

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 2356

INTRODUCER: Judiciary Committee and Senator Baker

SUBJECT: Controlled Substances

DATE: April 21, 2006

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Chinn   | Maclure        | JU        | Fav/CS |
| 2. |         |                | CJ        |        |
| 3. |         |                | BI        |        |
| 4. |         |                | HA        |        |
| 5. |         |                |           |        |
| 6. |         |                |           |        |

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## I. Summary:

This bill revises several sections of law to add provisions relating to the manufacture of controlled substances. For example, the creation of methamphetamines creates toxic waste, endangering first responders and others who are exposed to the sites of methamphetamine laboratories. In addition, the combustibility of the components of methamphetamines creates a fire hazard. The bill addresses concerns related to children and first responders being exposed to the hazards of manufacturing controlled substances like methamphetamine, including:

- Adding arrest for drug-related activities to the list of factors considered “high-risk” in a child protective investigation, requiring the Department of Children and Family Services to file a petition for dependency in child protective investigations;
- Expanding language providing for criminal penalty for a person who injures a first responder as a result of a violation under ch. 893, F.S., to include firefighters, emergency medical technicians, paramedics, and other specified persons;
- Prohibiting insurers from canceling or not renewing a health or life insurance policy for specified first responders solely on the basis of exposure to toxic chemicals, injury, or disease resulting from the exposure to chemicals as the result of performing duties related to another’s violation of ch. 893, F.S.; and
- Adding drug-related offenses to the list of crimes for which pretrial detention may be ordered and requiring that pretrial detention be ordered when the court finds that there is a substantial probability that a defendant charged with a drug-related offense committed that crime and that there are no conditions of pretrial release that are reasonably sufficient to protect the community from harm.

This bill amends the following sections of the Florida Statutes: 39.301, 893.13, 907.041, 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046. The bill creates section 627.4107, Florida Statutes.

## II. Present Situation:

### Child Protective Investigations

Section 39.301, F.S., provides for the investigation of oral or written reports of known or suspected child abuse, abandonment, or neglect. The Department of Children and Family Services (DCF) is instructed to notify its designated children and families district staff responsible for protective investigations to ensure that an onsite investigation is promptly initiated where the initial report indicates a prompt investigation is necessary. Where there is an allegation of substance abuse or substance exposure, the DCF must perform an enhanced onsite child protective investigation.<sup>1</sup> Under statute, the DCF must also immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the alleged conduct has occurred.<sup>2</sup> The law enforcement agency must review the written report of allegations to determine whether a criminal investigation is warranted and must coordinate its investigative activities with DCF when possible.<sup>3</sup>

The DCF's training program for investigators must ensure that protective investigators know how to fully inform parents or legal custodians who are subject to an investigation of their rights and options, including opportunities for audio or video recording of investigators' interviews with parents, legal custodians, or children.<sup>4</sup> An assessment of risk and the perceived needs for the child and family shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.<sup>5</sup> This assessment must include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child's residence. When a case is classified as a high-risk based upon the DCF's assessment, a petition for dependency<sup>6</sup> must be filed by DCF. The following factors may be considered by DCF when determining whether a case is high-risk:

- Young age of the parents or legal custodians;
- Use of illegal drugs; or
- Domestic violence.<sup>7</sup>

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<sup>1</sup> Section 39.301(10)(a)1., F.S. Some other instances where an enhanced site visit is required include allegations involving physical abuse, sexual abuse, domestic violence, medical neglect, a child younger than three years old, or a child who is disabled or lacks communication skills.

<sup>2</sup> Section 39.301(2)(a), F.S.

<sup>3</sup> Section 39.301(2)(c), F.S.

<sup>4</sup> Section 39.301(5)(b), F.S.

<sup>5</sup> Section 39.301(6), F.S.

<sup>6</sup> Section 39.501, F.S., provides for the filing of a petition for dependency. The section states that the purpose of a petition seeking the adjudication of a child as a dependent child is the protection of the child and not the punishment of the person creating the condition of dependency.

<sup>7</sup> Section 39.301(8)(b), F.S.

## Offenses Related to Use, Sale, or Manufacture of Controlled Substances

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>8</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>9</sup> delivered, or purchased. The penalties provided in this section are also dependant upon the location of the sale, manufacture, delivery, or possession of the controlled substance.<sup>10</sup> If the amount of the controlled substance sold, manufactured, purchased, or delivered is of a sufficient quantity, the offense is considered drug trafficking and the penalties in s. 893.135, F.S. apply. The type and quantity of controlled substance sold, purchased, manufactured, or delivered (i.e., trafficked) dictates the penalties that apply.

### *Methamphetamine*

Methamphetamine is a Schedule II controlled substance.<sup>11</sup> As such, it has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and the abuse of the substance may lead to severe psychological or physical dependence. Methamphetamine can be easily manufactured in clandestine laboratories (meth labs) using ingredients purchased in local stores, such as over-the-counter cold medicines containing ephedrine or pseudoephedrine and other materials that are “cooked” together.<sup>12</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

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<sup>8</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.” See s. 893.03, F.S.

<sup>9</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>10</sup> Section 893.13(1)(c)-(h), F.S., provides penalties based upon the location of the offense (e.g., schools, parks, community centers, colleges, places of worship, etc.)

<sup>11</sup> Section 893.03(2)(c), F.S.

<sup>12</sup> Executive Office of the President, Office of National Drug Control Policy, *Drug Policy Information Clearinghouse Fact Sheet: Methamphetamine*, available at <http://www.whitehousedrugpolicy.gov/publications/factsht/methamph/>.

taken orally. It produces an initial “high,” lasting between 15 and 30 minutes. The initial high 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.<sup>13</sup> According to the Office of National Drug Control Policy:

- 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 methamphetamine 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 booby-trapped, and lab operators are often well armed.<sup>14</sup>

### ***2005 Legislation***

During the 2005 session, House Bill 1347<sup>15</sup> was passed by the Legislature and signed by the Governor. The bill made a number of changes to ch. 893, F.S., 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 phencyclidine if the crime occurs where a child under 16 years of age is present;
- The bill provided for enhanced penalties for trafficking in pseudoephedrine; and
- The bill made it unlawful to store anhydrous ammonia (a chemical that can be used in methamphetamine production) in a manner not in accordance with sound engineering, agricultural, or commercial practices.

### **First Responders and Violations Under Chapter 893, F.S., on Controlled Substances**

Section 893.13(12), F.S., provides for criminal punishment for violations of ch. 893, F.S., (relating to offenses involving controlled substances) that result in injury or death to first responders. 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

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Chapter 2005-128, L.O.F.

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. Studies have shown, however, that there are others not included in Florida's statute that are also injured as a result of performing their professional duties, including emergency medical technicians, paramedics, firefighters, and others.<sup>16</sup>

Currently, there is no provision in statute that prohibits health and life insurance companies from canceling, refusing to renew, or refusing to offer insurance policies for first responders who have been exposed to toxic chemicals while performing their professional duties. Based upon the ill health effects of such exposure, the inability for first responders to obtain or maintain insurance coverage could result in mounting health costs for these individuals.

### **Pretrial Release/Dangerous Crimes**

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.<sup>17</sup> There is a presumption in favor of release on *nonmonetary* conditions<sup>18</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 the judge 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>19</sup>

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<sup>16</sup> Department of Health and Human Services, Centers for Disease Control, *Public Health Consequences Among First Responders to Emergency Events Associated With Illicit Methamphetamine Laboratories --- Selected States, 1996—1999*, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm4945a1.htm>.

<sup>17</sup> Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc. The defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses, and the state attorney has the burden of showing the need for pretrial detention under s. 907.041(4)(h) and (g), F.S., respectively.

<sup>18</sup> Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.

<sup>19</sup> Section 907.041(4), F.S.

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

#### **Child Protective Investigations**

This bill amends s. 39.301, F.S., which 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 (DCF) must file a petition for dependency. As discussed above, a petition for dependency must be filed in all cases classified by the DCF as high-risk, which includes cases involving the use of illegal drugs. This bill adds to the factors that are considered high-risk for purposes of requiring a petition for dependency to be filed to include cases where a parent or legal custodian is arrested on charges of manufacturing, processing, disposing of, or storing substances in violation of chapter 893 (e.g., methamphetamines). This revision to statute is designed to protect children from the risk of proximity to sites where illegal manufacture of drugs is taking place (e.g., methamphetamine labs), in addition to the protection already afforded in statute for high-risk status based upon parental use of drugs.

#### **First Responders and Violations Under Chapter 893, F.S., on Controlled Substances**

This bill amends s. 893.13, F.S., providing for criminal punishment for violations of ch. 893, F.S., (relating to offenses involving controlled substances) that result in injury or death to first responders. The criminal punishments provided in this section would apply where any of the following persons are injured:

- 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; and
- Any other local, state, or federal employee injured during the course and scope of his or her employment.

The bill also creates s. 627.4107, F.S., which provides that no life or health insurer may cancel or nonrenew<sup>20</sup> a life or health insurance policy or certificate of insurance providing coverage to certain first responders, 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 ch. 893, F.S., by another person. Individuals whose insurance cannot be canceled or nonrenewed for exposure to toxic chemicals as provided under

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<sup>20</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, F.S., 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), F.S., 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), F.S., 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.

this section include:

- 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 course and scope of his or her employment.

This provision will not apply to any person who commits an offense under ch. 893, F.S. In addition, the bill cross-references the Florida Insurance Code to provide that individuals under this section are subject to the same provisions found elsewhere in statute that allow an insurance company to deny claims in cases involving fraud on the part of the claimant.

### **Pretrial Release/Dangerous Crimes**

This bill amends s. 907.041(4), F.S., relating to pretrial detention to add “manufacturing any substances in violation of chapter 893” to the list of dangerous crimes for which an offender may be held in pretrial detention. The bill also provides that the Legislature finds that a person who manufactures or cooks any substance in violation of ch. 893, F.S., 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 any substances in violation of ch. 893, F.S., committed such a crime, and finds that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons, the court shall order pretrial detention.

Additionally, the bill makes several revisions to cross-references throughout the Florida Statutes to conform to the bill’s modifications to ch. 893, F.S.

The bill provides an effective date of July 1, 2006.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill would prohibit a life or health insurer from canceling or nonrenewing a policy for 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 of the commission of a violation of ch. 893, F.S. While most first responders are part of group health and life insurance plans and would not be denied coverage under existing law, the proposed language would ensure coverage is not canceled or nonrenewed for those who are not part of a group plan.

**C. Government Sector Impact:**

According to the Department of Children and Family Services (DCF), there has already been a push both by law enforcement and within the DCF to educate both protective investigators and case managers on the dangers of methamphetamines, and these cases are likely already considered high-risk in most cases as would be required in the bill. Based upon these assumptions and the assumption that the proposed revisions to statute will most often be applied in cases involving the manufacture of methamphetamine, the DCF does not project any significant fiscal impact as the result of the requirement that cases involving violations under ch. 893, F.S., be considered high-risk for purposes of requiring a petition for dependency be filed.

The bill requires a judge to order pretrial detention if it finds that there is a substantial probability that a defendant charged with manufacturing a substance in violation of ch. 893, F.S., committed such a crime and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. On March 21, 2006, the Criminal Justice Impact Conference determined that this bill, as filed,<sup>21</sup> would have an insignificant prison bed impact on the Department of Corrections. There may be a jail bed impact on the counties, but the impact is not known at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>21</sup> Revised language adopted in a committee substitute in the Judiciary Committee provides limited discretion to judges ruling on whether to order pretrial detention rather than requiring judges to order pretrial detention, thus the Criminal Justice Impact Conference's initial estimate that was based upon required detention with little fiscal impact would still be applicable.



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

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## **VIII. Summary of Amendments:**

None.

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