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| Tab 1 | SB 164 by Polsky (CO-INTRODUCERS) Berman; (Identical to H 00165) Controlled Substance Testing | | | | | | |
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| Tab 2 | SB 280 by Brodeur; (Identical to H 00365) Controlled Substances | | | | | | |
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|--------|---|---|-----|-------------|---------------------|----------------|
| 861258 | A | S | RCS | CJ, Brodeur | Delete L.170 - 175: | 02/14 03:38 PM |
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| Tab 3 | SB 306 by Boyd (CO-INTRODUCERS) Hooper; (Similar to H 00185) Catalytic Converters | | | | | | |
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| 301160 | A | S | RCS | CJ, Martin | btw L.137 - 138: | 02/14 03:39 PM |
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Martin, Chair
Senator Bradley, Vice Chair

MEETING DATE: Tuesday, February 14, 2023
TIME: 1:00—3:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Martin, Chair; Senator Bradley, Vice Chair; Senators Ingoglia, Perry, Pizzo, Polsky, Powell, and Yarborough

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|---|----------------------------|
| 1 | SB 164 Polsky (Identical H 165) | Controlled Substance Testing; Revising the definition of the term "drug paraphernalia" to exclude certain narcotic-drug-testing products, etc. CJ 02/14/2023 Favorable JU RC | Favorable Yeas 8 Nays 0 |
| 2 | SB 280 Brodeur (Identical H 365) | Controlled Substances; Revising the elements that constitute the capital offense of murder in the first degree; revising the elements that constitute the offense of murder in the third degree and constitute a felony of the second degree; providing criminal penalties for adults who unlawfully distribute, deliver, sell, or dispense specified substances or mixtures and an injury or overdose of the user results; providing enhanced criminal penalties for repeat offenders, etc. CJ 02/14/2023 Fav/CS ACJ FP | Fav/CS Yeas 6 Nays 2 |
| 3 | SB 306 Boyd (Similar H 185) | Catalytic Converters; Citing this act as the "Catalytic Converter Antitheft Act"; requiring certain records regarding a transaction involving a detached catalytic converter to be maintained for a specified period; requiring certain information regarding a transaction to be provided to certain persons upon request; providing for an inference that a catalytic converter may have been stolen; providing criminal penalties, etc. CJ 02/14/2023 Fav/CS ACJ FP | Fav/CS Yeas 8 Nays 0 |

Other Related Meeting Documents

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 164

INTRODUCER: Senators Polsky and Berman

SUBJECT: Controlled Substance Testing

DATE: February 13, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Erickson</u> | <u>Stokes</u> | <u>CJ</u> | Favorable |
| 2. | _____ | _____ | <u>JU</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 164 amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog. If so amended, a person who possesses or uses a fentanyl test strip kit would not be subject to arrest and prosecution for any offense under s. 893.145, F.S.

The Legislature’s Office of Economic and Demographic Research preliminary estimates that the bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July1, 2023.

II. Present Situation:

Scheduling of Fentanyl as a Controlled Substance

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

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

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

“Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally.”² Fentanyl is a Schedule (2)(b) controlled substance.³

“Synthetic opioids, including fentanyl, are now the most common drugs involved in drug overdose deaths in the United States.”⁴ According to Florida’s Statewide Drug Policy Advisory Council, the majority of overdose death in Florida in 2021 were related to opioids, and “[t]he most significant increases [in overdose deaths relative to the previous year] were deaths involving fentanyl which increased by 11 percent, and deaths caused by fentanyl increased by 9 percent.”⁵

Controlled Substance Analog

A “controlled substance analog” is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- The substance 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

² *Fentanyl DrugFacts*, National Institute on Drug Abuse (footnotes omitted), available at <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited on Feb. 7, 2023). As a medicine, fentanyl is “typically used to treat patients with severe pain, especially after surgery[,]” and “is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids.” *Id.*

³ Section 893.03(2)(b)9., F.S.

⁴ *Id.*

⁵ *2020 Annual Report* (Dec. 1, 2022), p. 8, Statewide Drug Policy Advisory Council, available at https://www.floridahealth.gov/provider-and-partner-resources/dpac/_documents/2022_DPAC_Annual_Report.pdf (last visited on Feb. 7, 2023).

on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

Fentanyl Test Strip Kit

According to the Centers for Disease Control and Prevention (CDC), fentanyl test strips (FTS) are “small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables).”⁶

The CDC outlines the steps to conduct the test:

- “Put a small amount (at least 10mg) of your drugs aside in a clean, dry container.”
- “Add water to the container and mix together.”
- “Place the wavy end of the test strip down in the water and let it absorb for about 15 seconds.”
- “Take the strip out of the water and place it on a flat surface for 2 to 5 minutes.”
- “Read results.”
 - “Positive results: A single pink line on the left-hand side indicates that fentanyl or a fentanyl analog has been detected in your drugs. If you receive a positive result, it is much safer to discard the batch. Using it could kill you. Illicitly manufactured fentanyl is extremely potent and can be deadly.”
 - “Negative results: Two pink lines indicate that fentanyl or a fentanyl analog has not been detected in your drugs. Remember that no test is 100% accurate and your drugs may still contain fentanyl or fentanyl analogs even if you receive a negative result. You should still take caution as FTS might not detect more potent fentanyl-like drugs, like carfentanil, and fentanyl might not be everywhere in your drugs and your test might miss it.”
 - “Invalid results: A single pink line on the right-hand side or no lines at all, indicates an invalid test. If you get an invalid result, test your drugs again using a new strip.”⁷

Drug Paraphernalia Statutes

Section 893.145, F.S., defines “drug paraphernalia” as *all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S. (prohibiting inhaling, etc., of certain substances)*. Drug paraphernalia is deemed to be contraband which is subject to civil forfeiture.

⁶ *Fentanyl Test Strips: A Harm Reduction Strategy*, Centers for Disease Control and Prevention (citation omitted), available at [https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20\(FTS\)%20are,%2C%20powder%2C%20and%20injectables](https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20(FTS)%20are,%2C%20powder%2C%20and%20injectables). (last visited on Feb. 7, 2023).

⁷ *Id.*

Drug paraphernalia includes testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.⁸

When determining in a criminal case whether an object constitutes drug paraphernalia, a jury or judge must consider, in addition to all other logically relevant factors, all of the following:

- Statements by an owner or by anyone in control of the object concerning its use.
- The proximity of the object, in time and space, to a direct violation of this act.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.
- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- Instructions, oral or written, provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- Any advertising concerning its use.
- The manner in which the object is displayed for sale.
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.⁹

It is a first degree misdemeanor¹⁰ to:

- Use, or possess with intent to use, drug paraphernalia to test a controlled substance.¹¹
- Advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of objects designed or intended for use as drug paraphernalia.¹²

It is a third degree felony¹³ to:

- Deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to test a controlled substance in violation of s. 893.147, F.S.¹⁴

⁸ Section 893.145(4), F.S.

⁹ Section 893.146, F.S.

¹⁰ A first degree misdemeanor is punishable by a term of not more than one year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

¹¹ Section 893.147(1)(a), F.S.

¹² Section 893.147(5), F.S.

¹³ A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

¹⁴ Section 893.147(2), F.S.

- Use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1., F.S.¹⁵

Immunity from Arrest, Charge, Prosecution, or Penalization

Section 893.21, F.S., provides that a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, a drug-related overdose may not be arrested, charged, prosecuted, or penalized for possession of a controlled substance or use or possession of drug paraphernalia.¹⁶ Similar immunity is provided for the person who experiences, or has a good faith belief that he or she is experiencing, drug-related overdose and is in need of medical assistance¹⁷

Section 893.21, F.S., appears to provide immunity from arrest, etc., for a violation of s. 893.147(1), F.S. (use or possession), assuming an FTS kit was used or possessed and the criteria of s. 893.147, F.S., were met. However, there are other offenses in s. 893.147, F.S., which might be applicable to an FTS kit which are not referenced in s. 893.21, F.S.

III. Effect of Proposed Changes:

The bill amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl¹⁸ or a fentanyl analog. If so amended, a person who possesses or uses a fentanyl test strip kit would not be subject to arrest and prosecution for any offense under s. 893.145, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ Section 893.147(4), F.S.

¹⁶ Section 893.21(1), F.S.

¹⁷ Section 893.21(2), F.S.

¹⁸ The bill references s. 893.03(2)(b)9., F.S., which is the scheduling reference for fentanyl in the controlled substance schedules.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).¹⁹

According to the EDR, "per [Department of Corrections] in FY 18-19, there were 4 new commitments for drug paraphernalia violations under s. 893.147, F.S., and there was 1 new commitment in FY 19-20. In FY 20-21, there was 1 new commitment, and in FY 21-22, there were 2 new commitments. While it is not known how prison admissions will be impacted by this new language, the low number of commitments for the last four fiscal years indicate that there will not be a significant impact on the prison population."²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.145 of the Florida Statutes.

¹⁹ *HB 165 – Controlled Substance Testing (Identical SB 164)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

²⁰ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

By Senator Polsky

30-00067B-23

2023164__

1 A bill to be entitled
2 An act relating to controlled substance testing;
3 amending s. 893.145, F.S.; revising the definition of
4 the term "drug paraphernalia" to exclude certain
5 narcotic-drug-testing products; providing an effective
6 date.

8 Be It Enacted by the Legislature of the State of Florida:

10 Section 1. Subsection (4) of section 893.145, Florida
11 Statutes, is amended to read:

12 893.145 "Drug paraphernalia" defined.—The term "drug
13 paraphernalia" means all equipment, products, and materials of
14 any kind which are used, intended for use, or designed for use
15 in planting, propagating, cultivating, growing, harvesting,
16 manufacturing, compounding, converting, producing, processing,
17 preparing, testing, analyzing, packaging, repackaging, storing,
18 containing, concealing, transporting, injecting, ingesting,
19 inhaling, or otherwise introducing into the human body a
20 controlled substance in violation of this chapter or s. 877.111.
21 Drug paraphernalia is deemed to be contraband which shall be
22 subject to civil forfeiture. The term includes, but is not
23 limited to:

24 (4) Testing equipment used, intended for use, or designed
25 for use in identifying, or in analyzing the strength,
26 effectiveness, or purity of, controlled substances, excluding
27 narcotic-drug-testing products that are used to determine
28 whether a controlled substance contains fentanyl as described in
29 s. 893.03(2)(b)9. or a controlled substance analog, as defined

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-00067B-23

2023164__

30 in s. 893.0356, of fentanyl.

31 Section 2. This act shall take effect July 1, 2023.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 165 – Controlled Substance Testing (Identical SB 164)

This bill amends s. 893.145, F.S., providing exclusions to what testing equipment constitutes drug paraphernalia. The language would now read as follows (new language in bold): “Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, **excluding narcotic-drug-testing products that are used to determine whether a controlled substance contains fentanyl as described in s. 893.03(2)(b)9, F.S. or a controlled substance analog, as defined in s. 893.0356, F.S. of fentanyl.**”

Per DOC, in FY 18-19, there were 4 new commitments for drug paraphernalia violations under s. 893.147, F.S., and there was 1 new commitment in FY 19-20. In FY 20-21, there was 1 new commitment, and in FY 21-22, there were 2 new commitments. While it is not known how prison admissions will be impacted by this new language, the low number of commitments for the last four fiscal years indicate that there will not be a significant impact on the prison population.

EDR PROPOSED ESTIMATE: Negative Insignificant

Requested by: Senate

APPEARANCE RECORD

2/14/23

Meeting Date

SB 164

Bill Number or Topic

Criminal Justice Comm

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Mary Beth Creighton

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State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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The Florida Senate

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2/14

Meeting Date

CRIMJ

Committee

1054

Bill Number or Topic

Amendment Barcode (if applicable)

Name JENNIFER WEBB

Phone 727-320-6275

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Street

Tallahassee FL 32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

414

The Florida Senate

APPEARANCE RECORD

1684

Meeting Date

Bill Number or Topic

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CRIM

Committee

LIVE TAMPA BAY

Amendment Barcode (if applicable)

Name

~~JENNIFER WEBB~~

Phone

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Address

Email

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City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

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I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2/14/23

Meeting Date

CO

Committee

SB 164

Bill Number or Topic

Amendment Barcode (if applicable)

Name

AARON WAYT, FL ASSN OF CRIM DEF LAWYERS

Phone

Address

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AARON@DONDUMPHREY.COM

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Feb 14, 2023

Meeting Date

SB 164

Bill Number or Topic

CJ

Committee

Amendment Barcode (if applicable)

Name Ann Salamone

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State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/14/23

164

Meeting Date

Bill Number or Topic

Criminal Justice

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Committee

Amendment Barcode (if applicable)

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FL

32302

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
R Street Institute

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

2/14/23

APPEARANCE RECORD

SB0164

Meeting Date

Bill Number or Topic

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Senate Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Jessica Yearry for Florida Public Defender Assoc. Phone 850-488-6850

Address 103 N. Gadsden St. Email ARichardson@flpda.org

Tallahassee FL 32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

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2/14/2023

Meeting Date

SB144

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name LAURETTE PHILIPSEN

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Street

Email laurette@florida-cares
Charity.org

West Palm Beach FL 33407
City State Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

2/14/23

Meeting Date

The Florida Senate

APPEARANCE RECORD

SB 164

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name NR Hines

Phone 786-363-1104

Address 4343 W Flagler St

Email nhines@aclufl.org

Street

Coral Gables

City

FL

State

33134

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

ACLU FL

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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This form is part of the public record for this meeting.

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Committee on Agriculture, Environment,
and General Government
Appropriations Committee on Transportation, Tourism,
and Economic Development
Criminal Justice
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR TINA SCOTT POLSKY

30th District

January 19, 2023

Chairman Jonathan Martin
Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Martin,

I respectfully request that you place SB 164, relating to Controlled Substance Testing, on the agenda of the Committee on Criminal Justice, at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Tina S. Polsky".

Senator Tina S. Polsky
Florida Senate, District 30

cc: Amanda Stokes, Staff Director
Sue Arnold, Administrative Assistant

REPLY TO:

- 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 280

INTRODUCER: Criminal Justice Committee and Senator Brodeur

SUBJECT: Controlled Substances

DATE: February 15, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Erickson | Stokes | CJ | Fav/CS |
| 2. | | | ACJ | |
| 3. | | | FP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 280 addresses prosecution and punishment of certain unlawful acts involving heroin, fentanyl, and fentanyl-related controlled substances.

The bill revises the causation requirement for the first degree murder offense of “death caused by the unlawful distribution of a controlled substance.” Under current law, a controlled substance is required to be the proximate cause of the death of the user. The bill, instead, only requires that the substance be a “substantial factor” in producing the death of the user. “Substantial factor” means that the use of a substance or mixture alone is sufficient to cause death or that the use of the substance or mixture contributed to the resulting death, regardless of whether any other substance or mixture used is also sufficient to cause death or contributed to the death. This definition may cover situations where a user dies with a combination of illegal substances in his or her body.

The bill also makes it a second degree felony or a first degree felony (second or subsequent offense) for an adult to unlawfully distribute, deliver, sell, or dispense heroin, fentanyl, fentanyl-related substances, and mixtures containing any of these substances, and an injury or overdose results, when such substance or mixture is proven to have caused or been a substantial factor in causing the injury or overdose.

The bill also specifies that this unlawful distribution, etc., may be from a person who directly, or indirectly through another person, provided the substance or mixture to the user who was injured or overdosed.

Finally, the bill provides that the administration of medical care by an emergency responder is prima facie evidence that the person receiving medical care was injured or overdosed.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Scheduling of Fentanyl as a Controlled Substance

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"¹ of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

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

“Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally.”² “Synthetic opioids, including fentanyl, are now the most common drugs involved in drug overdose deaths in the United States.”³ According to Florida’s Statewide Drug Policy Advisory Council, the majority of overdose deaths in Florida in 2021 were related to opioids, and “[t]he most significant increases [in overdose deaths relative to the previous year] were deaths involving fentanyl which increased by 11 percent, and deaths caused by fentanyl increased by 9 percent.”⁴

Fentanyl and fentanyl-related substances (e.g., alfentanil, carfentanil, and sufentanil) are Schedule (2)(b) controlled substances.⁵ Section 893.13, F.S., punishes various unlawful acts involving Schedule (2)(b) controlled substances:

- Selling, manufacturing, or delivering the substance, or possessing the substance with intent to sell, manufacture, or deliver⁶ it are generally second degree felonies;⁷
- Purchasing or possessing the substance with intent to purchase it are generally second degree felonies;⁸
- Bringing the substance into this state (importing) is generally a second degree felony;⁹
- Possessing 10 grams of more of the substance is generally a first degree felony¹⁰ but possessing a lesser amount is generally a third degree felony;¹¹ and
- Distributing¹² the substance, except through an authorized order form, is generally a third degree felony.¹³

Section 893.135, F.S., punishes drug trafficking, which consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importing), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled

² *Fentanyl DrugFacts*, National Institute on Drug Abuse (footnotes omitted), available at <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited on Feb. 6, 2023). As a medicine, fentanyl is “typically used to treat patients with severe pain, especially after surgery[,]” and “is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids.” *Id.*

³ *Id.*

⁴ *2020 Annual Report* (Dec. 1, 2022), p. 8, Statewide Drug Policy Advisory Council, available at https://www.floridahealth.gov/provider-and-partner-resources/dpac/documents/2022_DPAC_Annual_Report.pdf (last visited on Feb. 6, 2023).

⁵ Section 893.03(2)(b)1., 6., 9., and 30., F.S.

⁶ “Deliver” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. Section 893.02(6), F.S.

⁷ Section 893.13(1)(a)1., F.S. A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Section 775.082 and 775.083, F.S.

⁸ Section 893.13(2)(a)1., F.S.

⁹ Section 893.13(5)(a)1., F.S.

¹⁰ Section 893.13(6)(c), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹¹ Section 893.13(6)(a), F.S. A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

¹² “Distribute” means to deliver, other than by administering or dispensing, a controlled substance. Section 893.02(8), F.S.

“Dispense” means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user. Section 893.02(7), F.S. “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal. Section 893.02(1), F.S.

¹³ Section 893.13(7)(a)4., F.S.

substances, in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, including fentanyl and fentanyl-related substances. The controlled substance involved in the trafficking must meet a specified weight or quantity threshold. Most drug trafficking offenses are first degree felonies and are subject to a mandatory minimum term of imprisonment and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.

Trafficking in 4 grams or more of:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- A fentanyl derivative;¹⁴
- A controlled substance analog¹⁵ of any previously-described substance or a fentanyl derivative; or
- A mixture containing any previously-described substance or a fentanyl derivative or analog.¹⁶

If the quantity involved in the drug trafficking violation is:

- 4 grams or more, but less than 14 grams, the person must be sentenced to a mandatory minimum term of imprisonment of 7 years, and must be ordered to pay a fine of \$50,000;
- 14 grams or more, but less than 28 grams, the person must be sentenced to a mandatory minimum term of imprisonment of 20 years, and must be ordered to pay a fine of \$100,000; or
- 28 grams or more, the person must be sentenced to a mandatory minimum term of imprisonment of 25 years, and must be ordered to pay a fine of \$500,000.¹⁷

Controlled Substance Analog

A “controlled substance analog” is a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- The substance 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 of s. 893.03, F.S.¹⁸

Murder by Unlawful Distribution of Certain Controlled Substances

Section 782.04(1)(a)3., F.S., provides that first degree murder includes unlawfully killing of a human being which resulted from the unlawful distribution by a person 18 years of age or older

¹⁴ See s. 893.03(1)(a)62., F.S.

¹⁵ See s. 893.0356(2)(a), F.S.

¹⁶ Section 893.135(1)(c)4.a.(I)-(VII), F.S.

¹⁷ Section 893.135(1)(c)4.b.(I)-(III), F.S.

¹⁸ Section 893.0356(2)(a), F.S.

of any of the following substances, or a mixture containing any of the following substances, when such substance or mixture is proven to be the *proximate cause* of the death of the user:

- A Schedule I controlled substance;¹⁹
- Cocaine;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- Methadone;
- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- Methamphetamine; or
- A controlled substance analog of any of the above-listed controlled substances.

First degree murder is a capital felony,²⁰ punishable by death or life imprisonment.²¹

Third Degree Murder – Exclusion of Unlawful Distribution of Certain Controlled Substances

Section 782.04(4), F.S., provides that it is third degree murder, a second degree felony, when an unlawful killing of a human being, was perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate any felony *other than* any felony listed in subsection (4). This list of excluded felonies includes unlawful distribution by a person 18 years of age or older of any of the following substances when such substance is proven to be the *proximate cause* of the death of the user:

- A Schedule I controlled substance;
- Cocaine;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- Methadone;
- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- Methamphetamine; or
- A controlled substance analog of any of the above-listed controlled substances.²²

Crimes with an Element of Causation

The Florida Supreme Court has identified “two distinct subelements” of causation for crimes that include an element of causation.²³

¹⁹ See s. 893.03(1), F.S.

²⁰ Section 782.04(1)(a)3., F.S.

²¹ Section 782.082, F.S.

²² Section 782.04(4)(1), F.S.

²³ *Eversely v. State*, 748 So.2d 963, 966-67 (Fla. 1999) (citations omitted).

As legal scholars have recognized, before a defendant can be convicted of a crime that includes an element of causation, the [s]tate must prove beyond a reasonable doubt that the defendant’s conduct was (1) the “cause in fact” and (2) the “legal cause” (often called “proximate cause” of the relevant harm.²⁴

Typically, to establish the “cause in fact” subelement, the state “must demonstrate that ‘but for’ the defendant’s conduct, the harm would not have occurred.”²⁵ “A defendant can rebut this showing by demonstrating that the harm would have occurred in any event, regardless of the defendant’s conduct.”²⁶ However, “[i]n those rare circumstances where ‘two causes, each alone sufficient to bring about the harmful result, operate together to cause it,’ the ‘but for’ test becomes impossible to prove”²⁷ and “the State may prove the “‘cause-in-fact’ causation by demonstrating that the defendants conduct was a ‘substantial factor’ in bringing about the harm.”²⁸

Additionally, the state must prove that the defendant’s conduct was the “proximate cause” of the harm. “Florida courts have considered two basic questions in determining proximate cause: (1) whether the prohibited result of the defendant’s conduct is beyond the scope of any fair assessment of the danger created by the defendant’s conduct and (2) whether it would be otherwise unjust, based on fairness and policy considerations, to hold the defendant criminally responsible for the prohibited result.”²⁹

Florida Standard Jury Instructions for Murder by Unlawful Distribution of Certain Controlled Substances

The Florida Standard Jury instructions for murder by unlawful distribution of certain controlled substances defines “proximate cause” as conduct “that was the *primary* or moving cause in producing the death, and without it, the death would not have happened.”³⁰ Because the instruction requires the substance be the *primary* cause of death, a prosecutor may encounter certain scenarios where he or she cannot prove a specific substance was the primary cause of death. A victim may, for example, have ingested lethal amounts of both cocaine and opium, each of which could have caused his or her death. Prosecutors have reported difficulty obtaining convictions in scenarios such as this, as it is virtually impossible to determine if something was the *primary* cause if there are multiple sufficient possibilities that were all equally lethal.³¹

²⁴ *Id.* at 966-967 (citations omitted).

²⁵ *Id.* at 967 (citations omitted).

²⁶ *Id.* (citation omitted).

²⁷ *Id.*, quoting 1 Wayne R. LaFare & Austin W. Scott, Jr., *Substantive Criminal Law* s. 3.12, at 394 (footnote and other citations omitted).

²⁸ *Id.* (citations omitted).

²⁹ *Id.* (citations omitted).

³⁰ Fla. Std. Jury Instr. (Crim.) 7.3(a) (emphasis added by staff), available at <https://www.floridabar.org/rules/florida-standard-jury-instructions/criminal-jury-instructions-home/criminal-jury-instructions/sji-criminal-chapter-7/> (last visited on Feb. 6, 2023); and *Aumuller v. State*, 944 So 2d 1137, 1141-1142 (Fla. 2d DCA 2006).

³¹ Office Memorandum to Bob Cortes from Daniel E. Faggard, Assistant State Attorney, Eighteenth Judicial Circuit, Re: Substantial Factor Test (Feb. 5, 2021) (on file with the Senate Committee on Criminal Justice).

Criminal Punishment Code

The Criminal Punishment Code³² (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³³ Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. 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.³⁴ Absent mitigation,³⁵ 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.³⁶

III. Effect of Proposed Changes:

The bill addresses unlawful acts involving heroin, fentanyl, and fentanyl-related controlled substances.

The bill amends s. 782.04(1)(a), F.S., to revise the causation requirement for the first degree murder offense of "death caused by the unlawful distribution of a controlled substance." Under current law, a controlled substance is required to be the *proximate cause* of the death of the user. The bill, instead, only requires that the substance be a "substantial factor" in producing the death of the user. "Substantial factor" means that the use of a substance or mixture alone is sufficient to cause death or that the use of the substance or mixture contributed to the resulting death, regardless of whether any other substance or mixture used is also sufficient to cause death or contributed to the death. This definition may cover situations where a user dies with a combination of illegal substances in his or her body.

The bill also creates s. 893.131, F.S., which provides that it is a second degree felony or first degree felony (second or subsequent offense) for a person 18 years of age or older to unlawfully distribute, deliver, sell, or dispense any of the following substances if injury or overdose³⁷

³² 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.

³³ 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.

³⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

³⁵ 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.

³⁶ 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. Section 921.0024(2), F.S.

³⁷ "Injury or overdose" is defined in the bill as drug toxicity or the temporary loss of locomotor activity, motor coordination, or consciousness or cognitive impairment.

results, when such substance or mixture is proven to have caused or been a substantial factor³⁸ in causing the injury or overdose:

- Heroin;³⁹
- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- Fentanyl derivatives;
- A controlled substance analog of any previously-described substance or a fentanyl derivative; or
- A mixture containing any previously-described substance or a fentanyl derivative or analog.

Neither the second degree felony nor the first degree felony created by the bill are specifically ranked in the Code offense severity level ranking chart. Accordingly, both would be ranked under s. 921.0023, F.S. The second degree felony would be ranked in level 4, and the first degree felony would be ranked in level 7.⁴⁰

The bill also specifies that this unlawful distribution, etc., may be from a person who directly, or indirectly through another person, provided the substance or mixture to the user who was injured or overdosed.

Finally, the bill provides that the administration of medical care⁴¹ by an emergency responder, including, but not limited to, a law enforcement officer, a paramedic, or an emergency medical technician, or the administration of an emergency opioid antagonist⁴² by such emergency responder, is prima facie evidence that the person receiving medical care was injured or overdosed.⁴³

The bill takes effect July 1, 2023.

³⁸ “Substantial factor” means that the use of a substance or mixture alone is sufficient to cause an injury or overdose or that the use of the substance or mixture contributed to a resulting injury or overdose, regardless of whether any other substance or mixture used is also sufficient to cause an injury or overdose.

³⁹ Heroin is a Schedule (1)(b) controlled substance. *See* s. 893.03(1)(b)11. F.S.

⁴⁰ Section 921.0023(2) and (3), F.S.

⁴¹ “Medical care” is defined as the administration of treatment for the purposes of preserving or sustaining life or the administration of an emergency opioid antagonist.

⁴² “Emergency opioid antagonist” is defined in s. 381.887(1)(d), F.S., as naloxone hydrochloride or any similarly acting drug that blocks the effects of opioids administered from outside the body and that is approved by the United States Food and Drug Administration for the treatment of an opioid overdose.

⁴³ The bill appears to create a permissive inference. In criminal law, a “permissive inference” is legally permissible if it “allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. In this situation, the basic fact may constitute prima facie evidence of the elemental fact.” *State v. Rygwelski*, 899 So.2d 498, 501 (Fla. 2d DCA 2005) (citations omitted).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).⁴⁴

The EDR provided the following information relevant to its estimate:

In FY 18-19, the incarceration rate for a Level 4, 2nd degree felony was 28.7%, and in FY 19-20 the incarceration rate was 27.3%. In FY 20-21, the incarceration

⁴⁴ *HB 365 – Controlled Substances (Identical SB 280)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

rate for a Level 4, 2nd degree felony was 23.8%, and in FY 21-22 the incarceration rate was 29.7%. In FY 18-19, the incarceration rate for a Level 1, 1st degree felony was 67.1%, and in FY 19-20 the incarceration rate was 66.5%. In FY 20-21, the incarceration rate for a Level 1, 1st degree felony was 65.5%, and in FY 21-22 the incarceration rate was 63.1%.

Per [Department of Corrections], in FY 18-19, there was 1 new commitment under s. 782.04, F.S. relating to drugs, and no new commitments in FY 19-20, FY 20-21, or FY 21-22. Per Florida Department of Health, in CY 2021, there were 50,803 non-fatal drug overdose emergency department visits and 8,093 fatal drug overdoses. While it is not known what drug or drugs were in their systems, prior reports have indicated mixtures of the drugs included in this bill. The drugs listed under s. 782.04(1), F.S. and s. 893.131, F.S. showed similar high numbers as contributing to fatal overdoses, so it is likely that the non-fatal overdoses also have these drugs involved. It is not known how prison admissions will be impacted by this new language, nor is it known if this language will expand how a non-fatal overdose is defined.⁴⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 782.04 of the Florida Statutes.

This bill creates the section 893.131 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 14, 2023:

The CS specifies that the unlawful distribution, etc., of the fentanyl, etc., or mixture may be from a person who directly, or indirectly through another person, provided the substance or mixture to the user who was injured or overdosed.

- B. **Amendments:**

None.

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

⁴⁵ *Id.*



861258

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/14/2023 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Criminal Justice (Brodeur) recommended the following:

Senate Amendment

Delete lines 170 - 175

and insert:

(3) The unlawful distribution, delivery, sale, or dispensing of a substance or mixture specified in subparagraphs (2) (a) 1.-8. may be from a person who directly, or indirectly through another person, provided the substance or mixture to the user who was injured or overdosed.

By Senator Brodeur

10-00273B-23

2023280__

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 782.04, F.S.; revising the elements that constitute
 4 the capital offense of murder in the first degree;
 5 revising the elements that constitute the offense of
 6 murder in the third degree and constitute a felony of
 7 the second degree; defining the term "substantial
 8 factor"; creating s. 893.131, F.S.; defining terms;
 9 providing criminal penalties for adults who unlawfully
 10 distribute, deliver, sell, or dispense specified
 11 substances or mixtures and an injury or overdose of
 12 the user results; providing enhanced criminal
 13 penalties for repeat offenders; providing
 14 construction; providing an effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Paragraph (a) of subsection (1) and subsections
 19 (4) and (5) of section 782.04, Florida Statutes, are amended to
 20 read:
 21 782.04 Murder.—
 22 (1) (a) The unlawful killing of a human being:
 23 1. When perpetrated from a premeditated design to effect
 24 the death of the person killed or any human being;
 25 2. When committed by a person engaged in the perpetration
 26 of, or in the attempt to perpetrate, any:
 27 a. Trafficking offense prohibited by s. 893.135(1),
 28 b. Arson,
 29 c. Sexual battery,

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 d. Robbery,
 31 e. Burglary,
 32 f. Kidnapping,
 33 g. Escape,
 34 h. Aggravated child abuse,
 35 i. Aggravated abuse of an elderly person or disabled adult,
 36 j. Aircraft piracy,
 37 k. Unlawful throwing, placing, or discharging of a
 38 destructive device or bomb,
 39 l. Carjacking,
 40 m. Home-invasion robbery,
 41 n. Aggravated stalking,
 42 o. Murder of another human being,
 43 p. Resisting an officer with violence to his or her person,
 44 q. Aggravated fleeing or eluding with serious bodily injury
 45 or death,
 46 r. Felony that is an act of terrorism or is in furtherance
 47 of an act of terrorism, including a felony under s. 775.30, s.
 48 775.32, s. 775.33, s. 775.34, or s. 775.35, or
 49 s. Human trafficking; or
 50 3. Which resulted from the unlawful distribution by a
 51 person 18 years of age or older of any of the following
 52 substances, or mixture containing any of the following
 53 substances, when such substance or mixture is proven to have
 54 caused, or is proven to have been a substantial factor in
 55 producing, ~~be the proximate cause of~~ the death of the user:
 56 a. A substance controlled under s. 893.03(1);
 57 b. Cocaine, as described in s. 893.03(2)(a)4.;
 58 c. Opium or any synthetic or natural salt, compound,

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59 derivative, or preparation of opium;
 60 d. Methadone;
 61 e. Alfentanil, as described in s. 893.03(2)(b)1.;
 62 f. Carfentanil, as described in s. 893.03(2)(b)6.;
 63 g. Fentanyl, as described in s. 893.03(2)(b)9.;
 64 h. Sufentanil, as described in s. 893.03(2)(b)30.;
 65 i. Methamphetamine, as described in s. 893.03(2)(c)5.; or
 66 j. A controlled substance analog, as described in s.
 67 893.0356, of any substance specified in sub-subparagraphs a.-i.,
 68
 69 is murder in the first degree and constitutes a capital felony,
 70 punishable as provided in s. 775.082.
 71 (4) The unlawful killing of a human being, when perpetrated
 72 without any design to effect death, by a person engaged in the
 73 perpetration of, or in the attempt to perpetrate, any felony
 74 other than any:
 75 (a) Trafficking offense prohibited by s. 893.135(1),
 76 (b) Arson,
 77 (c) Sexual battery,
 78 (d) Robbery,
 79 (e) Burglary,
 80 (f) Kidnapping,
 81 (g) Escape,
 82 (h) Aggravated child abuse,
 83 (i) Aggravated abuse of an elderly person or disabled
 84 adult,
 85 (j) Aircraft piracy,
 86 (k) Unlawful throwing, placing, or discharging of a
 87 destructive device or bomb,

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88 (l) Unlawful distribution of any substance listed in sub-
 89 subparagraphs (1)(a)3.a.-j. by a person 18 years of age or
 90 older, when such substance is proven to have caused, or is
 91 proven to have been a substantial factor in producing, ~~be the~~
 92 ~~proximate cause of~~ the death of the user,
 93 (m) Carjacking,
 94 (n) Home-invasion robbery,
 95 (o) Aggravated stalking,
 96 (p) Murder of another human being,
 97 (q) Aggravated fleeing or eluding with serious bodily
 98 injury or death,
 99 (r) Resisting an officer with violence to his or her
 100 person, or
 101 (s) Felony that is an act of terrorism or is in furtherance
 102 of an act of terrorism, including a felony under s. 775.30, s.
 103 775.32, s. 775.33, s. 775.34, or s. 775.35,
 104
 105 is murder in the third degree and constitutes a felony of the
 106 second degree, punishable as provided in s. 775.082, s. 775.083,
 107 or s. 775.084.
 108 (5) As used in this section, the term:
 109 (a) "Substantial factor" means that the use of a substance
 110 or mixture alone is sufficient to cause death or that the use of
 111 the substance or mixture contributed to the resulting death,
 112 regardless of whether any other substance or mixture used is
 113 also sufficient to cause death or contributed to the death.
 114 (b) "Terrorism" means an activity that:
 115 ~~(a)~~1.a. Involves a violent act or an act dangerous to human
 116 life which is a violation of the criminal laws of this state or

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117 of the United States; or
 118 ~~b.2-~~ Involves a violation of s. 815.06; and
 119 ~~2.(b)~~ Is intended to:
 120 ~~a.1-~~ Intimidate, injure, or coerce a civilian population;
 121 ~~b.2-~~ Influence the policy of a government by intimidation
 122 or coercion; or
 123 ~~c.3-~~ Affect the conduct of government through destruction
 124 of property, assassination, murder, kidnapping, or aircraft
 125 piracy.
 126 Section 2. Section 893.131, Florida Statutes, is created to
 127 read:
 128 893.131 Distribution of controlled substances resulting in
 129 injury or overdose.-
 130 (1) As used in this section, the term:
 131 (a) "Emergency opioid antagonist" has the same meaning as
 132 in s. 381.887.
 133 (b) "Injury or overdose" means drug toxicity or the
 134 temporary loss of locomotor activity, motor coordination, or
 135 consciousness or cognitive impairment.
 136 (c) "Medical care" means the administration of treatment
 137 for the purposes of preserving or sustaining life or the
 138 administration of an emergency opioid antagonist.
 139 (d) "Substantial factor" means that the use of a substance
 140 or mixture alone is sufficient to cause an injury or overdose or
 141 that the use of the substance or mixture contributed to a
 142 resulting injury or overdose, regardless of whether any other
 143 substance or mixture used is also sufficient to cause an injury
 144 or overdose.
 145 (2) (a) Except as provided in paragraph (b), a person 18

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146 years of age or older who unlawfully distributes, delivers,
 147 sells, or dispenses:
 148 1. Heroin, as described in s. 893.03(1)(b)11.;
 149 2. Alfentanil, as described in s. 893.03(2)(b)1.;
 150 3. Carfentanil, as described in s. 893.03(2)(b)6.;
 151 4. Fentanyl, as described in s. 893.03(2)(b)9.;
 152 5. Sufentanil, as described in s. 893.03(2)(b)30.;
 153 6. Fentanyl derivatives, as described in s.
 154 893.03(1)(a)62.;
 155 7. A controlled substance analog, as described in s.
 156 893.0356, of any substance specified in subparagraphs 1.-6.; or
 157 8. A mixture containing any substance specified in
 158 subparagraphs 1.-7.,
 159 and an injury or overdose of the user results, commits a felony
 160 of the second degree, punishable as provided in s. 775.082, s.
 161 775.083, or s. 775.084, when such substance or mixture is proven
 162 to have caused or been a substantial factor in causing the
 163 injury or overdose suffered by the user.
 164 (b) A person 18 years of age or older who commits a
 165 violation of paragraph (a) and who has previously been convicted
 166 of a violation of paragraph (a) commits a felony of the first
 167 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 168 775.084.
 169 (3) The unlawful distribution, delivery, sale, or
 170 dispensing of a substance or mixture specified in subparagraphs
 171 (2)(a)1.-8. may be attributed directly or indirectly to the
 172 person who was injured or who overdosed or as a result of a
 173 further unlawful distribution, delivery, sale, or dispensing of
 174

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175 such substance or mixture to another person.

176 (4) The administration of medical care by an emergency
177 responder, including, but not limited to, a law enforcement
178 officer, a paramedic, or an emergency medical technician, or the
179 administration of an emergency opioid antagonist by such
180 emergency responder, is prima facie evidence that the person
181 receiving medical care was injured or overdosed.

182 Section 3. This act shall take effect July 1, 2023.

HB 365 – Controlled Substances (Identical SB 280)

This bill amends multiple statutes. First, it amends the Level 9, 1st degree felony under s. 782.04(1), F.S. for “the unlawful killing of a human being...when perpetrated from a premeditated design to effect the death of the person killed or any human being,” deleting that the unlawful killing of a human being can be defined as someone unlawfully distributing a controlled substance and that substance being the proximate cause of the death of the user. It is replaced with (new language in bold): “**proven to have caused, or is proven to have been a substantial factor in producing** the death of the user.” Furthermore, it amends the Level 8, 1st degree felony under s. 782.04(4), F.S. for “the unlawful killing of a human being, when perpetrated without any design to effect death,” deleting that the unlawfully distributed substance must be the proximate cause of the death of the user. This is also replaced with (new language in bold): “**proven to have caused, or is proven to have been a substantial factor in producing** the death of the user.” It then defines substantial factor as “the use of a substance or mixture alone is sufficient to cause death or that the use of the substance or mixture contributed to the resulting death, regardless of whether any other substance or mixture used is also sufficient to cause death or contributed to the death.”

This bill also creates s. 893.131, F.S., providing several definitions, including that “injury or overdose” means drug toxicity or the temporary loss of locomotor activity, motor coordination, or consciousness or cognitive impairment.” Additionally, substantial factor has a slightly different definition where “the use of a substance or mixture alone is sufficient to cause an injury or overdose or that the use of the substance or mixture contributed to a resulting injury or overdose, regardless of whether any other substance or mixture used is also sufficient to cause an injury or overdose.” It is then stated that “a person 18 years of age or older who unlawfully distributes, delivers, sells, or dispenses...heroin...alfentanil...carfentanil...fentanyl...sufentanil...fentanyl derivatives...a controlled substance analog” of the drugs listed “or a mixture containing any substance specified” of these drugs and their analogs “and an injury or overdose of the user results” commits an **unranked, 2nd degree felony (Level 4 by default)** “when such substance or mixture is proven to have caused or been a substantial factor in causing the injury or overdose suffered by the user.” One who commits this act and has previously been convicted of one of these violations would now have committed an **unranked, 1st degree felony (Level 7 by default)**. It is also stated that someone who was injured or overdosed could also be charged with these violations if that person committed these acts. Finally, it states that “the administration of medical care by an emergency responder, including, but not limited to, a law enforcement officer, a paramedic, or an emergency medical technician, or the administration of an emergency opioid antagonist by such emergency responder, is prima facie evidence that the person receiving medical care was injured or overdosed.”

In FY 18-19, the incarceration rate for a Level 4, 2nd degree felony was 28.7%, and in FY 19-20 the incarceration rate was 27.3%. In FY 20-21, the incarceration rate for a Level 4, 2nd degree felony was 23.8%, and in FY 21-22 the incarceration rate was 29.7%. In FY 18-19, the incarceration rate for a Level 1, 1st degree felony was 67.1%,

and in FY 19-20 the incarceration rate was 66.5%. In FY 20-21, the incarceration rate for a Level 1, 1st degree felony was 65.5%, and in FY 21-22 the incarceration rate was 63.1%.

Per DOC, in FY 18-19, there was 1 new commitment under s. 782.04, F.S. relating to drugs, and no new commitments in FY 19-20, FY 20-21, or FY 21-22. Per Florida Department of Health, in CY 2021, there were 50,803 non-fatal drug overdose emergency department visits and 8,093 fatal drug overdoses. While it is not known what drug or drugs were in their systems, prior reports have indicated mixtures of the drugs included in this bill. The drugs listed under s. 782.04(1), F.S. and s. 893.131, F.S. showed similar high numbers as contributing to fatal overdoses, so it is likely that the non-fatal overdoses also have these drugs involved. It is not known how prison admissions will be impacted by this new language, nor is it known if this language will expand how a non-fatal overdose is defined.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: Senate

OFFICE OF THE STATE ATTORNEY
EIGHTEENTH JUDICIAL COURT OF FLORIDA
BREVARD AND SEMINOLE COUNTIES

PHIL ARCHER
STATE ATTORNEY

OFFICE MEMORANDUM

February 7, 2023

TO: Bob Cortes
FROM: Daniel E. Faggard
SUBJECT: HB325
MESSAGE: Re: Substantial Factor Test

As currently written HB325 reads in part, “3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, tended to cause, or contributed to the death of the user...”

I understand there is some hesitation to “extend” culpability to situations where the drug distributor played only a minor role. The goal of amending the current statute is not to “cast a wider net.” Rather, it is to assist our Medical Examiners in forming an opinion in overdose homicide cases.

“Proximate Cause” is not defined in Chapter 782. However, in Aumuller v. State, 944 So.2d 1137 (Fla. 2d DCA 2006) Florida’s Second District Court of Appeal quoted from the jury instruction used in the trial court and seemed to approve of the definition used. The Aumuller court stated, “The State is required to prove the heroin was the proximate cause of the death. This means you must find that the heroin was the primary or moving cause in producing the death, and without it, the death would not have happened.” Recently, Florida Standard Criminal Jury Instruction 7.3(a) was promulgated and similarly defines Proximate Cause as, “[T]he primary or moving cause of the death; the death would not have occurred but for the defendant’s conduct; and the death was a natural and reasonably anticipated consequence of the defendant’s conduct.”

The trouble with the current definition stems from the fact that nearly one hundred percent of drug users choose to use multiple controlled substances, and alcohol. As a result, when, for example, the Medical Examiner is reviewing the toxicology of a deceased individual indicating fentanyl, cocaine, alcohol, THC and Diluadid in their system, under the current definition of

Proximate Cause, before the doctor can opine the fentanyl is the Proximate Cause, they must they must determine that every other substance (cocaine, alcohol, THC and Dilaudid) could NOT have caused their death. This produces an absurd, and extremely common, result. For example, in the scenario above, suppose the decedent was prescribed Dilaudid and taking it normally. Additionally, picture them going to a party, and several hours before that party they use some cocaine. It does not kill them, but they have a short “high” and their body starts to metabolize that cocaine. Finally, imagine they go to the party and smoke a little THC, drink a little alcohol and then buy some fentanyl from a dealer at the party. They shoot up in the bathroom and immediately die from a massive fentanyl overdose. The medical examiner sees an enormous amount of fentanyl in the blood. The Medical Examiner’s opinion is that the level of fentanyl observed would clearly be fatal one hundred percent of the time. Of course they also see some cocaine, Dilaudid and alcohol, which when combined together, the Medical Examiner articulates could have caused the death as well. The result is the Medical Examiner, using the current definition, would say they cannot say what the “primary or moving cause” is, because they cannot determine “the death would not have occurred but for the” drug dealer selling the decedent the fentanyl. This is the case even though we know the decedent would have certainly died if they had only taken the fentanyl. This is an absurd result.

Now envision a different murder case where Defendant Alpha shoots Victim at the same time Defendant Bravo separately and independently shoots victim. The Medical Examiner determines that Defendant Alpha’s shot would have been fatal by itself. But the Medical Examiner also determines that Defendant Bravo’s shot would have been fatal by itself. If we were to apply the current overdose homicide definition of proximate cause to this situation, the result would be absurd again. Even though Defendant Alpha’s shot would have been fatal by itself, Defendant Alpha cannot be responsible for Victim’s murder because the statute and jury instruction require that “the death would not have occurred but for the defendant’s conduct.” The victim is still dead from Defendant Bravo’s shot.

Causation in Florida is typically “but for,” but there are instances where “two causes, each alone sufficient to bring about the harmful result, operate together to cause it.” Eversley v State, 748 So.2d 963 (Fla. 1999) making “but for” testing impossible (Such as the example above). In these circumstances, the State may prove “cause in fact” causation by demonstrating that the defendant’s conduct was a substantial factor in bringing about the harm. This is known as the “Substantial Factor Test.”

It is my recommendation that the current language in HB325 be amended incorporate the Substantial Factor Test, in lieu of the “tended to cause, or contributed to” language. Additionally, it would be prudent to define “Substantial Factor.” For example: “3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, or is proven to be a substantial factor in producing, the death of the user... As used in this section, ‘Substantial factor’ means the substance alone is sufficient to cause the death, whether or not any other substance or substances are also sufficient to cause the death.”

APPEARANCE RECORD

02/14/23

Meeting Date

SB 280

Bill Number or Topic

Criminal Justice

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name Christie Arnold

Phone 407-312-5374

Address 201 W. Park Ave.

Email carold@flaccb.org

Street

Tallahassee

City

FL

State

32301

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: Florida Conference of Catholic Bishops

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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2/14/23

280

Meeting Date

Criminal Justice

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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

JONATHAN Webber

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36104

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Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

SPLC Action Fund

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/14/2023

Meeting Date

Senate Criminal Justice

Committee

The Florida Senate APPEARANCE RECORD

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SB 280 Controlled Substances

Bill Number or Topic

Amendment Barcode (if applicable)

Name Allie McNair

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32308

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Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Sheriffs Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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Meeting Date

SB 280

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Jackson Oberlink

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32304

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Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Rising

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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SB280

2/14/2023

Meeting Date

Bill Number or Topic

Criminal Justice

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Amendment Barcode (if applicable)

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Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

2/14/23

Meeting Date

APPEARANCE RECORD

SB0280

Bill Number or Topic

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Senate Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Jessica Yeany for Florida Public Defender Assoc. Phone 850-488-6850

Address 103 N. Gadsden St. Email ARichardson@fpda.org

Tallahassee FL 32301

City State Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [] In Support [X] Against

PLEASE CHECK ONE OF THE FOLLOWING:

- [X] I am appearing without compensation or sponsorship. [] I am a registered lobbyist, representing: [] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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Meeting Date

The Florida Senate
APPEARANCE RECORD

SB 280

Bill Number or Topic

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Committee

Amendment Barcode (if applicable)

Name NR Hines

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Coral Gables
City

FL
State

33134
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against!

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

ACLU FL

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/14/23

Meeting Date

SB 280

Bill Number or Topic

CRIMINAL JUSTICE

Committee

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Amendment Barcode (if applicable)

Name LIBBY GUZZO

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Email LIBBY.GUZZO@MYFLORIDA
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TLH

City

FL

State

32399

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
OFFICE OF ATTORNEY GENERAL

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

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2/14/23

Meeting Date

SB 290

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Adam Ross

Phone 727-510-9821

Address PO Box 17500

Email

Street

Clearwater

FL

33759

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: Executive Director State Attorney's Office Sixth Circuit

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

7/14/23

Meeting Date

The Florida Senate APPEARANCE RECORD

SB 280

Bill Number or Topic

Criminal Justice

Committee

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Amendment Barcode (if applicable)

Name Jack Cypell - State Attorney

Phone 850 606 6012

2d Circuit

Address 301 S. Marcos
Street

Email Co.ple/JS@ocw-3fl.gov

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

02/14/23 Meeting Date

280 Bill Number or Topic

Criminal Justice Committee

Amendment Barcode (if applicable)

Name Bob Cortes, Seminole County Sheriffs Office Phone 407-463-825

Address 100 Eslinger way Email Bcortes@seminole-sheriff.org

Sanford FL 32773

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

- [x] I am appearing without compensation or sponsorship. [] I am a registered lobbyist, representing: [] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

The Florida Senate

APPEARANCE RECORD

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02/14/23
Meeting Date

280
Bill Number or Topic

Criminal Justice
Committee

Amendment Barcode (if applicable)

Name Lauren Jackson Phone 931-265-8999

Address 205 S. Adams St. Email lauren@ericksconsultants.com
Street

Tallahassee FL 32301
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

SEMINOLE COUNTY SHERIFF'S OFFICE

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Agriculture,
Environment, and General Government, *Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JASON BRODEUR

10th District

January 30, 2023

The Honorable Jonathan Martin
Chair, Committee on Criminal Justice
311 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Martin,

I respectfully request that **Senate Bill 280, Controlled Substances**, be placed on the agenda of the Criminal Justice Committee meeting to be considered at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me or my office.

Sincerely,

A handwritten signature in cursive script that reads "Jason Brodeur".

Senator Jason Brodeur – District 10

CC: Amanda Stokes – Staff Director
Sue Arnold – Administrative Assistant

REPLY TO:

- 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida 32746 (407) 333-1802
- 405 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 306

INTRODUCER: Criminal Justice Committee and Senators Boyd and Hooper

SUBJECT: Catalytic Converters

DATE: February 15, 2023 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Erickson | Stokes | CJ | Fav/CS |
| 2. | | | ACJ | |
| 3. | | | FP | |

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 306 creates the Catalytic Converter Antitheft Act, which addresses tampering with and theft of a catalytic converter, a device the bill defines as an emission control device that is designed to be installed and operate in a motor vehicle to convert toxic gases and pollutants in the motor vehicle’s exhaust system into less toxic substances via chemical reaction. There have been numerous incidents throughout the United States of catalytic converters being detached from motor vehicles and stolen due to precious metals contained in the devices.

The bill requires recordkeeping and records inspection and disclosure regarding certain transactions involving a catalytic converter, and punishes certain unlawful transactions involving a catalytic converter. Specifically, the bill:

- Defines key terms;
- Requires a person engaged in the purchase, sale, or installation of a detached catalytic converter to maintain manual or electronic record of the transaction;
- Requires certain information be contained in those records and that the records be maintained for a specified period;
- Requires disclosure of specified information and records regarding a detached catalytic converter;
- Punishes as a third degree felony certain acts involving a new or detached catalytic converter such as possessing the detached device without proof of ownership;
- Punishes as a second degree felony certain acts involving a catalytic converter that is fake, counterfeit, or junk-filled, and punishes as a first degree misdemeanor or third degree felony

(second or subsequent offense) the failure to maintain certain records regarding any of these devices;

- Specifies that a catalytic converter is a major component part of a vehicle and recordkeeping and other requirements of s. 319.30, F.S., relating, in part, to salvaging a motor vehicle, apply to the purchase, possession, or sale of a catalytic converter by a salvage motor vehicle dealer; and
- Provides that proof that a person was in possession of two or more detached catalytic converters, unless satisfactorily explained, gives rise to an inference that the person in possession of the catalytic converters knew or should have known that the catalytic converters may have been stolen or fraudulently obtained.
- Prohibits a secondary metals recycler from processing or removing from the recycler's place of business a catalytic converter the recycler has purchased for a period of 10 business days after the date of purchase. This prohibition does not apply to a purchase from a salvage motor vehicle dealer.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Theft of Catalytic Converter

The U.S. Justice Department has described a catalytic converter as "a component of an automotive vehicle's exhaust device that reduce the toxic gas and pollutants from a vehicle's internal combustion engine into safe emissions."¹ The reason why catalytic converters are tampered with (detached) and stolen is the high volume of precious metals in the center or "core" of the converter, "especially the precious metals palladium, platinum, and rhodium."²

Some of these precious metals are more valuable per ounce than gold and their value has been increasing in recent years. The black-market price for catalytic converters can be above \$1,000 each, depending on the type of vehicle and what state it is from. They can be stolen in less than a minute. Additionally, catalytic converters often lack unique serial numbers, VIN information, or other distinctive identification features, making them difficult to trace to their lawful owner. Thus, the theft of catalytic converters has become

¹ Press Release: *Justice Department Announces Takedown of Nationwide Catalytic Converter Theft Ring* (Nov. 2, 2022), available at <https://www.justice.gov/opa/pr/justice-department-announces-takedown-nationwide-catalytic-converter-theft-ring> (last visited on Feb. 3, 2023). "A catalyst is a device installed in the exhaust system of a vehicle. It treats and eliminates harmful pollution produced in the vehicle's engine, and is a type of device commonly referred to as an 'after-treatment system.' Automakers install catalysts in their new vehicles to meet tailpipe emissions standards (commonly referred to as 'OEM catalysts', which stands for original equipment manufacturer)." *Notice of Availability of EPA Tampering Policy and Request for Information Regarding 1986 Catalyst Policy*, U.S. Environmental Protection Agency (Dec. 14, 2020), 85 FR 80782, available at <https://www.federalregister.gov/documents/2020/12/14/2020-27433/notice-of-availability-of-epa-tampering-policy-and-request-for-information-regarding-1986-catalyst> (last visited on Feb. 3, 2023).

² *Id.*

increasingly popular because of their value, relative ease to steal, and their lack of identifying markings.³

There do not appear to be any official national or statewide data on the number of catalytic converter thefts. However, the National Insurance Crime Bureau, a not-for-profit organization that assists insurers, law enforcement, and representatives of the public in preventing and combatting insurance fraud and crime, reports: “In 2018, there were 1,298 catalytic converter thefts for which a claim was filed. In 2019, it was 3,389 thefts with a claim. In 2020, catalytic converter theft claims jumped massively to 14,433, a 325% increase in a single year.”⁴

The Congressional Research Service reports that “the National Highway Traffic Safety Administration ... issued a Federal Motor Vehicle Theft Standard, which requires manufacturers to apply or stamp a car’s unique Vehicle Identification Number (VIN) on the engine, transmission, and a dozen other major vehicle parts so law enforcement agencies can better identify vehicles from which the parts were stolen. However, the standard does not require automakers to stamp identification numbers on catalytic converters.”⁵

Federal Law on Tampering with Catalytic Converters

According to the U.S. Environmental Protection Agency (EPA), tampering with a catalytic converter “is illegal under federal law[.]” The EPA cites to a 1990 amendment to Part A of Title II of the Clean Air Act (42 U.S.C. s. 7521-7554) which was codified at 42 U.S.C. s. 7522(a)(3)), and which broadened earlier federal tampering provisions to apply them to “everyone, including car owners.”⁶

The Congressional Research Service cites the following federal criminal statutes that authorize federal law enforcement agencies to investigate vehicle or vehicle part theft but notes this theft does not appear to be a priority for these agencies:

- 18 U.S.C. s. 2312, which punishes transportation of a stolen motor vehicle in interstate commerce;
- 18 U.S.C. s. 2313, which punishes receiving, possessing, concealing, storing, bartering, selling, or disposing of a stolen car that has crossed state lines;
- 18 U.S.C. s. 2321, which punishes buying, receiving, possessing, or obtaining control of a car part, with the intent to sell or otherwise dispose of it, if the person knows that the identification number was removed, obliterated, tampered with, or altered; and

³ *Id.*

⁴ *Catalytic Converter Thefts Skyrocket Across the Nation*, National Insurance Crime Bureau, available at <https://www.nicb.org/news/blog/catalytic-converter-thefts-skyrocket-across-nation-0> (last visited on Feb. 3, 2023). The organization is not representing that it is reporting all catalytic converter theft for the relevant time period noted.

⁵ *Addressing Catalytic Converter Theft*, IF118700 (July 6, 2021), Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF11870/2> (last visited on Feb 3, 2023).

⁶ *Frequent Questions related to Transportation, Air Pollution, and Climate Change*, U.S. Environmental Protection Agency, available at <https://www.epa.gov/transportation-air-pollution-and-climate-change/frequent-questions-related-transportation-air> (last visited on Feb. 3, 2023). The EPA further notes: “The resale of a vehicle which has already had the catalytic converter removed is not specifically addressed by federal law. Therefore, the person who removed the converter violated federal law, but not necessarily the person who sold the vehicle. However, the sale of vehicles that have had the emission control system removed, disabled, or tampered with may be further governed by state or local laws.” *Id.*

- 18 U.S.C. s. 2322, which punishes operating, owning, maintaining, or controlling a chop shop or conducting operations in a chop shop.⁷

National Motor Vehicle Title Information System and Catalytic Converter Theft

The National Motor Vehicle Title Information System (NMVTIS) was established by federal law “to protect consumers from fraud and unsafe vehicles and to keep stolen vehicles from being resold.”⁸ The U.S. Department of Justice says the NMVTIS is “a tool that assists local, state, and federal law enforcement in investigating, deterring, and preventing vehicle-related crimes.”⁹ The NMVTIS is “[a]dministered by the American Association of Motor Vehicle Administrators” and “requires regular reporting by scrap recyclers and salvage yards”¹⁰

Florida Law

Section 812.014(1), F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

The statute, in part, provides for escalating punishment for grand theft based on the property value range applicable to the value of the property stolen in the theft.

Grand theft is theft of property valued at \$750 or more. If the property stolen is valued at:

- \$750 or more, but less than \$5,000, it is grand theft of the third degree and a Level 2¹¹ third degree felony;¹²
- \$5,000 or more, but less than \$10,000, it is grand theft of the third degree and a Level 3 third degree felony;¹³

⁷ *Addressing Catalytic Converter Theft*, IF118700 (July 6, 2021), Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF11870/2> (last visited on Feb 3, 2023).

⁸ *Law Enforcement*, National Motor Vehicle Title Information System, U.S. Department of Justice, available at https://vehiclehistory.bja.ojp.gov/nmvtis_law_enforcement (last visited on Feb. 3, 2023). The Congressional Research Service says the federal law has facilitated “identifying stolen vehicle parts.” *Addressing Catalytic Converter Theft*, IF118700 (July 6, 2021), Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF11870/2> (last visited on Feb 3, 2023).

⁹ *Id.*

¹⁰ *Consumers Don’t Be Fooled. Protect Yourself*, National Motor Vehicle Title Information System, U.S. Department of Justice, available at <https://vehiclehistory.bja.ojp.gov/> (last visited on Feb. 3, 2023).

¹¹ The Criminal Punishment Code (Code) (ss. 921.002-921.0027, F.S.) is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Section 921.0022(2), F.S. Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S. Sentence points escalate as the severity level escalates. These points are relevant to determining whether the offender scores a prison sentence as the minimum sentence, and if so scored, the length of that sentence. *Id.* The offense severity ranking is either assigned by specifically ranking the offense in the Code offense severity level chart (s. 921.0022(3), F.S) or ranking the offense by “default” based on its felony degree (s. 921.0023, F.S.).

¹² Sections 812.014(2)(c)1. and 921.0022(3)(b), F.S. A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

¹³ Sections 812.014(2)(c)2. and 921.0022(3)(c), F.S.

- \$10,000 or more, but less than \$20,000, it is grand theft of the third degree and a Level 4 third degree felony;¹⁴
- \$20,000 or more, but less than \$100,000, it is grand theft of the second degree and a Level 6 second degree felony;¹⁵ and
- \$100,000 or more, it is grand theft of the first degree and a Level 7 first degree felony.¹⁶

It is also grand theft of the third degree, a third degree felony, to commit theft of any item specified in s. 812.014(1)(c)1.-13., F.S. (e.g., theft of a will, firearm, fire extinguisher, or stop sign).¹⁷

A catalytic converter is not an item specified in s. 812.014(1)(c)1.-13., F.S., so theft of a catalytic converter would be punished as either petit theft or grand theft based on the value of the device. For example, if the value of the catalytic converter stolen is \$1,000, the theft of this device is a grand theft of the third degree, which is a Level 2 third degree felony. The offender who commits this offense is unlikely to receive a prison sentence absent the commission of an additional offense, prior criminal history, or other factors that score enough sentence points to make the offender eligible for a prison sentence.¹⁸

Tampering with a Catalytic Converter and Related Offenses

Section 316.2935, F.S., addresses a motor vehicle's air pollution control device or system and tampering with that device. This section defines "tampering" as the dismantling, removal, or rendering ineffective of any air pollution control device or system which has been installed on a motor vehicle by the vehicle manufacturer except to replace such device or system with a device or system equivalent in design and function to the part that was originally installed on the motor vehicle.¹⁹

At the time of sale, lease, or transfer of title of a motor vehicle, the seller, lessor, or transferor must certify in writing to the purchaser, lessee, or transferee that the air pollution control equipment of the motor vehicle has not been tampered with by the seller, lessor, or transferor or their agents, employees, or other representatives.²⁰ A licensed motor vehicle dealer must also visually observe those air pollution control devices listed by rule of the Florida Department of

¹⁴ Sections 812.014(2)(c)3. and 921.0022(3)(d), F.S.

¹⁵ Sections 812.014(2)(b)1. and 921.0022(3)(f), F.S. A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹⁶ Sections 812.014(2)(a)1. and 921.0022(3)(g), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000.

¹⁷ Section s. 812.014(1)(c)4., 5., 8., and 11., F.S.

¹⁸ A Level 2 offense alone would not score more than 22 sentence points. See s. 921.0024(1)(a), F.S. Section 775.082(10), F.S., provides that a defendant must be sentenced to a nonstate prison sanction, which could include jail, if the defendant's offense was committed on or after July 1, 2009, is a third degree felony but not a forcible felony as defined in s. 776.08, F.S., and excluding any third degree felony violation under chapter 810, F.S., and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer. Theft is not a forcible felony. Although subsection (10) provides that "the court" may impose a prison sentence if it makes written findings that a nonstate prison sanction could present a danger to the public, the Florida Supreme Court has held that this finding must be made by a jury. See *Brown v. State*, 260 So. 3d 147, 150–51 (Fla. 2018).

¹⁹ Section 316.2935(1)(a), F.S.

²⁰ Section 316.2935(1)(b), F.S.

Environmental Protection (DEP),²¹ and certify that they are in place, and appear properly connected and undamaged.²²

It is a second degree misdemeanor²³ (first violation) or first degree misdemeanor²⁴ (second or subsequent violation) for any person or motor vehicle dealer to knowingly and willfully offer or display for retail sale or lease, sell, lease, or transfer title to, a motor vehicle in Florida that has been subject to tampering.²⁵

It is a noncriminal traffic infraction for a person to operate any gasoline-powered motor vehicle, except a motorcycle, moped, scooter, or an imported nonconforming motor vehicle which has received a one-time exemption from federal emission control requirements under 40 C.F.R. 85, subpart P,²⁶ on the public roads and streets of this state which emits visible emissions from the exhaust pipe for more than a continuous period of 5 seconds. Further, a person may not operate on the public roads or streets of this state any motor vehicle that has been subject to tampering.²⁷

Salvage Motor Vehicle Dealer Requirements Relating to Major Component Parts

Section 319.30(j), F.S., defines a “major component part.” Relevant to motor vehicles and trucks, this definition includes a catalytic converter.²⁸ Section 319.30, F.S., in part, requires a salvage motor vehicle dealer to record the date of purchase of a major component part and the name, address, and personal identification card number of the person selling such part, as well as the vehicle identification number, if available. The dealer must also obtain such documentation as may be required by s. 319.30(2), F.S., which, in part, requires the dealer to notify the National Motor Vehicle Title Information System and provide certain information when a motor vehicle is sold, transported, delivered to, or received by a salvage motor vehicle dealer or a derelict motor vehicle is sold, transported, or delivered to a licensed salvage motor vehicle dealer.²⁹

Unlawful Acts by a Secondary Metal Recycler That May Involve Catalytic Converter Theft

Section 538.26, F.S., addresses unlawful acts by a secondary metal recycler. A secondary metal recycler is a person who:

- Is engaged, from a fixed location, in the business of purchase transactions or gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or

²¹ Rule 62-243.500, F.A.C. (“Certification”).

²² Section 316.2935(1)(b), F.S.

²³ A second degree misdemeanor is punishable by a term of not more than 60 days in county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

²⁴ A first degree misdemeanor is punishable by a term of not more than one year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁵ Section 316.2935(1)(a) and (5)(a) and (b), F.S. Motor vehicles sold, reassigned, or traded to a licensed motor vehicle dealer are exempt from this paragraph. Section 316.2935(1)(a), F.S.

²⁶ This federal regulation involves imported motor vehicles and motor vehicle engines.

²⁷ Section 316.2935(2), F.S. Additionally, it is a noncriminal traffic infraction for a person to operate on the public roads or streets of this state any diesel-powered motor vehicle which emits visible emissions from the exhaust pipe for more than a continuous period of 5 seconds, except during engine acceleration, engine lugging, or engine deceleration. Section 316.2935(3), F.S.

²⁸ Section 319.30(j)1. and 2., F.S.

²⁹ Section 319.30(6)(a), F.S. Any person who violates subsection (6) commits a third degree felony. Section 319.30(6)(b), F.S.

nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

- Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

With some exclusions, “regulated metals property” is any item composed primarily of any nonferrous metals.³⁰ “Restricted regulated metals property” are any regulated metals property listed in s. 538.26(5)(b), F.S., the sale of which is restricted as provided in s. 538.26(5)(a), F.S.³¹

Among the regulated metals property listed in s. 538.26(5)(b), F.S., as restricted regulated metals property is a catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.³² It is a first degree misdemeanor for a secondary metals recycler to purchase or allow the purchase of this device unless the recycler obtains reasonable proof that the seller:

- Owns such property. Reasonable proof of ownership may include, but is not limited to, a receipt or bill of sale; or
- Is an employee, agent, or contractor of the property’s owner who is authorized to sell the property on behalf of the owner. Reasonable proof of authorization to sell the property includes, but is not limited to, a signed letter on the owner’s letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.³³

It is a third degree felony or second degree felony (third or subsequent violation) for a secondary metals recycler to knowingly and intentionally:

- Violate s. 538.20, F.S., relating to law enforcement inspection of regulated property and records, or s. 538.21, F.S., relating to law enforcement’s issuance of a hold notice to a secondary metals recycler on regulated metals property in the recycler’s possession that law enforcement reasonably believes is stolen;
- Purchase restricted regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle; or
- Accept cash in any amount for the purchase of restricted regulated metals property or in a manner other than specified in s. 538.235(3), F.S.³⁴

Any person who knowingly gives false verification of ownership or who gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

³⁰ Section 538.18(9), F.S. “Ferrous metals” are metals containing significant quantities of iron and steel. Section 538.18(3), F.S.

³¹ Section 538.18(10), F.S.

³² Section 538.26(5)(b)13., F.S.

³³ Sections 538.26(5) and 538.15, F.S.

³⁴ Section 538.23(1), F.S.

- A third degree felony if the value of the money or other consideration received is less than \$300; or
- A second degree felony if the value of the money or other consideration received is \$300 or more.³⁵

III. Effect of Proposed Changes:

The bill creates s. 860.142, F.S., the title of which is the “Catalytic Converter Antitheft Act.” The bill addresses tampering with and theft of a catalytic converter, a device the bill defines as an emission control device that is designed to be installed and operate in a motor vehicle to convert toxic gases and pollutants in the motor vehicle’s exhaust system into less toxic substances via chemical reaction.

The bill requires recordkeeping and records inspection and disclosure regarding certain transactions involving a catalytic converter, and punishes certain unlawful transactions involving a catalytic converter.

The bill requires a person engaged in the purchase, sale, or installation of a detached catalytic converter to maintain a manual or electronic record of the purchase, sale, or installation. This record must include the following information:

- The first and last name, the address, and a copy of the driver license or other government-issued means of identification of the person from whom the detached catalytic converter was purchased; and
- If the detached catalytic converter is installed, the vehicle identification number of the motor vehicle in which the catalytic converter is installed.

This record must be maintained for 3 years after the transaction and may be inspected during normal business hours by a law enforcement officer or other authorized representative of the agency charged with administering this section.

A person who sells or installs a detached catalytic converter must disclose to the purchaser or consumer that the catalytic converter has been detached from a motor vehicle. Upon request, information contained in a record or document pertaining to a specific transaction must be provided to an insurer, purchaser, consumer, or law enforcement officer.

The bill states that a catalytic converter is a major component part of a vehicle and recordkeeping requirements and other requirements of s. 319.30, F.S., relating, in part, to salvaging a motor vehicle, apply to the purchase, possession, or sale of a catalytic converter by a salvage motor vehicle dealer. (See “Present Situation” section of this for information regarding s. 319.30, F.S.)

The bill provides proof that a person was in possession of two or more detached catalytic converters, unless satisfactorily explained, gives rise to an inference that the person in possession

³⁵ Section 538.23(3), F.S.

of the catalytic converters knew or should have known that the catalytic converters may have been stolen or fraudulently obtained.³⁶

A person commits a third degree felony if the person:

- Knowingly possesses, purchases, sells, or installs:
 - A stolen catalytic converter;
 - A new or detached catalytic converter of which the manufacturer's part identification number, aftermarket identification number, or owner-applied number has been removed, altered, or defaced; or
 - A catalytic converter removed from a stolen motor vehicle;
- Knowingly purchases a detached catalytic converter without being a registered secondary metals recycler; or
- Possesses, sells, or offers for sale a detached catalytic converter without proof of ownership or proof that the person meets the criteria for exemption provided in s. 538.22, F.S.³⁷

A person commits a second degree felony if the person knowingly imports, manufactures, purchases, sells, offers for sale, or installs or reinstalls in a motor vehicle a counterfeit,³⁸ fake,³⁹ or junk-filled catalytic converter.

A person or business entity commits a first degree misdemeanor (first offense) or third degree felony (second or subsequent offense) if the person or business entity fails to:

- Maintain complete and accurate records;
- Prepare complete and accurate documents;
- Provide a record or information contained in a record upon request; or
- Properly disclose that a catalytic converter is a counterfeit, detached, fake, or junk-filled⁴⁰ catalytic converter.

The bill also amends s. 538.26, F.S., to prohibit a secondary metals recycler from processing or removing from the recycler's place of business a catalytic converter the recycler has purchased

³⁶ In criminal law, a "permissive inference" is legally permissible if it "allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. In this situation, the basic fact may constitute prima facie evidence of the elemental fact." *State v. Rygwelski*, 899 So.2d 498, 501 (Fla. 2d DCA 2005) (citations omitted).

³⁷ Section 538.22, F.S., provides that part II of ch. 538, F.S., relating to secondary metals recyclers, does not apply to purchase of regulated metals property from certain persons like a law enforcement officer performing the officer's official duties.

³⁸ The bill defines "counterfeit catalytic converter" as a catalytic converter displaying a mark identical or similar to the genuine mark of a catalytic converter manufacturer or motor vehicle manufacturer without authorization from such manufacturer.

³⁹ The bill defines "fake catalytic converter" as an item, other than a catalytic converter designed in accordance with United States Environmental Protection Agency regulations for a given make, model, and year of motor vehicle as part of a motor vehicle emission control system, including a counterfeit or nonfunctional catalytic converter, which is used to replace a legitimate, functional catalytic converter. A "nonfunctional catalytic converter" is a replacement catalytic converter that: was previously recalled or damaged; or includes a part or object, including, but not limited to, a counterfeit or repaired catalytic converter, installed in a motor vehicle to mislead the owner or operator of such motor vehicle to believe that a functional catalytic converter has been installed.

⁴⁰ The bill defines "junk-filled catalytic converter" as a catalytic converter the composition of which includes a metal or chemical that does not function in the same manner or to the same extent as a metal or chemical in a legitimate catalytic converter to protect motor vehicle occupants and others from toxic gases and pollutants produced by the motor vehicle.

for a period of 10 business days after the date of purchase. This prohibition does not apply to a purchase from a salvage motor vehicle dealer.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).⁴¹ According to the EDR, there is no data on how many stolen catalytic converters have been sold in the manner described in the newly-created felonies created

⁴¹ *HB 185 – Catalytic Converters (Similar SB 306)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

by the bill, “nor is there data available on the sales of counterfeit, detached, fake, or junk-filled catalytic converters.”⁴²

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the National Insurance Crime Bureau, in 2021, 26 states proposed bills to help curb theft of catalytic converters. Ten of these states “either enacted new legislation or firmed up existing legislation.”⁴³

VIII. Statutes Affected:

This bill substantially amends section 538.26 of the Florida Statutes.

This bill creates section 860.142 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 14, 2023:

The CS prohibits a secondary metals recycler from processing or removing from the recycler’s place of business a catalytic converter the recycler has purchased for a period of 10 business days after the date of purchase. This prohibition does not apply to a purchase from a salvage motor vehicle dealer.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁴² *Id.*

⁴³ *See* footnote 30.



301160

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/14/2023 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Criminal Justice (Martin) recommended the following:

Senate Amendment (with title amendment)

Between lines 137 and 138
insert:

Section 2. Subsection (6) is added to section 538.26,
Florida Statutes, to read:

538.26 Certain acts and practices prohibited.—It is
unlawful for a secondary metals recycler to do or allow any of
the following acts:

(6) Process or remove from the place of business of a



301160

11 secondary metals recycler a catalytic converter the second
12 metals recycler has purchased for a period of 10 business days
13 after the date of purchase. This subsection does not apply to a
14 purchase from a salvage motor vehicle dealer as defined in s.
15 320.27(1)(c)5.

16
17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete line 25

20 and insert:

21 disclosures; amending s. 538.26, F.S., relating to
22 prohibited acts by a secondary metals recycler;
23 prohibiting a secondary metals recycler from
24 processing or removing a catalytic converter from the
25 recycler's place of business for a specified period;
26 providing an exception; providing an effective date.

By Senator Boyd

20-00311A-23

2023306__

A bill to be entitled

An act relating to catalytic converters; creating s. 860.142, F.S.; providing a short title; providing definitions; requiring certain records regarding a transaction involving a detached catalytic converter to be maintained for a specified period; authorizing inspection of such records by a law enforcement officer or agency representative; requiring a person who sells or installs a detached catalytic converter to disclose that the catalytic converter has been detached; requiring certain information regarding a transaction to be provided to certain persons upon request; providing application of specified statutory provisions; providing for an inference that a catalytic converter may have been stolen; providing prohibitions regarding the possession, purchase, sale, or installation of a stolen, detached, or altered catalytic converter; providing prohibitions regarding the importing, manufacturing, purchase, sale, or installation or reinstallation of a counterfeit, fake, or junk-filled catalytic converter; providing criminal penalties; providing criminal penalties for failure to maintain certain records, prepare certain documents, provide certain records upon request, or make certain disclosures; providing an effective date.

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

Section 1. Section 860.142, Florida Statutes, is created to

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

20-00311A-23

2023306__

read:

860.142 Catalytic Converter Antitheft Act.—

(1) SHORT TITLE.—This section may be cited as the "Catalytic Converter Antitheft Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Catalytic converter" means an emission control device that is designed to be installed and operate in a motor vehicle to convert toxic gases and pollutants in the motor vehicle's exhaust system into less toxic substances via chemical reaction.

(b) "Counterfeit catalytic converter" means a catalytic converter displaying a mark identical or similar to the genuine mark of a catalytic converter manufacturer or motor vehicle manufacturer without authorization from such manufacturer.

(c) "Detached catalytic converter" means a catalytic converter that has been removed or detached from a motor vehicle.

(d) "Fake catalytic converter" means an item, other than a catalytic converter designed in accordance with United States Environmental Protection Agency regulations for a given make, model, and year of motor vehicle as part of a motor vehicle emission control system, including a counterfeit or nonfunctional catalytic converter, which is used to replace a legitimate, functional catalytic converter.

(e) "Junk-filled catalytic converter" means a catalytic converter the composition of which includes a metal or chemical that does not function in the same manner or to the same extent as a metal or chemical in a legitimate catalytic converter to protect motor vehicle occupants and others from toxic gases and pollutants produced by the motor vehicle.

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

20-00311A-23

2023306__

59 (f) "Nonfunctional catalytic converter" means a replacement
 60 catalytic converter that:

- 61 1. Was previously recalled or damaged; or
 62 2. Includes a part or object, including, but not limited
 63 to, a counterfeit or repaired catalytic converter, installed in
 64 a motor vehicle to mislead the owner or operator of such motor
 65 vehicle to believe that a functional catalytic converter has
 66 been installed.

67 (g) "Registered secondary metals recycler" means a
 68 secondary metals recycler, as defined in s. 538.18, that is
 69 registered with the Department of Revenue as required in s.
 70 538.25.

71 (h) "Salvage motor vehicle dealer" has the same meaning as
 72 provided in s. 320.27(1)(c)5.

73 (3) PURCHASE, SALE, OR INSTALLATION OF CATALYTIC
 74 CONVERTERS; RECORDS.—

75 (a) A person engaged in the purchase, sale, or installation
 76 of a detached catalytic converter shall maintain a manual or
 77 electronic record of the purchase, sale, or installation. The
 78 record must include the first and last name, the address, and a
 79 copy of the driver license or other government-issued means of
 80 identification of the person from whom the detached catalytic
 81 converter was purchased and, if the detached catalytic converter
 82 is installed, the vehicle identification number of the motor
 83 vehicle in which the catalytic converter is installed. Such
 84 record must be maintained for 3 years after the transaction and
 85 may be inspected during normal business hours by a law
 86 enforcement officer or other authorized representative of the
 87 agency charged with administering this section. A person who

20-00311A-23

2023306__

88 sells or installs a detached catalytic converter must disclose
 89 to the purchaser or consumer that the catalytic converter has
 90 been detached from a motor vehicle. Upon request, information
 91 contained in a record or document pertaining to a specific
 92 transaction must be provided to an insurer, purchaser, consumer,
 93 or law enforcement officer.

94 (b) A catalytic converter is a major component part of a
 95 motor vehicle as provided in s. 319.30(1)(j)1. The requirements
 96 of s. 319.30 apply to the purchase, possession, or sale of a
 97 catalytic converter by a salvage motor vehicle dealer.

98 (4) INFERENCE.—Proof that a person was in possession of two
 99 or more detached catalytic converters, unless satisfactorily
 100 explained, gives rise to an inference that the person in
 101 possession of the catalytic converters knew or should have known
 102 that the catalytic converters may have been stolen or
 103 fraudulently obtained.

104 (5) PROHIBITIONS; PENALTIES.—

105 (a) A person may not:

106 1. Knowingly possess, purchase, sell, or install a stolen
 107 catalytic converter; a new or detached catalytic converter of
 108 which the manufacturer's part identification number, aftermarket
 109 identification number, or owner-applied number has been removed,
 110 altered, or defaced; or a catalytic converter removed from a
 111 stolen motor vehicle;

112 2. Knowingly purchase a detached catalytic converter
 113 without being a registered secondary metals recycler; or

114 3. Possess, sell, or offer for sale a detached catalytic
 115 converter without proof of ownership or proof that the person
 116 meets the criteria for exemption provided in s. 538.22.

20-00311A-23

2023306__

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A person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person may not knowingly import, manufacture, purchase, sell, offer for sale, or install or reinstall in a motor vehicle a counterfeit, fake, or junk-filled catalytic converter. A person who violates this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person or business entity that fails to maintain complete and accurate records, to prepare complete and accurate documents, to provide a record or information contained in a record upon request, or to properly disclose that a catalytic converter is a counterfeit, detached, fake, or junk-filled catalytic converter:

1. Upon a first offense, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Upon a second or subsequent offense, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect July 1, 2023.

HB 185 – Catalytic Converters (Similar SB 306)

This bill creates s. 860.142, F.S., defining catalytic converter and the different kinds of alterations to it, as well as stating the specific record keeping needed by “a person engaged in the purchase, sale, or installation of a detached catalytic converter.” Furthermore, “proof that a person was in possession of two or more detached catalytic converters, unless satisfactorily explained, gives rise to an inference that the person in possession of the catalytic converters knew or should have known that the catalytic converters may have been stolen or fraudulently obtained.” An **unranked, 3rd degree felony (Level 1 by default)** is created for a person to “knowingly possess, purchase, sell, or install a stolen catalytic converter; a new or detached catalytic converter of which the manufacturer’s part identification number, aftermarket identification number, or owner-applied number has been removed, altered, or defaced; or a catalytic converter removed from a stolen motor vehicle...knowingly purchase a detached catalytic converter without being a registered secondary metals recycler...or possess, sell, or offer for sale a detached catalytic converter without proof of ownership or proof that the person meets the criteria for exemption provided in s. 538.22, F.S.” An **unranked, 2nd degree felony (Level 4 by default)** is created for a person to “knowingly import, manufacture, purchase, sell, offer for sale, or install or reinstall in a motor vehicle a counterfeit, fake, or junk-filled catalytic converter.” Finally, a **1st degree misdemeanor** is created for a first offense when “a person or business entity...fails to maintain complete and accurate records, to prepare complete and accurate documents, to provide a record or information contained in a record upon request, or to properly disclose that a catalytic converter is a counterfeit, detached, fake, or junk-filled catalytic converter.” A second or subsequent offense is an **unranked 3rd degree felony (Level 1 by default)**.

In FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.1%, and in FY 19-20 the incarceration rate was 8.2%. In FY 20-21, the incarceration rate for a Level 1, 3rd degree felony was 7.5%, and in FY 21-22 the incarceration rate was 8.6%. In FY 18-19, the incarceration rate for a Level 4, 2nd degree felony was 28.7%, and in FY 19-20 the incarceration rate was 27.3%. In FY 20-21, the incarceration rate for a Level 4, 2nd degree felony was 23.8%, and in FY 21-22 the incarceration rate was 29.7%.

Per National Insurance Crime Bureau (NICB), data for Florida indicates significant growth in catalytic converter thefts in recent years: 24 in 2019, 137 in 2020, and 631 in 2021. Furthermore, this is only data reported to NICB, and the actual numbers are likely much higher and continuing to grow. A recent new article noted that Jacksonville police had worked on 900 catalytic converter thefts in the first eleven months of CY 2022.¹

¹ News4Jax, *I-TEAM: Jacksonville records 900 catalytic converter thefts in 11 months as thieves steal auto parts at alarming speed*, (December 29, 2022) available at <https://www.news4jax.com/i-team/2022/12/29/i-team-jacksonville-records-900-catalytic-converter-thefts-in-11-months-as-thieves-steal-auto-parts-at-alarming-speed/> (last visited February 7, 2023)

However, there is no data available on how many of these stolen parts have been sold in the manner described in these newly created felonies, nor is there data available on the sales of counterfeit, detached, fake, or junk-filled catalytic converters.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: Senate

APPEARANCE RECORD

SB 306

2-14-23

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

CS

Committee

ORANGE COUNTY SHERIFF

Amendment Barcode (if applicable)

Name

Lieutenant DALE MACK

Phone

407-212-6171

Address

2500 West Colonial Dr

Email

dale.mack@ocsofl.com

Street

ORLANDO

FL

32804

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Sheriff
John Mina

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022JointRules.pdf)

APPEARANCE RECORD

Meeting Date

2/14/2023

Bill Number or Topic

306

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Criminal Justice

Committee

Amendment Barcode (if applicable)

Name

Jim Magill

Phone

850-545-8911

Address

205 South Monroe St

Email

JAMES.MAGILL@BIPL.COM

Street

JLH

City

FL

State

32301

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FLORIDA RECYCLERS Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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2/14/2023

Meeting Date

Criminal Justice

Committee

The Florida Senate APPEARANCE RECORD

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SB 306

Bill Number or Topic

Name **Katie Kelly**

Phone **850-933-2822**

Amendment Barcode (if applicable)

Address **106 E. College Ave. Ste 820**

Email **KKelly@mansonbolves.com**

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Collier County Sheriff's Office

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022JointRules.pdf)

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APPEARANCE RECORD

2/14/23

Meeting Date

SB 306

Bill Number or Topic

Criminal Justice

Committee

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Amendment Barcode (if applicable)

Name Amanda Fraser

Phone 850 556 1401

Address

Street

Email

Tallahassee

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
Florida catalytic converter recycling coalition

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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APPEARANCE RECORD

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Meeting Date 2/14/23
Criminal Justice
Committee

SB 300
Bill Number or Topic

Name Amanda Fraser Phone 850 556 1401
Amendment Barcode (if applicable)

Address _____
Street _____ Email _____
Tallahassee _____
City _____ State _____ Zip _____

Speaking: For Against Information **OR** Waive Speaking: In Support Against

I am appearing without compensation or sponsorship.
 I am a registered lobbyist, representing:
Florida Auto Dismantlers + Recyclers Association
 I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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The Florida Senate
APPEARANCE RECORD

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2/14/23

Meeting Date

Criminal Justice
Committee

306

Bill Number or Topic

Amendment Barcode (if applicable)

Name Leslie Dughi

Phone

Address

Street

Email

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

Enterprise,
National & Alamo

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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2/14/2023

Meeting Date

Senate Criminal Justice

Committee

The Florida Senate APPEARANCE RECORD

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SB 306/Catalytic Converters

Bill Number or Topic

Name Allie McNair

Phone 8508772165

Amendment Barcode (if applicable)

Address 2167 Mahan Dr.

Email amcnair@flsheriffs.org

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Sheriffs Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](http://2020-2022JointRules.pdf/flsenate.gov)

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture, *Vice Chair*
Appropriations Committee on Agriculture,
Environment, and General Government
Finance and Tax
Fiscal Policy
Judiciary
Rules
Transportation

SENATOR JIM BOYD

20th District

January 26, 2023

Senator Jonathan Martin
404 South Monroe Street
510 Knott Building
Tallahassee, FL 32399

Dear Chairman Martin:

I respectfully request Senate Bill 306: Catalytic Converters, be scheduled for a hearing in the Committee on Criminal Justice, at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink that reads "Jim Boyd".

Jim Boyd

cc: Amanda Stokes
Sue Arnold

REPLY TO:

- 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- 418 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/14/2023 1:01:34 PM

Ends: 2/14/2023 2:39:10 PM

Length: 01:37:37

1:01:35 PM Meeting called to order, roll call
1:01:48 PM Quorum is present
1:01:54 PM Chair Martin makes remarks
1:02:00 PM Moment of silence
1:02:31 PM Chair Martin continues opening remarks
1:02:43 PM Tab 2 -SB 280, Controlled Substances
1:03:11 PM Chair Martin recognizes Senator Brodeur to explain the bill
1:06:18 PM Questions:
1:07:17 PM Senator Ingoglia
1:07:51 PM Senator Brodeur
1:08:51 PM Senator Ingoglia
1:09:42 PM Senator Brodeur
1:09:53 PM Senator Ingoglia
1:10:10 PM Senator Brodeur
1:10:38 PM Senator Ingoglia
1:11:09 PM Senator Brodeur
1:11:25 PM Senator Pizzo
1:12:57 PM Senator Brodeur
1:13:56 PM Senator Pizzo
1:14:07 PM Senator Brodeur
1:14:47 PM Amendment 861258
1:15:25 PM Chair Martin recognizes Senator Brodeur to explain the amendment
1:15:32 PM Senator Brodeur
1:16:15 PM Chair Martin
1:16:38 PM Senator Brodeur waives close
1:16:45 PM Chair Martin adopts amendment
1:16:51 PM Questions:
1:16:55 PM Senator Pizzo
1:16:57 PM Senator Brodeur
1:17:06 PM Senator Pizzo
1:17:21 PM Senator Brodeur
1:17:37 PM Senator Pizzo
1:18:26 PM Senator Brodeur
1:18:27 PM Senator Pizzo
1:19:43 PM Senator Brodeur
1:20:44 PM Senator Pizzo
1:21:42 PM Senator Brodeur
1:22:33 PM Senator Pizzo
1:22:59 PM Senator Brodeur
1:23:20 PM Senator Polsky
1:23:54 PM Senator Brodeur
1:24:22 PM Senator Polsky
1:24:53 PM Senator Brodeur
1:25:12 PM Senator Powell
1:25:54 PM Senator Brodeur
1:26:53 PM Senator Powell
1:27:39 PM Senator Brodeur
1:28:27 PM Senator Ingoglia
1:29:03 PM Senator Brodeur
1:29:56 PM Senator Ingoglia
1:30:55 PM Senator Brodeur
1:31:10 PM Senator Ingoglia

1:31:19 PM Senator Brodeur
1:32:18 PM Senator Ingoglia
1:33:14 PM Senator Brodeur
1:33:38 PM Senator Ingoglia
1:33:47 PM Senator Brodeur
1:33:51 PM Senator Polsky
1:34:09 PM Senator Brodeur
1:34:41 PM Senator Pizzo
1:36:17 PM Senator Brodeur
1:37:15 PM Chair Martin reads appearance cards
1:38:07 PM Chair Martin recognizes Christie Arnold, Florida Conference of Catholic Bishops, to speak
1:39:07 PM Christie Arnold
1:39:58 PM Chair Martin recognizes Jonathan Webber, SPLC Action Fund, to speak
1:40:09 PM Jonathan Webber
1:40:45 PM Senator Perry
1:41:45 PM Jonathan Webber
1:41:56 PM Chair Martin recognizes Jack Campbell to speak
1:42:08 PM Jack Campbell, State Attorney
1:45:25 PM Senator Pizzo
1:45:36 PM Jack Campbell
1:47:26 PM Senator Pizzo
1:48:25 PM Jack Campbell
1:48:38 PM Senator Powell
1:49:26 PM Jack Campbell
1:50:06 PM Debate:
1:51:01 PM Senator Pizzo
1:53:26 PM Senator Brodeur closes on the amendment
1:54:27 PM Roll call on SB 280
1:55:25 PM Chair Martin reports SB 280
1:55:46 PM Tab 3- SB 306, Catalytic Converters
1:56:02 PM Chair Martin recognizes Senator Boyd to explain the bill
1:56:16 PM Senator Boyd
1:56:57 PM Chair Martin turns Chair over to Vice Chair Bradley
1:57:06 PM Amendment 301160
1:57:27 PM Vice Chair Bradley recognizes Senator Martin to explain the amendment
1:57:39 PM Chair Martin
1:57:42 PM Questions:
1:57:45 PM Senator Powell
1:57:47 PM Chair Martin
1:58:09 PM Senator Pizzo
1:59:09 PM Chair Martin
2:00:04 PM Senator Pizzo
2:00:06 PM Chair Martin
2:01:02 PM Senator Pizzo
2:01:10 PM Chair Martin
2:01:19 PM Senator Powell
2:01:33 PM Chair Martin
2:02:16 PM Chair Martin waives close
2:03:16 PM Vice Chair Bradley adopts amendment
2:03:24 PM Vice Chair Bradley turns the chair back over to Chair Martin
2:03:34 PM Chair Martin recognizes Dale Mack, Orange County Sheriff Lieutenant, to speak
2:03:55 PM Lieutenant Dale Mack
2:04:30 PM Senator Pizzo
2:04:55 PM Senator Powell
2:06:04 PM Chair Martin recognizes Jim McGill, Florida Recyclers Association, to speak
2:06:31 PM Jim McGill
2:08:01 PM Senator Pizzo
2:08:04 PM Jim McGill
2:08:33 PM Senator Pizzo
2:09:19 PM Senator Perry
2:10:19 PM Jim McGill
2:10:41 PM Senator Perry

2:10:52 PM Jim McGill
2:11:04 PM Senator Perry
2:11:06 PM Jim McGill
2:11:16 PM Senator Perry
2:11:20 PM Jim McGill
2:12:20 PM Senator Powell
2:12:25 PM Jim McGill
2:12:46 PM Chair Martin reads appearance cards
2:13:10 PM Debate:
2:13:49 PM Senator Perry
2:13:52 PM Senator Pizzo
2:15:08 PM Chair Martin
2:16:06 PM Senator Pizzo
2:16:20 PM Chair Martin
2:16:51 PM Chair Martin recognizes Senator Boyd to close
2:17:14 PM Senator Boyd closes on the bill
2:17:40 PM Roll call on SB 306
2:18:40 PM Chair Martin reports SB 306
2:19:02 PM Tab 1, SB 164, Controlled Substance Testing
2:19:28 PM Chair Martin recognizes Senator Polsky to explain the bill
2:19:39 PM Senator Polsky
2:20:08 PM Questions:
2:21:06 PM Senator Ingoglia
2:21:09 PM Senator Polsky
2:21:23 PM Senator Ingoglia
2:21:28 PM Senator Polsky
2:21:42 PM Senator Ingoglia
2:21:48 PM Senator Polsky
2:22:05 PM Senator Perry
2:22:07 PM Senator Polsky
2:22:26 PM Senator Perry
2:22:31 PM Senator Polsky
2:23:00 PM Senator Pizzo
2:23:07 PM Senator Perry
2:24:07 PM Senator Polsky
2:24:22 PM Chair Martin reads appearance cards
2:24:38 PM Chair Martin recognizes Mary Beth Creighton to speak
2:25:08 PM Mary Beth Creighton
2:28:01 PM Chair Martin recognizes Jennifer Webb to speak
2:29:01 PM Jennifer Webb
2:30:15 PM Debate:
2:31:14 PM Senator Pizzo
2:32:10 PM Senator Perry
2:33:49 PM Senator Ingoglia
2:35:33 PM Chair Martin
2:36:41 PM Chair Martin recognizes Senator Polsky to close on the bill
2:38:03 PM Roll call on SB 164
2:38:09 PM Chair Martin reports SB 164
2:38:20 PM Chair Martin makes a motion
2:39:01 PM Meeting adjourned