

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1325

Controlled Substances

**SPONSOR(S):** Culp

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2356

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| REFERENCE                                      | ACTION | ANALYST       | STAFF DIRECTOR |
|--|--------|---------------|----------------|
| 1) <u>Criminal Justice Committee</u>           | _____  | <u>Kramer</u> | <u>Kramer</u>  |
| 2) <u>Health Care Appropriations Committee</u> | _____  | _____         | _____          |
| 3) <u>Justice Council</u>                      | _____  | _____         | _____          |
| 4) _____                                       | _____  | _____         | _____          |
| 5) _____                                       | _____  | _____         | _____          |

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**SUMMARY ANALYSIS**

Methamphetamine is a highly addictive nerve stimulant that is often manufactured in clandestine laboratories. The manufacture of methamphetamine has a severe impact on the environment and creates a large amount of toxic waste that can be harmful to those who come into contact with the laboratory while it is being used or after it is abandoned. Chapter 893 sets forth criminal penalties for the illegal sale or manufacture of methamphetamine and other controlled substances.

Section 39.301, F.S. provides that if it is determined that a child is in need of protection and supervision of the court, the Department of Children and Families must file a petition for dependency. A petition for dependency must be filed in all cases classified by the department as high-risk. The section sets forth factors that the department may consider in determining whether a case is high-risk. The bill adds the arrest of the parents or legal custodians on charges of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893 to the list of factors which the department may consider.

During the 2005 session, section 893.13, F.S. was amended to provide that if a person violates any provision of chapter 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. HB 1325 expands this provision to apply when injury results to a firefighter, emergency medical technician, paramedics or other specified person.

The bill also provides that the Legislature finds that a person who manufactures or cooks any substance in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. Further, if the court finds that there is a substantial probability that a defendant charged with manufacturing or cooking any substances in violation of chapter 893 committed such a crime, there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons and therefore the court must order pretrial detention.

The bill provides that no life or health insurer may cancel or nonrenew a life or health insurance policy or certificate of insurance providing coverage to, or refuse to insure a law enforcement officer, firefighter, paramedic, emergency medical technician or other specified official solely based on the fact that the individual has been exposed to toxic chemicals or suffered injury or disease as a result of the individual's lawful duties arising out of the commission of a violation of chapter 893 by another person.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government:* The bill prohibits life or health insurers from canceling, nonrenewing or refusing to insure certain individuals solely based on the fact that the individual has been exposed to toxic chemicals as a result of the individual's lawful duties arising out of a violation of chapter 893 by another person.

The bill also authorizes the Department of Children and Families to consider additional factors in determining whether a child is in need of protection and supervision of the court.

*Safeguard individual liberty:* The bill requires a judge to order the pretrial detention of a defendant in certain circumstances.

*Promote personal responsibility:* The bill creates criminal penalties for injurious behavior.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background information**

*Drug offenses:* Chapter 893 is known as the "Florida Comprehensive Drug Abuse Prevention and Control Act". Section 893.03, F.S. divides controlled substances into five categories ranging from Schedule I to Schedule V. The scheduling of a controlled substance is relevant to how it can be prescribed and to the severity of the criminal offense for its illicit possession, sale or purchase.<sup>1</sup>

Section 893.13, F.S., provides penalties for various drug offenses depending on the type and quantity of the controlled substance and whether the controlled substance is sold, manufactured<sup>2</sup> or delivered or is purchased as well as the location of the sale, manufacture or delivery. If the amount of controlled substance sold, manufactured, purchased or delivered is of a sufficient quantity, the offense is considered drug trafficking and the penalties in section 893.135, F.S. apply. The type and quantity of controlled substance sold, purchased, manufactured or delivered - in other words, trafficked - dictates the penalties that apply.

*Methamphetamine:* Methamphetamine is a Schedule II controlled substance.<sup>3</sup> 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,"

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<sup>1</sup> A drug in Schedule I has a "high potential for abuse and has no currently accepted medical use in treatment in the United States." A drug in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV."

<sup>2</sup> Section 893.02(13), F.S. defines the term "manufacture" as follows:

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.
2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

<sup>3</sup> s. 893.03(2)(c), F.S.

lasting between 15 and 30 minutes, that is difficult, if not impossible for the user to repeat, leading the user to ingest more and more of the drug and go 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. According to the Office of National Drug Control Policy<sup>4</sup>:

Methamphetamine can be easily manufactured in clandestine laboratories (meth labs) using ingredients purchased in local stores. Over-the-counter cold medicines containing ephedrine or pseudoephedrine and other materials are "cooked" in meth labs to make methamphetamine.

The manufacture of methamphetamine has a severe impact on the environment. The production of one pound of methamphetamine releases poisonous gas into the atmosphere and creates 5 to 7 pounds of toxic waste. Many laboratory operators dump the toxic waste down household drains, in fields and yards, or on rural roads.

Due to the creation of toxic waste at methamphetamine production sites, many first response personnel incur injury when dealing with the hazardous substances. The most common symptoms suffered by first responders when they raid meth labs are respiratory and eye irritations, headaches, dizziness, nausea, and shortness of breath.

Meth labs can be portable and so are easily dismantled, stored, or moved. This portability helps methamphetamine manufacturers avoid law enforcement authorities. Meth labs have been found in many different types of locations, including apartments, hotel rooms, rented storage spaces, and trucks. Methamphetamine labs have been known to be boobytrapped and lab operators are often well armed.

2005 Legislation: During the 2005 session, HB 1347<sup>5</sup> was passed by the Legislature and signed by the Governor. The bill made a number of changes to chapter 893 relating to methamphetamine and other controlled substances including the following:

- The bill limited over the counter sales of any drug containing a sole active ingredient of ephedrine, pseudoephedrine or phenylpropanolamine (commonly contained in cold medication) and required that such drugs be kept behind a checkout counter.
- The bill provided for enhanced penalties for the manufacture of methamphetamine or phenylcyclidine if the crime occurs where a children under 16 years of age is present.
- The bill provided for enhanced penalties for trafficking in pseudoephedrine.
- The bill made it unlawful to store anhydrous ammonia (a chemical which can be used in methamphetamine production) in a manner not in accordance with sound engineering, agricultural or commercial practices.

### **Effect of HB 1325**

*Protective investigations:* Section 39.301, F.S. provides that if it is determined that a child is in need of protection and supervision of the court, the Department of Children and Families must file a petition for dependency. A petition for dependency must be filed in all cases classified by the department as high-risk. Factors that the department may consider in determining whether a case is high-risk include, but are not limited to the following:

- The young age of the parents or legal custodians;
- The use of illegal drugs;
- Domestic violence.

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<sup>4</sup> <http://www.whitehousedrugpolicy.gov/publications/factsht/methamph/>

<sup>5</sup> Sponsored by Rep. Evers; chapter 2005-128, Laws of Fla.

The bill adds the arrest of the parents or legal custodians on charges of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893 to the list of factors which the department may consider.

*Injury to specified official:* The 2005 legislation discussed above amended s. 893.13, F.S. to provide that if a person violates any provision of chapter 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.

HB 1325 amends this provision to apply when injury results to any of the following people:

- A state or local law enforcement officer as defined in s. 943.10, F.S.
- A firefighter as defined in s. 633.30, F.S.
- An emergency medical technician as defined in s. 401.23, F.S.
- A paramedic as defined in s. 401.23, F.S.
- An employee of a public utility or an electric utility as defined in s. 366.02, F.S.
- An animal control officer as defined in s. 828.27, F.S.
- A volunteer firefighter engaged by state or local government;
- A law enforcement officer employed by the federal government
- Any other local, state or federal employee injured during the court and scope of his or her employment.

*Clandestine laboratory:* The bill defines the term “clandestine laboratory” to mean any location and proximate areas set aside or used that are likely to be contaminated as a result of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893, except as such activities are authorized in chapter 499.

*Insurance:* The bill creates s. 627.4107, F.S. which provides that no life or health insurer may cancel or nonrenew<sup>6</sup> a life or health insurance policy or certificate of insurance providing coverage to, or refuse to insure one of the following individuals solely based on the fact that the individual has been exposed to toxic chemicals or suffered injury or disease as a result of the individual’s lawful duties arising out of the commission of a violation of chapter 893 by another person:

- A state or local law enforcement officer as defined in s. 943.10, F.S.
- A firefighter as defined in s. 633.30, F.S.
- An emergency medical technician as defined in s. 401.23, F.S.
- A paramedic as defined in s. 401.23, F.S.
- A volunteer firefighter engaged by state or local government;
- A law enforcement officer employed by the Federal government
- Any other local, state or Federal employee injured during the court and scope of his or her employment.

This provision will not apply to any person who commits an offense under chapter 893.

*Pretrial Release/Detention:* Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is

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<sup>6</sup> Several other statutes prohibit an insurance company from canceling or nonrenewing a life or health insurance policy for other specified reasons. See for example, s. 627.6265 which provides that no insurer may cancel or nonrenew the health insurance policy of an insured person because of diagnosis or treatment of human immunodeficiency virus infection or acquired immune deficiency syndrome; s. 627.4301(2)(a) provides that in the absence of a diagnosis of a condition related to genetic information, no health insurer may cancel coverage based on such information; s. 627.70161(4) provides that, with certain exceptions, an insurer may not deny, cancel, or refuse to renew a policy for residential property insurance solely on the basis that the policyholder or applicant operates a family day care home.

entitled to pretrial release on reasonable conditions.<sup>7</sup> There is a presumption in favor of release on *nonmonetary* conditions<sup>8</sup> for any person who is granted pretrial release unless such person is charged with a dangerous crime.

Section 907.041(4)(c), F.S. provides that a judge may order pretrial detention based on one of several different grounds. For example, a court may order pretrial detention if the judge finds that the defendant poses a threat of harm to the community. The judge may so conclude if it finds that the defendant is charged with a dangerous crime, that there is a substantial probability that the defendant committed the crime, that the factual circumstances of the crime indicate a disregard for the safety of the community and there are no conditions of release sufficient to protect the community from the risk of physical harm to others. A court can also order pretrial detention if the defendant was on probation or pretrial release for a dangerous crime at the time the current offense was committed.

The term “dangerous crime” includes the following: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; and attempting or conspiring to commit any such crime.<sup>9</sup>

HB 1325 adds “manufacturing or cooking any substances in violation of chapter 893” to the list of dangerous crimes contained in s. 907.041, F.S.

The bill also provides that the Legislature finds that a person who manufactures or cooks any substance in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. Further, the bill provides that if the court finds that there is a substantial probability that a defendant charged with manufacturing or cooking any substances in violation of chapter 893 committed such a crime, there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons and therefore the court must order pretrial detention.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 39.301, F.S., to add to list of factors that DCF may consider in determining whether case being investigated is high-risk relating to initiation of protective investigations

Section 2. Amends s. 893.02, F.S. to define term “clandestine laboratory”.

Section 3. Amends s. 893.13, F.S.; relating to injury to an officer as a result of violation of chapter 893.

Section 4. Creates s. 627.4107, F.S. to prohibit refusing to insure or cancel insurance policies to certain employees due to exposure to toxic chemicals.

Section 5. Amends s. 907.041, F.S. relating to pretrial release of certain defendants.

Sections 6-12. Amends ss. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22 and 985.4046, F.S. to conform cross-references.

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<sup>7</sup> Conditions of pretrial release are determined at a defendant’s first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.

<sup>8</sup> Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.

<sup>9</sup> s. 907.041, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill requires a judge to order pretrial detention if it finds that there is a substantial probability that a defendant charged with manufacturing or cooking a substance in violation of chapter 893 committed such a crime. This may have a jail bed impact on the counties.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prohibit a life or health insurer from canceling or nonrenewing a policy to certain individuals solely based on the fact that the individual has been exposed to toxic chemicals or suffered injury as a result of the individual's lawful duties arising out the commission of a violation of chapter 893.

### D. FISCAL COMMENTS:

See above.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### 2. Other:

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. This section also provides that if no conditions of release can reasonably protect the community from risk of physical harm, an accused can be retained before trial.

Section 907.041, F.S. authorizes a court to order pretrial detention of a defendant in certain circumstances. There is no statutory *requirement* that the court order pretrial detention. Although the fact that the defendant is charged with a specified crime can be relevant to a judge's decision to

order pretrial detention, the fact that the defendant is charged with a certain offense is not sufficient by itself to authorize the court to order pretrial detention. For example, in order to order pretrial detention of a defendant charged with trafficking in a controlled substance, the judge has to find that there is a substantial probability that the defendant committed the offense and also must find that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings.

HB 1325 creates legislative findings that a person who manufactures or cooks any substance in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. The bill requires the court to order pretrial detention if it finds that there is a substantial probability that a defendant charged with this offense committed the crime. This mandatory provision is unlike any other provided for in statute. This could be challenged as violating a defendant's right to pretrial release on reasonable conditions.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 2 of the bill defines the term "clandestine laboratory". The term clandestine laboratory is not used elsewhere in the bill or in current law.

In several places the bill refers to manufacturing or "cooking" a substance in violation of chapter 893. Although the term "manufacture" is used, the term "cook" or "cooking" is not used in chapter 893.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**