

By Senator Bradley

5-00220B-20

2020346\_\_

1                   A bill to be entitled  
2       An act relating to controlled substances; amending s.  
3       893.13, F.S.; prohibiting the purchase or possession  
4       of less than a certain amount of specified substances;  
5       providing criminal penalties; amending s. 893.135,  
6       F.S.; authorizing a court to impose a sentence other  
7       than a mandatory minimum term of imprisonment and  
8       mandatory fine for a person convicted of trafficking  
9       if the court makes certain findings on the record;  
10      creating s. 900.06, F.S.; defining terms and  
11      specifying covered offenses; requiring that a  
12      custodial interrogation conducted at a place of  
13      detention in connection with certain offenses be  
14      electronically recorded in its entirety; requiring law  
15      enforcement officers who do not comply with the  
16      electronic recording requirement or who conduct  
17      custodial interrogations at a location other than a  
18      place of detention to prepare a specified report;  
19      providing exceptions to the electronic recording  
20      requirement; requiring a court to consider a law  
21      enforcement officer's failure to comply with the  
22      electronic recording requirement in determining the  
23      admissibility of a statement, unless an exception  
24      applies; requiring a court, upon the request of a  
25      defendant, to give certain cautionary instructions to  
26      a jury under certain circumstances; providing immunity  
27      from civil liability to law enforcement agencies that  
28      enforce certain rules; providing that a cause of  
29      action is not created against a law enforcement

5-00220B-20

2020346\_\_

30 officer; amending s. 961.04, F.S.; revising the  
31 circumstances under which a wrongfully incarcerated  
32 person is eligible for compensation; amending s.  
33 893.03, F.S.; conforming a cross-reference; reenacting  
34 ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4),  
35 F.S., all relating to eligibility for compensation for  
36 wrongfully incarcerated persons; providing an  
37 effective date.

38  
39 Be It Enacted by the Legislature of the State of Florida:

40  
41 Section 1. Present subsection (10) of section 893.13,  
42 Florida Statutes, is redesignated as subsection (11), and a new  
43 subsection (10) is added to that section, to read:

44 893.13 Prohibited acts; penalties.—

45 (10) Notwithstanding any provision of this section or any  
46 other law relating to the punishment for purchasing or  
47 possessing a controlled substance, a person who purchases or  
48 possesses less than 2 grams of a controlled substance, other  
49 than fentanyl, may not be imprisoned for a term longer than 12  
50 months.

51 Section 2. Present subsections (6) and (7) of section  
52 893.135, Florida Statutes, are redesignated as subsections (7)  
53 and (8), respectively, and a new subsection (6) is added to that  
54 section, to read:

55 893.135 Trafficking; mandatory sentences; suspension or  
56 reduction of sentences; conspiracy to engage in trafficking.—

57 (6) Notwithstanding any provision of this section, a court  
58 may impose a sentence for a violation of this section other than

5-00220B-20

2020346\_\_

59 the mandatory minimum term of imprisonment and mandatory fine if  
60 the court finds on the record that all of the following  
61 circumstances exist:

62 (a) The defendant has no prior conviction for a forcible  
63 felony as defined in s. 776.08.

64 (b) The defendant did not use violence or credible threats  
65 of violence, or possess a firearm or other dangerous weapon, or  
66 induce another participant to use violence or credible threats  
67 of violence, in connection with the offense.

68 (c) The offense did not result in the death of or serious  
69 bodily injury to any person.

70 (d) The defendant was not an organizer, leader, manager, or  
71 supervisor of others in the offense and was not engaged in a  
72 continuing criminal enterprise as defined in s. 893.20.

73 (e) At the time of the sentencing hearing or earlier, the  
74 defendant has truthfully provided to the state all information  
75 and evidence that he or she possesses concerning the offense or  
76 offenses that were part of the same course of conduct or of a  
77 common scheme or plan.

78 (f) The defendant has not previously benefited from the  
79 application of this subsection.

80  
81 A court may not apply this subsection to an offense under this  
82 section which carries a mandatory minimum term of imprisonment  
83 of 25 years.

84 Section 3. Section 900.06, Florida Statutes, is created to  
85 read:

86 900.06 Recording of custodial interrogations for certain  
87 offenses.-

5-00220B-20

2020346\_\_

88 (1) As used in this section, the term:

89 (a) "Custodial interrogation" means questioning or other  
90 conduct by a law enforcement officer which is reasonably likely  
91 to elicit an incriminating response from an individual and which  
92 occurs under circumstances in which a reasonable individual in  
93 the same circumstances would consider himself or herself to be  
94 in the custody of a law enforcement agency.

95 (b) "Electronic recording" means an audio recording or an  
96 audio and video recording that accurately records a custodial  
97 interrogation.

98 (c) "Covered offense" includes:

- 99 1. Arson.  
100 2. Sexual battery.  
101 3. Robbery.  
102 4. Kidnapping.  
103 5. Aggravated child abuse.  
104 6. Aggravated abuse of an elderly person or disabled adult.  
105 7. Aggravated assault with a deadly weapon.  
106 8. Murder.  
107 9. Manslaughter.  
108 10. Aggravated manslaughter of an elderly person or  
109 disabled adult.  
110 11. Aggravated manslaughter of a child.  
111 12. The unlawful throwing, placing, or discharging of a  
112 destructive device or bomb.  
113 13. Armed burglary.  
114 14. Aggravated battery.  
115 15. Aggravated stalking.  
116 16. Home-invasion robbery.

5-00220B-20

2020346\_\_

117 17. Carjacking.

118 (d) "Place of detention" means a police station, sheriff's  
119 office, correctional facility, prisoner holding facility, county  
120 detention facility, or other governmental facility where an  
121 individual may be held in connection with a criminal charge that  
122 has been or may be filed against the individual.

123 (e) "Statement" means a communication that is oral,  
124 written, electronic, nonverbal, or in sign language.

125 (2) (a) A custodial interrogation at a place of detention,  
126 including the giving of a required warning, the advisement of  
127 the rights of the individual being questioned, and the waiver of  
128 any rights by the individual, must be electronically recorded in  
129 its entirety if the interrogation is related to a covered  
130 offense.

131 (b) If a law enforcement officer conducts a custodial  
132 interrogation at a place of detention without electronically  
133 recording the interrogation, the officer must prepare a written  
134 report explaining why he or she did not record the  
135 interrogation.

136 (c) As soon as practicable, a law enforcement officer who  
137 conducts a custodial interrogation at a location other than a  
138 place of detention shall prepare a written report explaining the  
139 circumstances of the interrogation and summarizing the custodial  
140 interrogation process and the individual's statements.

141 (d) Paragraph (a) does not apply:

142 1. If an unforeseen equipment malfunction prevents  
143 recording the custodial interrogation in its entirety;

144 2. If a suspect refuses to participate in a custodial  
145 interrogation if his or her statements are to be electronically

5-00220B-20

2020346\_\_

146 recorded;

147 3. If an equipment operator error prevents recording the  
148 custodial interrogation in its entirety;

149 4. If the statement is made spontaneously and not in  
150 response to a custodial interrogation question;

151 5. If the statement is made during the processing of the  
152 arrest of a suspect;

153 6. If the custodial interrogation occurs when the law  
154 enforcement officer participating in the interrogation does not  
155 have any knowledge of facts and circumstances that would lead an  
156 officer to reasonably believe that the individual being  
157 interrogated may have committed a covered offense;

158 7. If the law enforcement officer conducting the custodial  
159 interrogation reasonably believes that making an electronic  
160 recording would jeopardize the safety of the officer, the  
161 individual being interrogated, or others; or

162 8. If the custodial interrogation is conducted outside of  
163 this state.

164 (3) Unless a court finds that one or more of the  
165 circumstances specified in paragraph (2) (d) apply, the court  
166 must consider the circumstances of an interrogation conducted by  
167 a law enforcement officer in which he or she did not  
168 electronically record all or part of a custodial interrogation  
169 in determining whether a statement made during the interrogation  
170 is admissible. If the court admits into evidence a statement  
171 made during a custodial interrogation that was not  
172 electronically recorded as required under paragraph (2) (a), the  
173 court must, upon request of the defendant, give cautionary  
174 instructions to the jury regarding the law enforcement officer's

5-00220B-20

2020346\_\_

175 failure to comply with that requirement.

176 (4) A law enforcement agency in this state which has  
177 enforced rules adopted pursuant to this section which are  
178 reasonably designed to ensure compliance with the requirements  
179 of this section is not subject to civil liability for damages  
180 arising from a violation of this section. This section does not  
181 create a cause of action against a law enforcement officer.

182 Section 4. Section 961.04, Florida Statutes, is amended to  
183 read:

184 961.04 Eligibility for compensation for wrongful  
185 incarceration.—A wrongfully incarcerated person is not eligible  
186 for compensation under the act if any of the following apply:

187 ~~(1) Before the person's wrongful conviction and~~  
188 ~~incarceration, the person was convicted of, or pled guilty or~~  
189 ~~nolo contendere to, regardless of adjudication, any violent~~  
190 ~~felony, or a crime committed in another jurisdiction the~~  
191 ~~elements of which would constitute a violent felony in this~~  
192 ~~state, or a crime committed against the United States which is~~  
193 ~~designated a violent felony, excluding any delinquency~~  
194 ~~disposition;~~

195 ~~(2) Before the person's wrongful conviction and~~  
196 ~~incarceration, the person was convicted of, or pled guilty or~~  
197 ~~nolo contendere to, regardless of adjudication, more than one~~  
198 ~~felony that is not a violent felony, or more than one crime~~  
199 ~~committed in another jurisdiction, the elements of which would~~  
200 ~~constitute a felony in this state, or more than one crime~~  
201 ~~committed against the United States which is designated a~~  
202 ~~felony, excluding any delinquency disposition;~~

203 (1)-(3) During the person's wrongful incarceration, the

5-00220B-20

2020346\_\_

204 person was convicted of, or pled guilty or nolo contendere to,  
205 regardless of adjudication, any violent felony.~~†~~

206 (2)~~(4)~~ During the person's wrongful incarceration, the  
207 person was convicted of, or pled guilty or nolo contendere to,  
208 regardless of adjudication, more than one felony that is not a  
209 violent felony.~~†~~~~or~~

210 (3)~~(5)~~ During the person's wrongful incarceration, the  
211 person was also serving a concurrent sentence for another felony  
212 for which the person was not wrongfully convicted.

213 Section 5. Paragraph (c) of subsection (3) of section  
214 893.03, Florida Statutes, is amended to read:

215 893.03 Standards and schedules.—The substances enumerated  
216 in this section are controlled by this chapter. The controlled  
217 substances listed or to be listed in Schedules I, II, III, IV,  
218 and V are included by whatever official, common, usual,  
219 chemical, trade name, or class designated. The provisions of  
220 this section shall not be construed to include within any of the  
221 schedules contained in this section any excluded drugs listed  
222 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
223 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
224 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
225 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
226 Anabolic Steroid Products."

227 (3) SCHEDULE III.—A substance in Schedule III has a  
228 potential for abuse less than the substances contained in  
229 Schedules I and II and has a currently accepted medical use in  
230 treatment in the United States, and abuse of the substance may  
231 lead to moderate or low physical dependence or high  
232 psychological dependence or, in the case of anabolic steroids,

5-00220B-20

2020346\_\_

233 may lead to physical damage. The following substances are  
234 controlled in Schedule III:

235 (c) Unless specifically excepted or unless listed in  
236 another schedule, any material, compound, mixture, or  
237 preparation containing limited quantities of any of the  
238 following controlled substances or any salts thereof:

239 1. Not more than 1.8 grams of codeine per 100 milliliters  
240 or not more than 90 milligrams per dosage unit, with an equal or  
241 greater quantity of an isoquinoline alkaloid of opium.

242 2. Not more than 1.8 grams of codeine per 100 milliliters  
243 or not more than 90 milligrams per dosage unit, with recognized  
244 therapeutic amounts of one or more active ingredients which are  
245 not controlled substances.

246 3. Not more than 300 milligrams of hydrocodone per 100  
247 milliliters or not more than 15 milligrams per dosage unit, with  
248 a fourfold or greater quantity of an isoquinoline alkaloid of  
249 opium.

250 4. Not more than 300 milligrams of hydrocodone per 100  
251 milliliters or not more than 15 milligrams per dosage unit, with  
252 recognized therapeutic amounts of one or more active ingredients  
253 that are not controlled substances.

254 5. Not more than 1.8 grams of dihydrocodeine per 100  
255 milliliters or not more than 90 milligrams per dosage unit, with  
256 recognized therapeutic amounts of one or more active ingredients  
257 which are not controlled substances.

258 6. Not more than 300 milligrams of ethylmorphine per 100  
259 milliliters or not more than 15 milligrams per dosage unit, with  
260 one or more active, nonnarcotic ingredients in recognized  
261 therapeutic amounts.

5-00220B-20

2020346\_\_

262           7. Not more than 50 milligrams of morphine per 100  
263 milliliters or per 100 grams, with recognized therapeutic  
264 amounts of one or more active ingredients which are not  
265 controlled substances.

266

267 For purposes of charging a person with a violation of s. 893.135  
268 involving any controlled substance described in subparagraph 3.  
269 or subparagraph 4., the controlled substance is a Schedule III  
270 controlled substance pursuant to this paragraph but the weight  
271 of the controlled substance per milliliters or per dosage unit  
272 is not relevant to the charging of a violation of s. 893.135.  
273 The weight of the controlled substance shall be determined  
274 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

275           Section 6. For the purpose of incorporating the amendment  
276 made by this act to section 961.04, Florida Statutes, in a  
277 reference thereto, subsection (4) of section 961.02, Florida  
278 Statutes, is reenacted to read:

279           961.02 Definitions.—As used in ss. 961.01–961.07, the term:

280           (4) "Eligible for compensation" means that a person meets  
281 the definition of the term "wrongfully incarcerated person" and  
282 is not disqualified from seeking compensation under the criteria  
283 prescribed in s. 961.04.

284           Section 7. For the purpose of incorporating the amendments  
285 made by this act to section 961.04, Florida Statutes, in  
286 references thereto, paragraph (a) of subsection (1) and  
287 subsections (2), (3), and (4) of section 961.03, Florida  
288 Statutes, are reenacted to read:

289           961.03 Determination of status as a wrongfully incarcerated  
290 person; determination of eligibility for compensation.—

5-00220B-20

2020346\_\_

291 (1) (a) In order to meet the definition of a "wrongfully  
292 incarcerated person" and "eligible for compensation," upon entry  
293 of an order, based upon exonerating evidence, vacating a  
294 conviction and sentence, a person must set forth the claim of  
295 wrongful incarceration under oath and with particularity by  
296 filing a petition with the original sentencing court, with a  
297 copy of the petition and proper notice to the prosecuting  
298 authority in the underlying felony for which the person was  
299 incarcerated. At a minimum, the petition must:

300 1. State that verifiable and substantial evidence of actual  
301 innocence exists and state with particularity the nature and  
302 significance of the verifiable and substantial evidence of  
303 actual innocence; and

304 2. State that the person is not disqualified, under the  
305 provisions of s. 961.04, from seeking compensation under this  
306 act.

307 (2) The prosecuting authority must respond to the petition  
308 within 30 days. The prosecuting authority may respond:

309 (a) By certifying to the court that, based upon the  
310 petition and verifiable and substantial evidence of actual  
311 innocence, no further criminal proceedings in the case at bar  
312 can or will be initiated by the prosecuting authority, that no  
313 questions of fact remain as to the petitioner's wrongful  
314 incarceration, and that the petitioner is not ineligible from  
315 seeking compensation under the provisions of s. 961.04; or

316 (b) By contesting the nature, significance, or effect of  
317 the evidence of actual innocence, the facts related to the  
318 petitioner's alleged wrongful incarceration, or whether the  
319 petitioner is ineligible from seeking compensation under the

5-00220B-20

2020346\_\_

320 provisions of s. 961.04.

321 (3) If the prosecuting authority responds as set forth in  
322 paragraph (2)(a), the original sentencing court, based upon the  
323 evidence of actual innocence, the prosecuting authority's  
324 certification, and upon the court's finding that the petitioner  
325 has presented clear and convincing evidence that the petitioner  
326 committed neither the act nor the offense that served as the  
327 basis for the conviction and incarceration, and that the  
328 petitioner did not aid, abet, or act as an accomplice to a  
329 person who committed the act or offense, shall certify to the  
330 department that the petitioner is a wrongfully incarcerated  
331 person as defined by this act. Based upon the prosecuting  
332 authority's certification, the court shall also certify to the  
333 department that the petitioner is eligible for compensation  
334 under the provisions of s. 961.04.

335 (4)(a) If the prosecuting authority responds as set forth  
336 in paragraph (2)(b), the original sentencing court shall make a  
337 determination from the pleadings and supporting documentation  
338 whether, by a preponderance of the evidence, the petitioner is  
339 ineligible for compensation under the provisions of s. 961.04,  
340 regardless of his or her claim of wrongful incarceration. If the  
341 court finds the petitioner ineligible under the provisions of s.  
342 961.04, it shall dismiss the petition.

343 (b) If the prosecuting authority responds as set forth in  
344 paragraph (2)(b), and the court determines that the petitioner  
345 is eligible under the provisions of s. 961.04, but the  
346 prosecuting authority contests the nature, significance or  
347 effect of the evidence of actual innocence, or the facts related  
348 to the petitioner's alleged wrongful incarceration, the court

5-00220B-20

2020346\_\_

349 shall set forth its findings and transfer the petition by  
350 electronic means through the division's website to the division  
351 for findings of fact and a recommended determination of whether  
352 the petitioner has established that he or she is a wrongfully  
353 incarcerated person who is eligible for compensation under this  
354 act.

355 Section 8. This act shall take effect July 1, 2020.