

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 125 Preventing Deaths from Drug-related Overdoses

**SPONSOR(S):** Bernard and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Krol	Cunningham
2) Health & Human Services Access Subcommittee	14 Y, 0 N	Poche	Schoolfield
3) Judiciary Committee	16 Y, 0 N	Krol	Havlicak

### 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.

The bill 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 October 1, 2012.

## 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 a criminal defendant to have his or her sentence 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 from 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 a person convicted of a felony who provides 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.

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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.

## 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 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

Chapter 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act, makes it a crime for a person to possess<sup>8</sup> a controlled substance.<sup>9</sup> The severity of the crime depends on the type and quantity of the controlled substance possessed. For example:

- 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>10</sup> by up to 5 years in prison and a fine up to \$5,000.<sup>11</sup>
- Possession of less than 20 grams of cannabis<sup>12</sup> is a first degree misdemeanor punishable<sup>13</sup> by up to 1 year in prison and a fine up to \$1,000.<sup>14</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 a first degree felony punishable<sup>15</sup> by up to 30 years in prison and a fine up to \$10,000.<sup>16</sup>

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

<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; 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(18), F.S., states that possession “includes temporary possession for the purpose of verification or testing, irrespective of dominion or control.”

<sup>9</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>10</sup> As provided in ss. 775.082 and 775.083, F.S.

<sup>11</sup> Section 893.13(6)(a), F.S.

<sup>12</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>13</sup> As provided in ss. 775.082 and 775.083, F.S.

<sup>14</sup> Section 893.13(6)(b), F.S.

<sup>15</sup> As provided in ss. 775.082 and 775.083, F.S.

<sup>16</sup> Section 893.13(6)(c), F.S.

## 911 Good Samaritan Laws in Other States

In 2007, New Mexico enacted the 911 Good Samaritan Act, which prevents prosecution for drug possession based on evidence “gained as a result of the seeking of medical assistance” to treat a drug overdose.<sup>17</sup> This law was the first of its kind in the country.<sup>18</sup>

While many states have considered similar Good Samaritan immunity legislation, Alaska, Connecticut, New York, and Washington are the only other states to have passed such a law.<sup>19</sup>

### **Effect of the Bill**

The bill is cited as the “911 Good Samaritan Act” and 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 October 1, 2012.

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

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<sup>17</sup> New Mexico Statutes Annotated section 30-31-27.1.

<sup>18</sup> “Preventing Overdose, Saving Lives.” Drug Policy Alliance. March 2009. <http://drugpolicy.org/library/overdose2009.cfm> (last visited on November 17, 2011).

<sup>19</sup> Alaska Statute section 12.55.155(d)(19) (effective September 2008); Connecticut Public Act No. 11-210 (effective 2011); Laws of New York s. 220.78 (effective September 2011); Revised Code of Washington 69.50.315 (effective June 2010).

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

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. The Criminal Justice Impact Conference (CJIC) has not yet met to determine the impact of the bill. During the 2011 legislative session, CJIC determined that a bill identical to this one would have no impact on the Department of Corrections.<sup>20</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

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. The Criminal Justice Impact Conference (CJIC) has not yet met to determine the impact of the bill. However, because CJIC determined that an identical bill filed during the 2011 legislative session would have “no impact” on prison beds;<sup>21</sup> 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:

This 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>20</sup> Criminal Justice Impact Conference. HB 91. March 2, 2011.

<sup>21</sup> *Id.*