

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: CS/SB 2352

SPONSOR: Criminal Justice Committee and Senator Peaden

SUBJECT: Controlled Substances

DATE: April 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/1 amendment</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2352 amends the Florida Comprehensive Drug Abuse Prevention and Control Act to revise the listed precursor chemicals and the listed essential chemicals that may be used to manufacture controlled substances in violation of ch. 893, F.S., to conform to federal requirements for precursor or essential chemicals used to manufacture controlled substances.

The CS makes it unlawful for any person to manufacture methamphetamine or phencyclidine, or to possess any listed chemical with intent to manufacture methamphetamine or phencyclidine, and to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of an assisted living facility. The CS increases penalties for the manufacture of methamphetamine or phencyclidine or the possession of any listed chemical with intent to manufacture methamphetamine or phencyclidine if the offense occurs in a structure or conveyance where any child under 16 years of age is present. The CS makes it unlawful to possess 14 grams or more of pseudoephedrine, such as Sudafed®, in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine and the offense is subject to the felony penalties of the drug trafficking provisions under ch. 893, F.S.

The CS makes it unlawful for any person to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

The CS makes it unlawful for a person to knowingly deliver in any single retail over-the-counter sale any number of packages of any drug containing a sole active ingredient that contains a

combined total of more than 9 base grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages in any single retail over-the-counter sale, regardless of weight, containing any such sole active ingredient. Additionally, no person shall knowingly display and offer for retail sale packages of such drug other than behind a checkout counter where the public is not permitted or other such location that is not otherwise accessible to the general public. Also, no person who is the owner or primary operator of a retail outlet where such drug is available for sale shall knowingly allow an employee to engage in the retail sale of such products unless the employee has completed an employee training program that shall include, at a minimum, basic instruction on state and federal regulations relating to the sale and distribution of such products.

A first violation of these restrictions is a second degree misdemeanor, punishable by a fine. A second violation is a first degree misdemeanor, a third or subsequent violation is a third degree felony.

The requirements relating to the marketing, sale, or distribution of such drug supersede any local ordinance or regulation passed by a county, municipality, or other local governmental authority.

This CS amends ss. 893.033, 893.13, 893.135, and 893.149, F.S.; creates s. 893.1495, F.S.; and reenacts ss. 311.12, 397.451, 414.095, 435.07, 772.12, 775.087, 782.04, 893.02, 893.1351, 903.133, 907.041, 921.0022, 921.0024, 921.142, 921.187, 938.25, 943.0585, 943.059, and 948.034, F.S.

II. Present Situation:

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States, e.g., heroin. Schedule II drugs have a high potential for abuse and a severely restricted medical use, e.g., cocaine. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use, e.g., anabolic steroids. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use, e.g., phenobarbital (Schedule IV) and certain stimulants (Schedule V).

Methamphetamine is a Schedule II controlled substance under Florida law, s. 893.03(2)(c)4., F.S., and federal law, s. 21 U.S.C. § 812. Methamphetamine is a highly addictive nerve stimulant found in virtually every metropolitan area of the country, according to the U.S. Drug Enforcement Agency (DEA). Commonly called “speed,” “crank,” “crystal,” or “zip,” methamphetamine can be smoked, injected, snorted, or taken orally. It produces an initial “high,” which lasts between 15 and 30 minutes and is difficult, if not impossible, for the user to repeat, so the user ingests more and more of the drug and goes on longer binges. Methamphetamine’s psychological side-effects include paranoia, hallucinations, and delusions of insects or parasites crawling under the skin. Long-time use results in a decline in physical health, as well. In the

United States, methamphetamines are imported by drug traffickers, manufactured in large-scale laboratories, and manufactured in small “clandestine” laboratories (usually household kitchens) using recipes involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches.

According to a December 15, 2003, news release posted on the Florida Department of Law Enforcement (FDLE) website, Florida ranked sixth nationwide for methamphetamine seizures. In 2002, law enforcement officers seized 127 clandestine methamphetamine labs, compared to 229 seizures in 2003. The rapidity of the spread of clandestine labs in Florida is reflected in the DEA statistics that, prior to 1999, only seven labs had been seized in Florida.

Anhydrous ammonia and ephedrine are listed as precursor chemicals under Florida law. It is unlawful under federal law to steal anhydrous ammonia or transport stolen anhydrous ammonia across state lines, if the person committing the theft or transport knows, intends, or has reasonable cause to believe that the anhydrous ammonia will be used to manufacture a controlled substance. (21 U.S.C. § 864)

Section 893.033(1), F.S., defines “listed precursor chemical” as a chemical that may be used in manufacturing a controlled substance in violation of ch. 893, F.S., and is critical to the creation of the controlled substance. Section 893.033(2), F.S., defines “listed essential chemical” as a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of ch. 893, F.S.

Currently, s. 893.033(1), F.S., specifies 26 chemicals as listed precursor chemicals, some of which are used or found in the manufacture of methamphetamines, such as anhydrous ammonia, ephedrine, pseudoephedrine, benzyl chloride, benzyl cyanide, chloroephedrine, chloropseudoephedrine, methylamine, and phenylacetic acid. There are scores of chemicals used in the production of methamphetamine; their appearance depends upon the production method used. Some listed precursor chemicals have legitimate uses. For example, anhydrous ammonia is used as a fertilizer; methylamine is used in tanning and the manufacture of dyestuffs; benzyl chloride is used in the manufacture of perfumes, pharmaceuticals, dyes, tannins, and artificial resins; ephedrine is used as an anti-asthmatic drug; and pseudoephedrine is used as a decongestant.¹

The inclusion of a chemical as a listed precursor chemical or listed essential chemical does not bar, prohibit, or punish legitimate use of the chemical or substance. However, s. 893.149, F.S., provides that it is a second-degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical

¹ The bill includes benzaldehyde, hydriodic acid, and nitroethane as listed precursor chemicals. All are used in the manufacture of methamphetamine, and all have legitimate uses. Among other legitimate uses, benzaldehyde is used in flavoring, perfumery, and pharmaceuticals, and in the synthesis of dyes; hydriodic acid is used as a reducing agent and iodide synthesis material; and nitroethane is used as an intermediate in pharmaceutical and pesticide manufacture. The bill includes anhydrous ammonia, benzyl chloride, hydrochloric gas, and iodine as listed essential chemicals. Some of the legitimate uses of anhydrous ammonia and benzyl chloride have been previously described. Among other legitimate uses, hydrochloric gas (anhydrous hydrogen chloride) is used in chemical syntheses in the cotton, electronic/silicon, and pharmaceutical industries; and iodine is used in disinfectants.

knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

Anhydrous ammonia is a necessary component to the “reactant metal” method or “Nazi” method of methamphetamine production. Some states punish unlawful transportation of anhydrous ammonia.² Some states punish tampering with equipment or a facility used to contain, store, or transport anhydrous ammonia.³ The federal government regulates the transportation of compressed gases.⁴

Section 893.13, F.S., specifies prohibited acts and provides penalties for violation of the Florida Comprehensive Drug Abuse Prevention and Control Act. Section 893.13, F.S., contains offenses relating to the sale, manufacture, or delivery of a controlled substance, or possession with intent to sell, manufacture or deliver a controlled substance, and the applicable penalty for the offense is enhanced if the offense occurs within 1,000 feet of the following locations:

- A child care facility or school;
- A park, community center or recreational facility;
- A public or private college, university or other postsecondary educational institution;
- A place of worship;
- A convenience business; or
- A public housing facility.

Section 893.135, F.S., proscribed trafficking in certain drugs, and the penalties are higher typically than the penalties provided in s. 893.13, F.S., because the quantities of drugs involved. A person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, phenylacetone, phenylacetic acid, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine commits a first degree felony, which is punishable by imprisonment of up to 30 years and the imposition of a fine of up to \$10,000. If the quantity of methamphetamine is 14 grams or more but less than 28 grams, the person must be sentenced to a mandatory minimum prison term of 3 years and be ordered to pay a fine of \$50,000. If the quantity of the drug is 28 grams or more, but less than 200 grams, the person must be sentenced to a mandatory minimum prison term of 7 years and ordered to pay a fine of \$100,000. If the quantity of the drug is 200 grams or more, the person must be sentenced to a mandatory minimum prison term of 15 years and ordered to pay a fine of \$250,000. A defendant commits a capital felony if he or she knowingly manufactures or brings

² See e.g., Hawaii Rev. Stat. § 329-65; Ind. Code § 22-11-20-6; Iowa Code § 124.410F; Minn. Stat. § 18C.201; Neb. Rev. Stat. § 28-1240; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.001; Wash. Rev. Code § 69.55.020; Wis. Stat. § 101.10.

³ See e.g., Iowa Code § 124.401F; Ky. Rev. Stat. § 250.4892; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.002; Wis. Stat. § 101.10. Some states punish unlawful sale, delivery (or transfer) of anhydrous ammonia. See e.g., Hawaii Rev. Stat. § 329-65; Iowa Code § 124.401F; Kan. Stat. Ann. § 65-7006; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tenn. Code Ann. § 39-17-433; Tex. Code Ann. § 504.002; Wash. Rev. Code § 69-55.020; Wis. Stat. § 101.10.

⁴ See The Transportation of Explosives Act. The Interstate Commerce Commission for railway and highway transport administers the Act.

into Florida 400 grams or more of the drug and knows that the probable result of such manufacture or importation would be death of any person. Any person sentenced for a capital felony must pay \$250,000.

Regulation of Over-the-Counter Ephedrine in Florida

During the 1994 Session, the Legislature adopted legislation, which made ephedrine, the active ingredient of ephedra, a prescription drug.⁵ This means that any product, which contains ephedrine, can only be dispensed by prescription. This legislation was enacted in reaction to the marketing of, and the growing popularity of, products that were advertised to help the user of the products to stay awake, lose weight, or enhance athletic performance. The federal Food and Drug Administration (FDA) has not approved the use of ephedrine for these purposes. There was growing concern that the marketing of these products was misleading consumers and was encouraging abuse of ephedrine among teenaged youth. In 1995, the law was amended to authorize certain drug products such as Primatene tablets to control asthma and combinations of products containing ephedrine in specified dosage forms to be sold over the counter. Such drug products were thought to have little potential for abuse. The 1995 revisions also made it a violation of the Florida Drug and Cosmetic Act, ch. 499, F.S., for any person to advertise or label any product containing ephedrine for the indication of stimulation, mental alertness, weight loss, appetite control, energy, or any other indication not approved by the FDA.⁶ Pseudoephedrine (Sudafed®) does not require a prescription. Pseudoephedrine decongests by causing blood vessels to narrow thereby preventing fluid from leaving the vessels and causing the tissues to swell.

Florida Drug and Cosmetic Act

The Department of Health is responsible for regulating and enforcing the Florida Drug and Cosmetic Act, ch. 499, F.S. Chapter 499, F.S., provides regulatory oversight of the manufacture and distribution of drugs, devices, cosmetics and ether within Florida. The Department of Health does not regulate dietary supplements, but has authority to take regulatory action if drugs are misbranded or adulterated.

Section 499.003, F.S., defines “contraband legend drug” to mean any adulterated drug; any counterfeit drug; or any legend drug for which a pedigree paper does not exist, or for which the pedigree paper in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter. Under s. 499.006(10), F.S., a drug is an adulterated drug if it is a legend drug that has been purchased, held, sold, or distributed at any time by a person not authorized under federal or state law to do so.

Chapter 499, F.S., provides criminal penalties for violations of the act relating to illegal activities to sell, purchase, receive, possess, or deliver prescription or contraband drugs. Any person who purchases or sells prescription drugs for wholesale distribution in exchange for currency commits a third degree felony.⁷ A person who knowingly purchases or receives from a person not authorized to distribute legend drugs under ch. 499, F.S., a legend drug in a wholesale

⁵ See ch. 94-309, L.O.F., which created s. 499.033, F.S.

⁶ See s. 2, ch. 95-415, L.O.F., which added s. 499.0054(6), F.S.

⁷ See s. 499.0691(2)(i), F.S.

transaction commits a second-degree felony.⁸ A person who knowingly sells or transfers to a person not authorized to purchase or possess legend drugs, under the law of the jurisdiction in which the person receives the drug, a legend drug in a wholesale distribution transaction commits a second degree felony.⁹ A person who is knowingly in actual possession of any amount of contraband legend drugs, who knowingly sells or delivers, or who possesses with intent to sell or deliver any amount of contraband legend drugs, commits a second degree felony.

III. Effect of Proposed Changes:

Section 1. Amends s. 893.033, F.S., relating to listed chemicals, to delete anhydrous ammonia and benzyl chloride from the “listed precursor chemicals” and to add benzaldehyde, hydriodic acid, and nitroethane to that list, as chemicals that may be used in manufacturing a controlled substance in violation of ch. 893, F.S.

The section adds anhydrous ammonia, benzyl chloride, hydrochloric gas, and iodine to the “listed essential chemicals” that may be used as a solvent, reagent, or catalyst to manufacture controlled substances in violation of ch. 893, F.S. According to the Florida Department of Law Enforcement, these changes conform to federal requirements for precursor or essential chemicals, as applicable, which are used to manufacture controlled substances.¹⁰

Section 2. Amends s. 893.13, F.S., relating to prohibited acts under the Florida Comprehensive Drug Abuse Prevention and Control Act, to provide that except as authorized under ch. 893, F.S., it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033, F.S., in violation of s. 893.149, F.S., and with intent to manufacture methamphetamine or phencyclidine. Section 893.149, F.S., provides that it is a second-degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

Any person who manufactures methamphetamine or phencyclidine, or possesses any listed chemical with an intent to manufacture methamphetamine or phencyclidine, and the commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, commits a first degree felony with a mandatory minimum term of 5 calendar years. If, during the commission of the crime, the defendant causes a child under the age of 16 years to suffer great bodily harm, the defendant commits a first-degree felony with a mandatory minimum term of 10 calendar years.

Except as authorized under ch. 893, F.S., any person who sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or deliver, a controlled substance in, on, or within

⁸ See s. 499.0051(4), F.S.

⁹ See s. 499.051(5), F.S.

¹⁰ See the federal “List I Chemicals” cited at 21 U.S.C. 802(34), which generally correspond to “precursor chemicals” under Florida law cited at s. 893.033(1), F.S. List I chemical means a chemical specified by regulation of the U.S. Attorney General as a chemical that is used in manufacturing a controlled substance in violation of federal drug abuse prevention and control laws and is important to the manufacture of the controlled substances. Also see federal “List II Chemicals” cited at 21 U.S.C. 802(35), which generally correspond to “essential chemicals” under Florida law cited at s. 893.033(2), F.S.

1,000 feet of an assisted living facility, commits a first degree felony, if the offense involves certain controlled substances listed in Schedules I and II, and a second degree felony, if the offense involves certain controlled substances listed in Schedules I, II, III, and IV.

Any person who stores anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices, commits a third degree felony.

If a person violates any provision of ch. 893, F.S., and such violation results in a serious injury to a state, local, or federal law enforcement officer, the person commits a third degree felony. If the injury sustained by the law enforcement officer results in death or great bodily harm, the person commits a second-degree felony.

Section 3. Amends s. 893.135, F.S., relating to drug trafficking, to provide that a person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of pseudoephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, commits a first degree felony. If the amount of pseudoephedrine is 14 grams or more but less than 28 grams, the person must be sentenced to a mandatory minimum prison term of 3 years and be ordered to pay a fine of \$50,000. If the amount of pseudoephedrine is 28 grams or more, but less than 200 grams, the person must be sentenced to a mandatory minimum prison term of 7 years and ordered to pay a fine of \$100,000. If the amount of pseudoephedrine is 200 grams or more, the person must be sentenced to a mandatory minimum prison term of 15 years and ordered to pay a fine of \$250,000.

A person commits a capital felony if he or she knowingly manufactures or brings into Florida 400 grams or more of pseudoephedrine used in conjunction with other chemicals and equipment in the manufacture of amphetamine or methamphetamine and knows that the probable result of such manufacture or importation would be the death of any person. Any person sentenced for a capital felony must pay \$250,000.

Section 4. Amends s. 893.149, F.S., relating to the unlawful possession of a listed chemical, to provide that this section does not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances resulting from the prohibited activities of ch. 893, F.S. Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, F.S., must be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

Section 5. Creates s. 893.1495, F.S., which makes it unlawful for a person to knowingly deliver in any single retail over-the-counter sale any number of packages of any drug containing a sole active ingredient that contains a combined total of more than 9 base grams of ephedrine,

pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages¹¹ in any single retail over-the-counter sale, regardless of weight, containing any such sole active ingredient. Additionally, no person shall knowingly display and offer for retail sale packages of such drug other than behind a checkout counter where the public is not permitted or other such location that is not otherwise accessible to the general public. Also, no person who is the owner or primary operator of a retail outlet where such drug is available for sale shall knowingly allow an employee to engage in the retail sale of such products unless the employee has completed an employee training program that shall include, at a minimum, basic instruction on state and federal regulations relating to the sale and distribution of such products.

A first violation of these restrictions is a second degree misdemeanor, punishable by a fine. A second violation is a first degree misdemeanor, a third or subsequent violation is a third degree felony.

Section 6. Reenacts s. 311.12(3)(c), F.S., relating to seaport security standards, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 7. Reenacts s. 397.451(4)(b) and (6), F.S., relating to the background checks of substance abuse service provider personnel, for purposes of incorporating the amendments to s. 893.13, F.S., and s. 893.135, F.S., in this CS.

Section 8. Reenacts s. 414.095(1), F.S., relating to the requirements for determining eligibility for temporary cash assistance, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 9. Reenacts s. 435.07(2), F.S., relating to the exemptions from disqualification from employment for persons who are employed by certain treatment providers, for purposes of incorporating the amendments to s. 893.13, F.S., in this CS.

Section 10. Reenacts s. 772.12(2)(a), F.S., relating to drug dealer liability, for purposes of incorporating the amendments to s. 893.13, F.S., and s. 893.135, F.S., in this CS.

Section 11. Reenacts s. 775.087(2)(a) and (3)(a), F.S., relating to the possession or use of a weapon and aggravated battery, felony reclassification, and minimum sentencing requirements, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 12. Reenacts s. 782.04(1)(a), (3)(a), and (4)(a), F.S., relating to murder, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 13. Reenacts s. 893.02(12), F.S., relating to listed chemicals, for purposes of incorporating the amendments to s. 893.033, F.S., in this CS.

¹¹ Presumably, the “package” restriction applies to pills, tablets, liquid, and liquid gel caps. The L.A. Daily News reported that “[p]olice say it’s much harder to extract pseudoephedrine from gels than from pills.” “Cold medicine bill aimed at meth labs.” *L.A. Daily News* (February 13, 2005).

Section 14. Reenacts s. 893.1351(1), F.S., relating to the lease or rent for the purpose of trafficking in a controlled substance, for purposes of incorporating the amendments to s. 893.13, F.S., and s. 893.135, F.S., in this CS.

Section 15. Reenacts s. 903.133, F.S., relating to bail, for purposes of incorporating the amendments to s. 893.13, F.S., and s. 893.135, F.S., in this CS.

Section 16. Reenacts s. 907.041(4)(c), F.S., relating to pretrial detention and release, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 17. Reenacts s. 921.0022(3)(g), (h), and (i), F.S., relating to the offense severity ranking chart, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 18. Reenacts s. 921.0024(1), F.S., relating to the Criminal Punishment Code, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 19. Reenacts s. 921.142(2), F.S., relating to sentence of death or life imprisonment for capital drug trafficking felonies, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 20. Reenacts s. 921.187(1), F.S., relating to disposition and sentencing, alternatives, and restitution, for purposes of incorporating the amendments to s. 893.13, F.S., in this CS.

Section 21. Reenacts s. 938.25, F.S., relating to the Operating Trust Fund of the Florida Department of Law Enforcement, for purposes of incorporating the amendments to s. 893.13, F.S., in this CS.

Section 22. Reenacts s. 943.0585, F.S., relating to court-ordered expunction of criminal history records, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 23. Reenacts s. 943.059, F.S., relating to court-ordered sealing of criminal history records, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS.

Section 24. Reenacts s. 948.034(1) and (2), F.S., relating to terms and conditions of probation and community residential drug punishment centers, for purposes of incorporating the amendments to s. 893.13, F.S., in this CS.

Section 25. Provides an effective date of July 1, 2005, and applies to offenses committed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this CS have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

The CS imposes restrictions on the sale the manner in which products containing ephedrine, pseudoephedrine, phenylpropanolamine or any of their salts or optical isomers as the sole active ingredient may be delivered, sold, and displayed, as well as limits the amount of that may be sold in a single retail over-the-counter sale. These restrictions may or may not reduce the sale of such medications by businesses that sell this medication. Business will likely incur some costs in providing employee training as specified in the CS.

C. Government Sector Impact:

The Criminal Justice Impact Conference states that the CS has an indeterminate prison bed impact with minimal prison bed impact expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Based on news reports from other states with pseudophedrine sale restrictions identical or similar to those proposed in the CS, it appears that the sale restrictions proposed by the bill will most likely affect operators of small methamphetamine labs. The San Francisco Chronicle reported that one California law enforcement officer indicated that recent federal legislation to restrict pseudoephedrine sales throughout the country “would not help much with the ‘superlabs’ -- major methamphetamine facilities that produce most of the nation’s supply and require large quantities of ingredients. Most of those labs buy ephedrine and pseudoephedrine in bulk from suppliers in countries such as Canada, China, and Mexico...”¹²

¹² “Bill could stymie meth cooks: Senate proposes new procedure for buying some cold remedies.” *San Francisco Chronicle* (January 27, 2005).

The sale restrictions proposed by the CS will not prevent persons from purchasing (within legal limits) pseudoephedrine products from multiple retailers (“smurfing”¹³); making multiple, separate purchases (within legal limits) of the products from a single retailer; or obtaining the products outside of Florida. The CS does not require purchasers to show identification and sign a log sheet, as Oklahoma’s law does. There is no limit on the number of purchases within a specified period. Iowa law limits the number of purchases within a single month to prevent stockpiling.

According to news reports, methamphetamine producers have circumvented pseudoephedrine sale restrictions. For example, the L.A. Daily News reported that, in California, which restricts pseudoephedrine sales, “authorities say pills are often bought elsewhere and shipped to California.”¹⁴ The San Francisco Chronicle reported that “some meth cooks in Oklahoma are beating the state law by driving to nearby border states, which do not limit pseudoephedrine sales, authorities say.”¹⁵

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

¹³ *Id.* The San Francisco Chronicle reported that “some meth cooks have responded with a tactic they call ‘smurfing’: driving from store to store and buying a few boxes of medicine at a time until they have enough to produce a batch of the potent drug.”

¹⁴ See Note 11.

¹⁵ See Note 16. The United Press International reported that Oklahoma’s restrictions on pseudoephedrine sales “forced users into neighboring states like Texas, where they can still legally purchase or steal the drug off the shelf.” “Analysis: Meth crackdown spreads.” *United Press International* (January 28, 2005).

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
