

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 278

INTRODUCER: Senator Sachs

SUBJECT: Preventing Deaths from Drug-related Overdoses

DATE: October 19, 2011

REVISED: 01/10/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			HR	
3.				
4.				
5.				
6.				

I. Summary:

The bill creates 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.

This bill substantially amends section 921.0026, Florida Statutes. The bill creates section 893.21, Florida Statutes.

II. Present Situation:

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, codified 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 reasonable and prudent person would have acted under the same or similar circumstances.¹
- Participates in emergency response activities of a local, state, or federal emergency response or management agency, if that person acts prudently and within the scope of his or her training.²
- 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 reasonable and prudent person would have acted under the same or similar circumstances.³

Section 768.1325(3), 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(1), 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 reasonable and 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 of any other person engaged in felonious criminal activity.

¹ Section 768.13(2)(a), F.S.

² Section 768.13(2)(d), F.S.

³ 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”⁴ from level one (least severe) to level 10 (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.⁵

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.”⁶ 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.⁷

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

Controlled substances are designated in s. 893.03, F.S., and are commonly referred to as “scheduled” drugs. The scheduled drugs are listed in Schedules I-V according to the potential for abuse or addiction, currently accepted medical use in treatment in the United States, and relative degree of danger to the user.

Generally, simple possession of a controlled substance is a third-degree felony punishable by up to five years in prison and a fine up to \$5,000.⁸ This is the “catch-all” offense, and all other drug offenses are specified “exceptions” to this general rule.

For example, two exceptions to the general rule are that simple possession of not more than 20 grams of cannabis⁹ and simple possession of not more than 3 grams of the substances listed in paragraphs 46-50 of Schedule I (c) are first-degree misdemeanors punishable by up to one year in jail and a fine up to \$1,000.¹⁰

⁴ Section 921.0022, F.S.

⁵ 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.

⁶ Section 921.0026, F.S.

⁷ *Id.*

⁸ Section 893.13(6)(a), F.S.

⁹ 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.

¹⁰ Section 893.13(6)(b), F.S.

Simple possession of *more than* 10 grams of any substance named in paragraphs (a) and (b) of Schedule I¹¹ is specified as a first-degree felony punishable by up to 30 years in prison and a fine up to \$10,000.¹² Because it is not otherwise specified and therefore falls under the general rule, possession of *not more than* 10 grams of those same substances constitutes a third degree felony offense.¹³

Paragraphs (1)(a)-(l) of s. 893.135, F.S., prohibit the possession of various *larger quantities* of controlled substances as trafficking offenses. Drug trafficking offenses carry minimum mandatory prison sentences that increase in severity as the amount or weight of the drug possessed increases, including capital crimes if deaths result from the manufacture or importation of the drug.

To further illustrate the application of the general rule that simple possession of a controlled substance is a third degree felony unless there is a specified “exception,” remember that possession of *not more than 20 grams* of cannabis is a first degree misdemeanor. Under the trafficking statute, possession of *more than 25 pounds* of cannabis is a first degree felony. Because it is not otherwise specified, possession of *more than 20 grams but 25 pounds or less* of cannabis is a third degree felony offense under the general simple possession statute, s. 893.13(6)(a), F.S.

Proving the Crimes of Possession and Possession “With Intent to...”

Possession of controlled substances are generally punished according to the gram-weight of the substance and the listing of the substance in the Schedules found in s. 893.03, F.S. Sale, delivery, manufacture and purchase of controlled substances are punished more severely than simple possession of those substances and the sentences are also increased if the crime is committed within the specified vicinity of certain areas. The same holds true for the offenses of possession *with intent to* sell, manufacture, deliver or purchase controlled substances.

Proof of *actual* sale, manufacture, delivery or purchase is provided by direct evidence, generally eyewitness testimony from a person who actually participated in or saw a transaction occur or who witnessed drug manufacturing taking place.

In order to prove that a person possesses a controlled substance *with intent to* sell, manufacture, deliver or purchase the substance, prosecutors must prove the element of intent. This can be much more difficult. The evidence should show that the controlled substance is not intended for personal use, thereby allowing a jury to draw the inference that the substance is possessed with the intent to sell, manufacture, deliver or purchase it. In order to prove intent, such evidence as incriminating statements can be used but it is more likely to be shown using circumstantial evidence like the quantity of the substance in the person’s possession, its packaging, or whether drug paraphernalia is available.¹⁴

¹¹ These controlled substances include such designer drugs (created from synthetic substances) as Flunitrazepam, commonly known as “roofies,” as well as codeine, heroin and morphine.

¹² Section 893.13(6)(c), F.S.

¹³ Section 893.13(6)(a), F.S.

¹⁴ See *Lee v. State*, 51 So.3d 600 (Fla.2d DCA 2011); *Richards v. State*, 37 So.3d 925 (Fla. 4th DCA 2010).

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.¹⁵ This law, which took effect in June 2007, was the first of its kind in the country.¹⁶

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.¹⁷

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the “911 Good Samaritan Act.”

Section 2 creates s. 893.21, F.S., to provide 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 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.

Because there is no stated exclusion from being charged, prosecuted or penalized for a person who has committed any other offenses or who has an outstanding arrest warrant, such an exclusion should not be presumed.

Section 3 amends s. 921.0026, F.S., to add 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.”

Section 4 provides an effective date for the bill of October 1, 2012.

¹⁵ Drug Policy Alliance, “Preventing Overdose, Saving Lives,” March 2009, <http://www.drugpolicy.org/library/overdose2009.cfm> (last visited April 21, 2011).

¹⁶ *Id.*

¹⁷ 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.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 2, 2011, the Criminal Justice Impact Conference (CJIC) determined that an identical bill considered during the 2011 Legislative Session would have no impact on the Department of Corrections. Although the bill has not yet been reviewed by CJIC this Session, it is unlikely that the analysis or outcome will change relative to last Session's determination.

VI. Technical Deficiencies:

Although no technical deficiencies are noted it is suggested that, depending upon the intended effect of the bill, a reference to section 893.13(6), Florida Statutes, (the simple possession statute) would clarify that persons who are in possession of trafficking amounts of controlled substances are not meant to benefit from the bill's provisions. Likewise persons who possess a controlled substance with the intent to sell, deliver, manufacture or purchase would be eliminated from claiming the benefits of the bill.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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