

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1155                                Use or Possession of Drug Paraphernalia  
**SPONSOR(S):** Glorioso and others  
**TIED BILLS:**                                        **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Safety & Security Council	15 Y, 0 N	Kramer	Havlicak
2) Policy & Budget Council	(W/D)		
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill amends section 893.147, F.S. to provide that it is a second degree felony to use, or possess with intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, or prepare methamphetamine in violation of chapter 893. The permissible sentence for a first time offense with no other sentencing factors would range from any non-state prison sanction (such as jail, probation or a fine) up to fifteen years in prison. This offense is currently a first degree misdemeanor, punishable by up to one year in county jail.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/promote personal responsibility: The bill increases the severity of a drug paraphernalia offense from a first degree misdemeanor to a second degree felony.

#### B. EFFECT OF PROPOSED CHANGES:

*Drug paraphernalia:* 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., (the “Florida Comprehensive Drug Abuse Prevention and Control Act”) or s. 877.111, F.S., (proscribing the inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances).

Further, s. 893.145, F.S., provides the following non-exclusive list of items that fall within the statutory definition of “drug paraphernalia”:

- Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
- Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
- Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.

- Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
  - Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
  - Water pipes.
  - Carburetion tubes and devices.
  - Smoking and carburetion masks.
  - Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.
  - Miniature cocaine spoons, and cocaine vials.
  - Chamber pipes.
  - Carburetor pipes.
  - Electric pipes.
  - Air-driven pipes.
  - Chillums.
  - Bongs.
  - Ice pipes or chillers.
  - A cartridge or canister, which means a small metal device used to contain nitrous oxide.
  - A charger, sometimes referred to as a “cracker,” which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.
  - A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.
  - A whip-it, which means a device that may be used to expel nitrous oxide.
  - A tank.
  - A balloon.
  - A hose or tube.
  - A 2-liter-type soda bottle.
  - Duct tape

Section 893.146, F.S., provides that, in determining whether an object is drug paraphernalia, a court or other authority or jury must consider, in addition to all other logically relevant factors, the following factors:

- 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.

Section 893.147(1), F.S. provides that it is unlawful for any person to use or to possess with intent to use, drug paraphernalia:

1. To plan, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal a controlled substance in violation of chapter 893.
2. To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 893.

A violation of this section is a first degree misdemeanor, punishable by up to one year in county jail.

This section makes it a third degree felony 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:<sup>1</sup>

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.

If the person committing the delivery and manufacturing offense delivered the drug paraphernalia to a minor, the person commits a second degree felony.<sup>2</sup>

*Methamphetamine*: Chapter 893, Florida Statutes, 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>3</sup> Methamphetamine is a Schedule II controlled substance under Florida law and federal law.<sup>4</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). In the United States, methamphetamines are either imported by drug traffickers or manufactured in small

<sup>1</sup> s. 847.147(2), F.S. The offense is ranked in level 2 of the offense severity ranking chart. [s. 921.0022, F.S.]

<sup>2</sup> s. 847.147(3), F.S.

<sup>3</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(1)-(5), F.S.

<sup>4</sup> s. 893.03(2)(c)4., F.S. and 21 U.S.C. § 812

“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.

*Effect of bill:* The bill amends section 893.147, F.S. to provide that it is a second degree felony to use, or possess with intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, or prepare methamphetamine in violation of chapter 893. The bill does not rank the offense in the offense severity ranking chart. As a result, it will default to a level 4 ranking. The permissible sentence for a first time offense with no other sentencing factors would range from any non-state prison sanction (such as jail, probation or a fine) up to fifteen years in prison. This offense would currently be a first degree misdemeanor, punishable by up to one year in county jail.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 893.147, F.S. relating to use, possession, manufacture, delivery, transportation or advertisement of drug paraphernalia.

Section 2. Provides effective date of July 1, 2007.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 6, 2007, the Criminal Justice Impact Conference met and determined that the prison bed impact of this bill is indeterminate, but potentially significant. Data are not available on the current number of arrests for drug paraphernalia in which the offense is related to the manufacture of methamphetamine.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

#### D. FISCAL COMMENTS:

See above.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**