

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 Committee on Criminal Justice

BILL: SB 1860

INTRODUCER: Criminal Justice Committee

SUBJECT: Drug Trafficking

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon		cj SPB 7148 as introduced
2.				
3.				
4.				
5.				
6.				

I. Summary:

SB 1860's most prominent feature is increasing from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers). Increasing weight thresholds for trafficking in prescription painkillers is an option that the Office of Program Policy Analysis and Government Accountability proposed in a 2012 report.

The bill removes reference to oxycodone and hydrocodone in s. 893.135(1)(c)1.-3., F.S., which punishes trafficking in these substances (as well as opium, morphine, heroin, and hydromorphone).

The bill creates a new drug trafficking provision that only applies to trafficking in oxycodone and hydrocodone. As a result of this new trafficking provision, some persons who unlawfully possess, sell, etc., relatively small quantities of oxycodone or hydrocodone will no longer be punished under s. 893.135, F.S., the drug trafficking statute (though they may be punished under s. 893.13, F.S., which prohibits unlawful possession, sale, etc., of controlled substances). Further, some persons who would be subject to trafficking penalties under both current law and the new trafficking provision will receive a shorter mandatory minimum term under the new trafficking provision than they would receive under current law.

Specifically, the bill punishes trafficking in oxycodone or hydrocodone as a first degree felony, for which a person who commits this offense is subject to the following mandatory minimum terms and fines:

- Trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone: 3-year mandatory minimum term and \$50,000 fine. (Under current law, a 3-year mandatory

minimum term and a \$50,000 fine are provided for trafficking in 4 grams or more, but less than 14 grams, of oxycodone or hydrocodone.)

- Trafficking in 28 grams or more, but less than 50 grams, of oxycodone or hydrocodone: 7-year mandatory minimum term and \$100,000 fine. (Under current law, a 15-year mandatory minimum term and a \$100,000 fine are provided for trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone.)
- Trafficking in 50 grams or more, but less than 200 grams, of oxycodone or hydrocodone: 15-year mandatory minimum term and \$50,000 fine. (Under current law, a 25-year mandatory minimum term and a \$500,000 fine are provided for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone.)
- Trafficking in 200 grams or more of oxycodone or hydrocodone: 25-year mandatory minimum term and \$500,000 fine. (Under current law, a 25-year mandatory minimum term and a \$500,000 fine are provided for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone. Trafficking in 30 kilograms or more of these drugs is punishable by life imprisonment.)

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the increase in the minimum weight threshold for trafficking in oxycodone and hydrocodone will result in the need for 595 fewer prison beds by FY 2017-2018 with the resulting cumulative savings of \$61 million.

This bill substantially amends section 893.135 of the Florida Statutes.

II. Present Situation:

With one exception, persons who are sentenced for drug offenses (e.g., possession or sale offenses) are convicted under s. 893.13, F.S., and sentenced under the Criminal Punishment Code. A lowest permissible sentence is established under the Code and the sentencing range is often very broad. The exception is drug trafficking. Under s. 893.135, F.S., the drug trafficking statute, most trafficking offenses are first degree felonies and all trafficking offenses are subject to mandatory minimum terms, which supersede the lowest permissible sentence under the Code, narrow the sentencing range, and often result in significantly longer sentences than would be the case for a non-trafficking drug offense. Whether a person is charged with drug trafficking depends on the type of drug and whether the amount of the drug meets weight thresholds in the drug trafficking statute. The bill alters the weight thresholds for trafficking in oxycodone and hydrocodone, which are opioid prescription painkillers.

Drug Trafficking/Opioids

Section 893.135, F.S., punishes drug trafficking. Section 893.135(1)(c), F.S., punishes trafficking in opium, opium derivatives, opiates, various opioids,¹ and any other substances covered under this paragraph. There are four categories of violations under this paragraph:

¹ According to MedicineNet.com, an "opioid" is: "1. A synthetic narcotic that resembles the naturally occurring opiates. 2. Any substance that binds to or otherwise affects the opiate receptors on the surface of the cell." This information is available at <http://www.medterms.com/script/main/art.asp?articlekey=13744> (last visited on April 3, 2013). Other definitions of the term are broader. For example, WebMD LLC defines "opioids" "by their ability to bind to and influence opiate receptors on cell membranes" and states that they can be divided into 3 classes. The first class is "[n]aturally occurring

- “Trafficking in illegal drugs” (first degree felony).
- “Trafficking in illegal drugs” (first degree felony punishable by life imprisonment).
- “Trafficking in illegal drugs” (capital felony).
- “Capital importation of illegal drugs” (capital felony).

“Trafficking in illegal drugs” (first degree felony)

Section 893.135(1)(c)1., F.S., provides that any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession² of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a first degree felony.³

If a person violates s. 893.135(1)(c)1., F.S., and the quantity involved:

- Is 4 grams⁴ or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.⁵
- Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$100,000.⁶
- Is 28 grams or more, but less than 30 kilograms, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of \$500,000.⁷

opioids: The classic natural opioids are opium and morphine. Opium is extracted from the plant *Papaver somniferum* (the opium poppy), and morphine is the primary active component of opium. Endogenous neural polypeptides such ... [as] endorphins and enkephalins are also natural opioids.” The second class is “[s]emi-synthetic opioids: Semisynthesis is a type of chemical synthesis that uses compounds isolated from natural sources (e.g., plants) as starting materials. Semi-synthetic opioids include heroin, oxycodone, oxymorphone, and hydrocodone.” The third class is “[s]ynthetic opioids: Synthetic opioids are made using total synthesis, in which large molecules are synthesized from a stepwise combination of small and cheap (petrochemical) building blocks. Synthetic opioids include buprenorphine, methadone, fentanyl, alfentanil, levorphanol, meperidine, codeine, and propoxyphene (withdrawn from US market).” This reference further states that “[t]he terms *opiate* and *narcotic* are generally used interchangeably with the term *opioid*.” This information is available at <http://emedicine.medscape.com/article/287790-overview> (last visited on April 3, 2013). For purposes of this analysis, staff generally applies the broader definition of “opioid.”

² One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

³ A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S. Repeat offender sanctions may be available under ss. 775.082 and 775.084, F.S. Section 921.0024(1)(b), F.S., provides that if the primary offense is drug trafficking, the subtotal sentence points are multiplied, at the discretion of the court, for a Level 7 or Level 8 offense, by 1.5.

⁴ For the purpose of comparison, the approximate weight of a U.S. currency note, regardless of denomination, is one gram. This information is available at <http://www.moneyfactory.gov/faqlibrary.html> (last visited on April 3, 2013).

⁵ Section 893.135(1)(c)1.a., F.S. This offense is ranked in Level 7 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(g), F.S.

⁶ Section 893.135(1)(c)1.b., F.S. This offense is ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(h), F.S.

⁷ Section 893.135(1)(c)1.c., F.S. This offense is ranked in Level 9 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(i), F.S.

“Trafficking in illegal drugs” (first degree felony punishable by life imprisonment)

Section 893.135(1)(c)2., F.S., provides that any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 30 kilograms or more of any mixture containing any such substance, commits a first degree felony punishable by life imprisonment⁸ and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.

“Trafficking in illegal drugs” (capital felony)

Section 893.135(1)(c)2., F.S., also provides that a person who violates this subparagraph commits a capital felony⁹ and shall also pay a fine of \$500,000 if the court determines that, in addition to committing this violation, either of the following applies:

- The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result.¹⁰
- The person’s conduct in committing that act led to a natural, though not inevitable, lethal result.¹¹

“Capital importation of illegal drugs” (capital felony)

Section 893.135(1)(c)3., F.S., provides that any person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of any person, commits a capital felony and shall also pay a fine of \$500,000.

Prescription Medications and Drug Trafficking

There are numerous prescription medications that are within the ambit of s. 893.135(1)(c), F.S., including medications that contain morphine, oxycodone, hydrocodone, hydromorphone, methadone, and fentanyl. A person who unlawfully possesses, purchases, sells, etc., these prescription medications in a trafficking weight may be subject to prosecution for drug trafficking under s. 893.135(1)(c), F.S.

Trafficking weight involving pills or tablets is determined by the total weight of each pill or tablet multiplied by the number of pills or tablets possessed, etc. The total weight of a pill or tablet includes the weight of the controlled substance in the pill or tablet (e.g., hydrocodone) and the weight of noncontrolled substances or matter in the pill or tablet, such as coating, binders,

⁸ As previously indicated, in general, a first degree felony is punishable by up to 30 years in state prison under s. 775.082, F.S. However, this section also provides that a first degree felony may be punished by a term of years not exceeding life imprisonment when specifically provided by statute.

⁹ A capital felony is punishable by life imprisonment or death. Section 775.082, F.S. See s. 921.142, F.S. (further proceedings to determine sentence for capital trafficking felonies).

¹⁰ Section 893.135(1)(c)2.a., F.S.

¹¹ Section 893.135(1)(c)2.b., F.S.

and nonprescription drugs (e.g., acetaminophen).¹² A relatively small number of pills or tablets may meet the 4 gram threshold for trafficking.

In a 2012 report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a table¹³ indicating how many hydrocodone and oxycodone pills would be necessary to meet the threshold gram weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. The weight ranges are:

- 4 grams or more, but less than 14 grams.
- 14 grams or more, but less than 28 grams.
- 28 grams or more, but less than 30 kilograms.

The table is based on a hydrocodone pill that weighs 0.65 grams with 10 mg. of hydrocodone and an oxycodone pill that weighs 0.13 grams with 30 mg. of oxycodone. Due to the different compositions of prescription opioids, noncontrolled substances may add significantly to the total weight of the pill or tablet as, for example, is the case with medication that contains hydrocodone and acetaminophen. Provided is the information from OPPAGA’s table and the mandatory minimum term applicable to the threshold weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. (i.e., 4 grams, 14 grams, and 28 grams):

Number of Pills and Gram Weight Thresholds to Meet Mandatory Minimum Term				
Prescription Drug	Pill Weight	3-year mandatory minimum term	15-year mandatory minimum term	25-year mandatory minimum term
Hydrocodone (10 mg.)	0.65 grams	7 pills (4 grams)	22 pills (14 grams)	44 pills (28 grams)
Oxycodone (30 mg.)	0.13 grams	31 pills (4 grams)	108 pills (14 grams)	215 pills (28 grams)

OPPAGA Report No. 12-02: Prison Admissions for Opioid Trafficking and Sample Information Regarding Prescription Opioid Offenders

Using Department of Corrections’ data for FY 2006-07 to FY 2010-11, the OPPAGA found that prescription admissions for trafficking quadrupled over those five fiscal years and that this substantial increase in admissions was primarily attributable to oxycodone trafficking convictions:

Department of Corrections data shows that prison admissions for trafficking in opioids have more than quadrupled over the past five years, from 262 admissions in Fiscal Year 2006-07 to 1,200 in Fiscal Year 2010-11.... This data does not distinguish among the types of opioids, and as a result, offenses involving heroin are grouped with those

¹² See ss. 893.02(16) and 893.135(6), F.S.

¹³ *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Report No. 12-02 (January 2012), at p. 5 (Exhibit 6), Office of Program Policy Analysis and Government Accountability, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=12-02> (last visited on April 3, 2013). This report is further cited as “OPPAGA Report.”

involving prescription painkillers. This is because these two controlled substances are addressed in the same section of the drug trafficking statute, and thus subject to the same weight thresholds and minimum mandatory sentences.

To evaluate the factors leading to the recent increase in prison admissions for trafficking in opioids, we reviewed data for a statewide random sample of 194 offenders admitted to prison for this offense during Fiscal Year 2010-11. We determined the type and amount of drugs involved in their offenses and the circumstances surrounding their arrests and convictions. Our analyses found that the recent increase in prison admissions for opioid trafficking was primarily due to convictions for prescription painkillers rather than heroin.....¹⁴

A noteworthy postscript to the OPPAGA report is that the quadrupled prison admissions for trafficking in opioids began to wane in FY 2011-12. Between FY 2010-11 and FY 2011-12 there was a 14.1% decline in prison admissions for trafficking in opioids.¹⁵ Although the cause of this decline is empirically unknown, it is most likely attributable to a number of measures taken by Florida designed to reduce prescription drug abuse, such as removing the so called “pill mills” in the state.

The OPPAGA analyzed arrest reports for the 194 offenders and determined that “almost all (93%) were convicted of trafficking in prescription painkillers.... [A]rrests most commonly involved oxycodone (73%) or hydrocodone (28%). In comparison, 6% of the offenders were convicted of trafficking in heroin.”¹⁶

The OPPAGA provided the following information regarding how most of these arrests occurred:

Most offenders in our sample (62%) were arrested for selling prescription painkillers to an undercover law enforcement officer or confidential informant.... In these cases, officers worked undercover to buy drugs from known dealers or monitored confidential informants during meetings they arranged to make purchases. In other cases, offenders were arrested for trafficking after a traffic stop or other law enforcement contact, or after being reported by a pharmacist for possible prescription fraud.¹⁷

The majority of the offenders in the OPPAGA’s sample illegally possessed or sold 30 to 90 pills:

For most of the offenders convicted of trafficking in oxycodone or hydrocodone, their convictions were based on the illegal possession or sale of a number of pills equivalent to one or two prescriptions. For those offenders sentenced for trafficking in hydrocodone, 50% were arrested for possessing or selling fewer than 30 pills and 25% were arrested for fewer than 15 pills. For offenders sentenced for trafficking in oxycodone, offenders possessed or sold a median number of 91 pills at the time of their arrests.

¹⁴ OPPAGA Report, at pp. 2-3 (footnotes omitted).

¹⁵ Information provided on April 4, 2013, to staff (via e-mail) by the Office of Economic and Demographic Research.

¹⁶ OPPAGA Report, at p. 3.

¹⁷ *Id.*

Following accepted medical practice, physicians may prescribe 30 or more prescription painkillers for patients with chronic pain¹⁸ or recovering from surgery. For example, a patient recovering from surgery may receive a one-time prescription of 30 to 60 hydrocodone or oxycodone pills, often in forms that also contain acetaminophen. Illegal possession of such an amount could trigger a minimum mandatory sentence.¹⁹

Most of the offenders in the OPPAGA sample did not have a prior drug trafficking record and were determined by prison staff to need substance abuse treatment:

Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison.... Half had either never been on probation or had been on probation solely for drug possession, and 81% did not have a prior history of offenses involving selling or trafficking drugs. Most (84%) had no current or past violent offenses.

These offenders tended to have substance abuse problems and were at low risk for recidivism. Prison staff assessments determined that 65% of these offenders needed substance abuse treatment and 61% were at low risk for recidivism.²⁰

Drug Trafficking Sentencing

The Criminal Punishment Code (Code)²¹ is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors, such as victim injury. Trafficking offenses are generally first degree felonies but levels assigned to these trafficking offenses vary depending on the offense.

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense and any additional offenses before the court for

¹⁸ Drug trafficking penalties (including mandatory minimum terms) may influence whether a "dose tolerant" chronic pain management patient continues to receive a prescription opioid. "Medical information indicates that chronic pain management patients are rarely addicted to the opioid analgesics prescribed them for pain but over time may develop a tolerance to and physical dependence upon opioid analgesics that may be misperceived as addiction rather than the 'normal consequences of sustained opioid use.' Some practitioners may be reluctant to treat chronic management cases for fear that regulatory and law enforcement agencies may not understand or appreciate this distinction." *A Policy Analysis of Minimum Mandatory Sentencing for Drug Trafficking*, Interim Report 2010-109 (October 2009), at p. 9 (footnotes omitted), Committee on Criminal Justice, The Florida Senate, quoting June L. Dahl, "How to Reduce Fears of Legal/Regulatory Scrutiny in Managing Pain in Cancer Patients," 3 *Journal of Supportive Oncology* 5 (September – October 2005), at p. 386.

¹⁹ OPPAGA Report, at p. 4. In a footnote (n. 7, at p. 4) at the end of the second paragraph of this quote, the OPPAGA notes: "Law enforcement and other stakeholders reported that pain clinics they would consider as being 'pill mills' routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month."

²⁰ *Id.* In a footnote (n. 8, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: "Prison staff assessed offenders' risk of recidivism using the risk assessment instrument developed by the Department of Corrections. Recidivism is defined as return to prison within three years of release." OPPAGA Report.

²¹ Sections 921.002 - 921.0027, F.S.

sentencing. The court is permitted to impose sentences concurrently or consecutively. “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply.”²²

The Code includes a list of ‘mitigating’ factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender’s sentence below the lowest permissible sentence (a “downward departure”). A mandatory minimum term is not subject to these mitigating factors.²³

Mandatory minimum terms are often longer than a prison sentence scored as the lowest permissible sentence, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term. Staff found only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term: when the court sentences a defendant as a youthful offender;²⁴ and when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant.²⁵

Because s. 893.135(1)(c), F.S., punishes both trafficking in certain ‘street’ opioids, like heroin, and trafficking in prescription opioids, it is not possible to precisely determine the number of prescription opioid trafficking arrests, prosecutions, convictions, and prison admissions (including length of sentences), or the disposition of cases in which drug trafficking was charged based upon unlawful possession, sale, etc., of a prescription opioid.

Typically there are three weight ranges for each first degree felony trafficking provision. Weight thresholds applicable to each range can be significantly greater, and mandatory minimum terms applicable to those ranges can be significantly longer, for trafficking under s. 893.135(1)(c), F.S., than for trafficking under some other trafficking provisions. For example, the following table compares trafficking in illegal drugs with some other trafficking provisions.

²² Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing ‘floor’ for the court and there is no prohibition to gain-time. If the court only sentences the defendant to the mandatory term specified by statute, the Department of Corrections (DOC) establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. *See Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner’s release prior to serving a minimum of 85% of the sentence).

²³ *See State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

²⁴ Section 958.04, F.S. *See Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012).

²⁵ Section 893.135(4), F.S., authorizes a state attorney to move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of s. 893.135, F.S., and who provides substantial assistance in the identification, arrest, or conviction of any of that person’s accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances.

COMPARISON OF TRAFFICKING WEIGHT RANGES AND MANDATORY MINIMUM TERMS FOR CERTAIN CONTROLLED SUBSTANCES			
Trafficking Provision	First Weight Range	Second Weight Range	Third Weight Range
Trafficking in illegal drugs (includes prescription opioids) (s. 893.135(1)(c)1., F.S.)	3-year mandatory minimum term (4 grams to less than 14 grams)	15-year mandatory minimum term (14 grams to less than 28 grams)	25-year mandatory minimum term (28 grams to less than 30 kilograms)
Trafficking in cocaine (s. 893.135(1)(b)1., F.S.)	3-year mandatory minimum term (28 grams to less than 200 grams)	7-year mandatory minimum term (200 grams to less than 400 grams)	15-year mandatory minimum term (400 grams to less than 150 kilograms)
Trafficking in phencyclidine (s. 893.135(1)(d)1., F.S.)	3-year mandatory minimum term (28 grams to less than 200 grams)	7-year mandatory minimum term (200 grams to less than 400 grams)	15-year mandatory minimum term (400 grams or more)
Trafficking in methaqualone (s. 893.135(1)(e)1., F.S.)	3-year mandatory minimum term (200 grams to less than 5 kilograms)	7-year mandatory minimum term (5 kilograms to less than 25 kilograms)	15-year mandatory minimum term (25 kilograms or more)
Trafficking in amphetamine or methamphetamine (s. 893.135(1)(f)1., F.S.)	3-year mandatory minimum term (14 grams to less than 28 grams)	7-year mandatory minimum term (28 grams to less than 200 grams)	15-year mandatory minimum term (200 grams or more)

OPPAGA Report No. 12-02: Increasing Weight Thresholds for Trafficking in Prescription Painkillers is an Option

In its report the OPPAGA provided a number of options for addressing trafficking in prescription painkillers. One of those options was to “[r]evise Florida statutes to increase the weight thresholds for prescription painkillers so that it would take more pills to be charged with drug trafficking offenses subject to minimum mandatory sentences.”²⁶

III. Effect of Proposed Changes:

The bill’s most prominent feature is increasing from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers). Increasing weight thresholds for trafficking in prescription painkillers is an option that the Office of Program Policy Analysis and Government Accountability proposed in a 2012 report.

²⁶ OPPAGA Report, at p. 8.

The bill removes reference to “oxycodone” and “hydrocodone” wherever those words appear in current subparagraphs 893.135(1)(c)1.-3., F.S. (which punish trafficking in opium, morphine, heroin, hydromorphone, oxycodone, and hydrocodone, and mixtures containing any of these substances).

The bill creates a new subparagraph s. 893.135(1)(c)2., F.S., which punishes as a first degree felony “trafficking in illegal prescription drugs.” The new trafficking provision only applies to a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 14 grams or more of any oxycodone or hydrocodone, or 14 grams or more of any mixture containing any such substance.²⁷

Under the new trafficking provision, the minimum gram weight threshold for trafficking in these drugs, which is 14 grams, differs from current law in which the minimum gram weight threshold for trafficking in these drugs is 4 grams. Gram weight ranges and applicable mandatory minimum terms and fines also differ from current law:

CURRENT LAW AND SB 1860 ON MANDATORY MINIMUM TERMS		
Drug Trafficking Mandatory Minimum Term	Quantity/Weight Required for Hydrocodone and Oxycodone Under Current Law	Quantity/Weight Required for Hydrocodone and Oxycodone Under SB 1860
3 years	4 grams or more but less than 14 grams	14 grams or more but less than 28 grams
7 years	N/A	28 grams or more but less than 50 grams
15 years	14 grams or more but less than 28 grams	50 grams or more but less than 200 grams
25 years	28 grams or more but less than 30 kilograms	200 grams or more
Life	30 kilograms or more	N/A

Section 893.135(1)(c), F.S., currently includes a life imprisonment penalty (s. 893.135(1)(c)2., F.S.)²⁸ and two capital felonies (s. 893.135(1)(c)2. and 3., F.S.). Under the bill, the life imprisonment penalty and the two capital felonies would not apply to trafficking in oxycodone and hydrocodone.

The effective date of the bill is July 1, 2013.

²⁷ The bill does not rank this offense in the Code offense severity ranking chart. Section 921.0023, F.S., assigns a Level 7 ranking to a first degree felony not ranked in the chart. Accordingly, trafficking in these oxycodone or hydrocodone, regardless of the quantity involved, will be a Level 7 offense.

²⁸ According to the OPPAGA, “[i]n Fiscal Year 2010-11, there were no offenders imprisoned for life for trafficking in opioids.” OPPAGA Report, at p. 2, n. 1.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will result in a positive fiscal impact (cost avoidance) in several ways. First, drug offenders who are convicted of possessing, selling, etc., less than 14 grams of oxycodone or hydrocodone will no longer be subject to the drug trafficking 3-year mandatory minimum term, but instead will be sentenced under the Criminal Punishment Code (based on a conviction for a drug offense under s. 893.13, F.S.). Absent a mandatory minimum term, the court may impose a sentence of less than 3 years.²⁹ According to a preliminary estimate from the Legislature's Office of Economic and Demographic Research (EDR), this change alone is estimated to result in the need for 595 fewer prison beds by FY 2017-2018 with the resulting cumulative savings of \$61 million. Given the current prison bed surplus situation, however, a more realistic savings projection will be closer to \$21 million over the next five years, which represents a savings in operational expenditures associated with 595 fewer inmates.

²⁹ However, the court does have the discretion to impose a greater sentence (up to the maximum penalty for the felony degree of the offense) and the sentence actually imposed will depend on particular facts of the case and the offender's prior criminal history and any additional offenses committed. A nonprison sanction may be imposed if the court departs downward from the lowest permissible sentence scored based on a finding of mitigating circumstances under s. 921.0026, F.S.

The following table depicts this projected fiscal impact:

Fiscal Impact of SB 1860 Increasing from 4 Grams to 14 Grams the Threshold for the 3-Year Minimum Mandatory for Trafficking in Hydrocodone or Oxycodone For offenses committed on or after July 1, 2013						
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2013-2014	0	0	\$0	(\$3,180,318)	(\$3,180,318)	(\$3,180,318)
2014-2015	-53	-53	(\$500,002)	(\$11,540,742)	(\$12,040,744)	(\$15,221,062)
2015-2016	-239	-186	(\$2,798,820)	(\$15,861,846)	(\$18,660,666)	(\$33,881,728)
2016-2017	-486	-247	(\$7,074,188)	(\$7,230,733)	(\$14,304,921)	(\$48,186,649)
2017-2018	-595	-109	(\$10,737,573)	(\$2,105,830)	(\$12,843,403)	(\$61,030,052)
TOTAL	-595	-595	(\$21,110,583)	(\$39,919,469)	(\$61,030,052)	(\$61,030,052)

Prepared by Florida Legislature, Office of Economic and Demographic Research, April 3, 2013

Second, an additional but indeterminate cost avoidance will also be achieved based on the inclusion of a 7-year mandatory minimum term (not a feature of current s. 893.135(1)(c), F.S.) and changes to other weight thresholds and to weight ranges, but the impact will most likely be significantly smaller and will not be experienced for many years out.

VI. Technical Deficiencies:

None.

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.