

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 91 Drug-related Overdoses  
**SPONSOR(S):** Bernard and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Krol	Cunningham
2) Health & Human Services Committee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances.

HB 91 creates s. 893.21, F.S., entitled the "911 Good Samaritan Act" and provides that:

- A person making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.
- A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

The bill does not appear to have a fiscal impact and is effective on July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Florida law currently contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances. A description of these provisions follows.

##### Florida Good Samaritan Laws

The Good Samaritan Act, found in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity for liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>1</sup>
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within scope of his or her training.<sup>2</sup>
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>3</sup>

Section 768.1325, F.S., provides that a person is immune from civil liability for any harm resulting from the use or attempted use of an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim.

Section 768.1355, F.S., entitled the Florida Volunteer Protection Act, provides that any person who volunteers to perform any service for any nonprofit organization without compensation will incur no civil liability for any act or omission that results in personal injury or property damage if:

- The person was acting in good faith within the scope of any official duties performed under the volunteer service and the person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the person in the performance of the duties.

##### Reduction or Suspension of Criminal Sentence

Section 921.186, F.S., allows the state attorney to move the sentencing court to reduce or suspend the sentence of persons convicted of a felony who provide substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity.

##### Mitigating Circumstances

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"<sup>4</sup> from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as

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<sup>1</sup> Section 768.13(2)(a), F.S.

<sup>2</sup> Section 768.13(2)(d), F.S.

<sup>3</sup> Section 768.13(3), F.S.

<sup>4</sup> Section 921.0022, F.S.

determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>5</sup>

The points are added in order to determine the “lowest permissible sentence” for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are “circumstances or factors that reasonably justify the downward departure.”<sup>6</sup> Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include:

- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The defendant acted under extreme duress or under the domination of another person.
- The defendant cooperated with the state to resolve the current offense or any other offense.<sup>7</sup>

Currently, there are no mitigating circumstances related to defendants who make a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

### **Possession of a Controlled Substance**

Section 893.02, F.S., states possession of a controlled substance<sup>8</sup> “includes temporary possession for the purpose of verification or testing, irrespective of dominion or control.”

Actual or constructive possession of a controlled substance, unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, is a third degree felony punishable<sup>9</sup> by up to 5 years in prison and a fine up to \$5,000.<sup>10</sup>

Possession of less than 20 grams of cannabis<sup>11</sup> is a first degree misdemeanor punishable<sup>12</sup> by up to 1 year in prison and a fine up to \$1,000.<sup>13</sup>

Possession of more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S., or any combination thereof, or any mixture containing any such substance is first degree felony punishable<sup>14</sup> by up to 30 years in prison and a fine up to \$10,000.<sup>15</sup>

### **911 Good Samaritan Laws in Other States**

In New Mexico, the 911 Good Samaritan Act prevents the prosecution for drug possession based on evidence “gained as a result of the seeking of medical assistance” to treat a drug overdose.<sup>16</sup> This law, which took effect in June 2007, was the first of its kind in the country.<sup>17</sup>

While many states have considered similar Good Samaritan immunity legislation, Washington is the only other state to have passed such a law.<sup>18</sup>

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<sup>5</sup> Section 921.0024, F.S., provides that a defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; and the defendant’s prior record and other aggravating factors,

<sup>6</sup> Section 921.0026, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 893.02(4), F.S., defines controlled substance as “any substance named or described in Schedules I-V of s. 893.03, F.S.”

<sup>9</sup> As provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>10</sup> Section 893.13(6)(a), F.S.

<sup>11</sup> For the purposes of s. 893.13(6)(b), F.S., cannabis is defined as all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof.

<sup>12</sup> As provided in ss. 775.082 or 775.083 F.S.

<sup>13</sup> Section 893.13(6)(b), F.S.

<sup>14</sup> As provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>15</sup> Section 893.13(6)(c), F.S.

<sup>16</sup> “Preventing Overdose, Saving Lives.” Drug Policy Alliance. March 2009. <http://www.drugpolicy.org/library/overdose2009.cfm> (Last accessed March 12, 2011.)

<sup>17</sup> *Id.*

## **Effect of the Bill**

HB 91 contains the following "Whereas clauses:"

- Whereas, some research suggests that in a majority of cases of fatal drug overdose another person was aware of or present during the decedent's fatal drug use and that in one third of the cases someone recognized the decedent's distress,
- Whereas, many people cite fear of police involvement or fear of arrest as their primary reason for not seeking immediate help for a person thought to be experiencing a drug overdose, and
- Whereas, it is in the public interest to encourage a person who is aware of or present during another individual's drug overdose to seek medical assistance for that individual.

The bill provides that a person who in good faith seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.

The bill also provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

## **B. SECTION DIRECTORY:**

Section 1. Provides this act may be cited as the "911 Good Samaritan Act."

Section 2. Creates s. 893.21, F.S., relating to drug-related overdoses; medical assistance; immunity from prosecution.

Section 3. Amends s. 921.0026, F.S., relating to mitigating circumstances.

Section 4. Provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

None.

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<sup>18</sup> SB 5516 entitled "Drug Overdose Prevention." Effective June 2010.

2. Expenditures:

Generally, possession of controlled substances is a felony offense. The bill precludes a person from being charged with possession of controlled substances in specified instances. However, on March 2, 2011, the Criminal Justice Impact Conference (CJIC) determined that this bill would have no impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Possession of less than 20 grams of cannabis is a first degree misdemeanor. The bill could have a positive impact on local jails in that it precludes a person from being charged with possession of cannabis in specified instances. However, since CJIC determined that a similar provision would have "no impact" on prison beds; the jail bed impact will also likely be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES