there would be a critical need for additional probation staff to manage the additional workload. There would also be a need for additional co-occurring beds and funding for offenders who are in need of outpatient substance abuse treatment services, including assessment, individual counseling, group counseling, treatment plan review, and aftercare services.

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<sup>89</sup> "Narrative Analyses of Adopted Impacts" (updated through March 2, 2017), Criminal Justice Impact Conference, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited Apr. 14, 2017). Unless otherwise noted, all information in this section of the analysis regarding prison diversion provisions of the bill is from this source. If the bill were to become law, the actual impact associated with the bill would differ depending on a number of factors including the existing inventory of prison beds.

<sup>90</sup> 2017 Legislative Bill Analysis (SB 290) (February 16, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). Unless otherwise noted, all information in this section of the analysis regarding DOC estimates of the prison diversion provisions is from this source.

The Office of the State Courts Administrator (OSCA) states that the prison diversion provisions of CS/SB 290 would likely lead to an increase in judicial workload because there will be much lengthier sentencing hearings as defendants will attempt to prove to the judge that they have a drug problem and that they are amenable to treatment. However, the fiscal impact is indeterminate because the OSCA does not currently have data needed to quantifiably establish the increase in judicial time and workload as a result of increased sentencing hearing time. Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of these provisions may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any judicial workload increases in the future as a result of these provisions would be reflected in the Supreme Court’s annual opinion In re: Certification of Need for Additional Judges.<sup>91</sup>

***Prison Diversion for Certain Drug Possession Offenders***

Section 8 requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public. The CJIC estimates that an identical prison diversion provision in CS/SB 290 will result in a cumulative decrease of 1,001 prison beds over 5 years (FY 2017-2018 to FY 2021-2022) with a cumulative cost avoidance of \$131,965,742 (\$64,993,112 in operating costs<sup>92</sup> and \$66,972,630 in fixed capital outlay costs<sup>93</sup>).<sup>94</sup> The complete breakdown of projected annual prison bed reductions and cost savings is provided in the table below:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2017-2018	-155	-155	(\$1,580,380)	(\$36,210,390)	(\$37,790,770)	(\$37,790,770)
2018-2019	-570	-415	(\$7,569,725)	(\$16,015,650)	(\$23,585,375)	(\$61,376,145)
2019-2020	-815	-245	(\$14,807,728)	(\$8,475,390)	(\$23,283,118)	(\$84,659,263)
2020-2021	-941	-126	(\$19,243,126)	(\$4,144,860)	(\$23,387,986)	(\$108,047,249)
2021-2022	-1,001	-60	(\$21,792,153)	(\$2,126,340)	(\$23,918,493)	(\$131,965,742)
<b>Total</b>	<b>-1,001</b>	<b>-1,001</b>	<b>(\$64,993,112)</b>	<b>(\$66,972,630)</b>	<b>(\$131,965,742)</b>	<b>(\$131,965,742)</b>

<sup>91</sup> Information provided by the Office of the State Courts Administrator (January 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary). All information in this section of the analysis regarding OSCA estimates is from this source.

<sup>92</sup> FY 2015-2016 operating costs per inmate were obtained from the DOC. The \$53.49 per diem (\$19,524 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference. “PRCs” means probation and restitution centers.

<sup>93</sup> FY 2006-2007 capital costs per bed were based on the DOC’s cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the CJIC on February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.

<sup>94</sup> “Narrative Analyses of Adopted Impacts” (updated through Apr. 14, 2017), Criminal Justice Impact Conference, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited Apr. 14, 2017). All information in this section of the analysis regarding prison diversion provisions of the bill is from this source.

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 10, 2017.

The DOC’s preliminarily estimate is that this diversion provision will impact the end of year prison population along with a corresponding increase to the supervised population. The chart provided below estimates impact based on certain percentages of the affected population being diverted from prison to supervision and drug treatment pursuant to this diversion provision. For example, for FY 2017-2018 to FY 2021-2022, the entire population that could be affected (100 percent) is estimated to be 5,287 persons. If five percent of this population (264 persons) were incarcerated, it would cost \$2,610,122. If, instead, these persons were diverted under this provision, the cost of supervision would be \$536,729. The “total cost to implement” (\$2,610,122 minus \$536,729) is a cost savings of \$2,073,383.

FY 2017-2018 to FY 2021-2022				
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Total Cost to Implement
5%	264	(\$2,610,112)	\$536,729	(\$2,073,383)
10%	528	(\$5,220,223)	\$1,073,360	(\$4,146,863)
15%	792	(\$7,830,335)	\$1,610,088	(\$6,220,247)
20%	1,059	(\$10,469,510)	\$2,152,872	(\$8,316,638)
25%	1,321	(\$13,062,186)	\$2,685,569	(\$10,376,617)
50%	2,646	(\$26,159,244)	\$5,379,103	(\$20,780,141)
75%	3,966	(\$39,209,801)	\$8,062,551	(\$31,147,250)
100%	5,287	(\$52,271,986)	\$10,748,119	(\$41,523,867)

Data from the Florida Department of Corrections, February 10, 2017.<sup>95</sup>

***Restoring a Sentence Mitigating Circumstance***

Section 9 restores a previous mitigating circumstance based on the defendant’s substance abuse or addiction and amenability to treatment. The CJIC estimates that an identical mitigating circumstance provision in CS/SB 290 will have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). The available data does not have the information necessary to determine which offenders entering prison might require specialized treatment for addiction. In FY 2015-2016, there were 54,444 offenders sentenced for a nonviolent felony with total sentencing points between 22 and 60 points, and 12,929 of these offenders were sentenced to prison (mean sentence length of 26.1 months and an incarceration rate of 23.8 percent). However, it cannot be determined what sentencing patterns judges might adopt with this new factor at their disposal.

***Requiring Drug Court, Treatment, or Probation for Certain Nonviolent Felony Offenders***

Section 10 requires the court to place certain nonviolent felony offenders into a drug court program, residential drug treatment, or drug offender probation if certain criteria are met. The CJIC estimates that an identical provision in CS/SB 290 will have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). The available data does not have the information necessary to determine which offenders

<sup>95</sup> This data is on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary.

entering prison might be amenable to substance abuse treatment, nor can it be determined if an offender’s criminal behavior was related to substance abuse or addiction.

Because the DOC does not have the ability to predict how many defendants are “amenable to treatment” and whose “criminal behavior is related to substance abuse or addiction,” the DOC’s preliminary estimate is that the diversion provision will have an indeterminate impact.

The chart provided below estimates impact based on certain percentages of the affected population being diverted from prison to supervision and drug treatment pursuant to this diversion provision. For example, for FY 2017-2018 to FY 2021-2022, the entire population that could be affected (100 percent) is estimated to be 24,607 persons. If five percent of this population (1,230 persons) were incarcerated, it would cost \$24,014,335. If, instead, these persons were diverted under this diversion provision, the total cost of supervision and drug treatment would be \$15,618,678 (\$2,499,538 for supervision plus \$13,119,141 for treatment). The “total cost to implement” (\$24,014,335 minus \$15,618,678) would be a cost savings of \$8,395,656.

FY 2017-2018 to FY 2021-2022					
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Drug Treatment Costs	Total Cost to Implement
5%	1,230	(\$24,014,335)	\$2,499,538	\$13,119,141	(\$8,395,656)
10%	2,462	(\$48,067,719)	\$5,003,212	\$26,238,281	(\$16,826,226)
15%	3,692	(\$72,082,055)	\$7,502,751	\$39,357,422	(\$25,221,882)
20%	4,921	(\$96,076,866)	\$10,000,223	\$52,476,564	(\$33,600,079)
25%	6,152	(\$120,110,725)	\$12,501,777	\$65,595,704	(\$42,013,244)
50%	12,305	(\$240,240,975)	\$25,005,817	\$131,191,408	(\$84,043,750)
75%	18,456	(\$360,332,176)	\$37,505,579	\$196,787,112	(\$126,039,485)
100%	24,607	(\$480,423,376)	\$50,005,434	\$262,382,817	(\$168,035,125)

Data from the Florida Department of Corrections, February 10, 2017.<sup>96</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 6, in part, authorizes a court to depart from a mandatory minimum sentence for drug trafficking after evaluating the defendant’s crime, history, character, and chances for successful rehabilitation, if the court finds compelling reasons on the record that the mandatory minimum sentence is not necessary to protect the public. Each month, a court must submit to the Legislature’s Office of Economic and Demographic Research (EDR) the written reasons in each case in which the court departed from the mandatory minimum sentence. The bill does not specify what the EDR is supposed to do with this information.

<sup>96</sup> This data is on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.887, 775.082, 782.04, 893.03, 893.13, 893.135, 921.0022, 921.0026, and 948.01.

This bill creates section 893.015 of the Florida Statutes.

The bill reenacts sections 39.806, 63.089, 95.11, 394.47892, 397.334, 775.082, 775.0823, 775.08435, 910.035, 921.002, 921.00265, 921.16, 921.187, 943.04352, 948.06, 948.062, 985.265, 1012.315, and 1012.467, Florida Statutes, for the purpose of incorporating amendments made by the bill to various statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary on April 19, 2017:**

The committee substitute corrects a technical deficiency by removing the date for which a provision on mitigating circumstances for nonviolent felony offenders will apply to conform to another change to the bill by a prior committee.

**CS by Criminal Justice on April 3, 2017:**

The committee substitute:

- Provides that a person 18 years of age or older commits felony murder if he or she unlawfully distributes any specified controlled substance, including a specified fentanyl-related substance, and the distribution is proven to be the proximate cause of the death of the user of the substance;
- Includes in Schedule I a class of fentanyl derivatives and five substances that were originally developed for legitimate research but that have now emerged in the illicit drug market;
- Punishes unlawful possession of 10 grams or more of certain Schedule II substances, including certain fentanyl-related substances;
- Adds codeine, an isomer of hydrocodone, to a current provision punishing trafficking in hydrocodone, and adds additional phenethylamines and phencyclidines to current provisions punishing trafficking in phencyclidine and phenethylamine;
- Revises the new offense of trafficking in fentanyl;
- Punishes trafficking in synthetic cannabinoids, and n-benzyl phenethylamines, including mandatory minimum terms of imprisonment and mandatory fines;
- Authorizes a court to depart from a mandatory minimum sentence for drug trafficking after evaluating the defendant's crime, history, character, and chances for successful rehabilitation, if the court finds compelling reasons on the record that the mandatory minimum sentence is not necessary to protect the public;
- Ranks new offenses for trafficking in fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines in the Code offense severity ranking chart;
- Removes a new offense of committing a drug act in a dwelling;

- Removes the ranking of a LSD trafficking offense in the Code offense severity ranking chart;
- Authorizes certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses;
- Provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act;
- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public;
- Restores a circumstance for mitigating (reducing) a sentence based on substance abuse or addiction and amenability to treatment; and
- Requires diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment.

B. Amendments:

None.