

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 328

INTRODUCER: Senator Joyner

SUBJECT: Trafficking in Illegal Drugs

DATE: February 6, 2014      REVISED: 02-26-14

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 328 precludes imposing the 3-year mandatory minimum term and mandatory fine for a first conviction for trafficking in cocaine, certain opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, and lysergic acid diethylamide (LSD). Under current law, possession, sale, etc., of relatively small quantities of any of these substances triggers drug trafficking penalties.

It appears that the 3-year mandatory minimum term and mandatory fine only apply if the defendant has previously been convicted of trafficking in the same controlled substance. For example, if the defendant is convicted of trafficking in cocaine and has previously been convicted of trafficking in cocaine, the 3-year mandatory minimum term and mandatory minimum fine would apply.

**II. Present Situation:**

**Drug Trafficking**

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). “Drug trafficking” consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession<sup>1</sup> of, certain controlled substances in a statutorily-specified quantity.

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are covered under

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<sup>1</sup> 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.

s. 893.135, F.S. Relevant to the bill, s. 893.135, F.S., covers cocaine, certain opiates<sup>2</sup> or opioids,<sup>3</sup> phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines,<sup>4</sup> and lysergic acid diethylamide (LSD).

The quantity of a covered controlled substance must also meet a minimum weight threshold prescribed in s. 893.135, F.S. Most drug trafficking offenses are first degree felonies<sup>5</sup> and are subject to mandatory minimum terms.<sup>6</sup> Section 893.135, F.S., establishes escalating weight ranges. The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc. In some cases, possession, sale, etc., of a relatively small quantity of a covered controlled substance will trigger drug trafficking penalties.

Relevant to the bill, the shortest mandatory minimum term available under s. 893.135, F.S., is a 3-year mandatory minimum term. Provided are the threshold weights that trigger drug trafficking penalties and the weight ranges applicable to a 3-year mandatory minimum term for each of the controlled substances or controlled substance categories addressed by the bill.

<b>Statutory Reference</b>	<b>Covered Substance</b>	<b>Threshold Weight</b>	<b>Weight Range Applicable to 3-Year Mandatory Minimum Term</b>
s. 893.13(1)(b), F.S.	Cocaine	28 grams	28 grams or more but less than 200 grams
s. 893.13(1)(c), F.S.	Opiates and opioids	4 grams	4 grams or more but less than 14 grams
s. 893.13(1)(d), F.S.	Phencyclidine	28 grams	28 grams or more but less than 200 grams
s. 893.13(1)(f), F.S.	Amphetamines	14 grams	14 grams or more but less than 28 grams
s. 893.13(1)(g), F.S.	Flunitrazepam	4 grams	4 grams or more but less than 14 grams
s. 893.13(1)(k), F.S.	Phenethylamines	10 grams	10 grams or more but less 200 grams
s. 893.13(1)(l), F.S.	Lysergic acid diethylamide (LSD)	1 gram	1 gram or more but less than 5 grams

<sup>2</sup> Examples of opiates are opium and morphine.

<sup>3</sup> Examples of opioids are heroin, oxycodone, hydrocodone, and hydromorphone.

<sup>4</sup> “Phenethylamines” is a broad category of “psychoactive substances.” Sanders B., Lankenau S.E., Bloom J.J., Hathazi D. “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth,” *Substance Use & Misuse* (2008), Vol. 43, No. 3-4, Pages 389-402, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last viewed on Feb. 25, 2014).

<sup>5</sup> 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.

<sup>6</sup> Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

## The Criminal Punishment Code and Mandatory Minimum Terms

The Criminal Punishment Code (Code)<sup>7</sup> 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. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied by 1.5, at the discretion of the court, for a Level 7 or Level 8 trafficking offense.<sup>8</sup>

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range primary offense 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. The court is permitted to impose sentences concurrently or consecutively.

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"). However, a mandatory minimum term is not subject to these mitigating factors.<sup>9</sup>

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact Code sentencing. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."<sup>10</sup>

A mandatory minimum sentence is often longer than a prison sentence scored as the lowest permissible sentence under the Code, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.<sup>11</sup>

### III. Effect of Proposed Changes:

The bill amends s. 893.135, F.S., to preclude imposing the 3-year mandatory minimum term and mandatory fine for a first conviction for trafficking in cocaine, certain opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, and lysergic acid diethylamide (LSD). Under current law, possession, sale, etc., of relatively small quantities of any of these substances triggers drug trafficking penalties.

The 3-year mandatory minimum term and mandatory fine appear to only apply if the defendant has previously been convicted of trafficking in the same controlled substance. For example, if the

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<sup>7</sup>Sections 921.002-921.0027, F.S.

<sup>8</sup> Section 921.0024(1)(b), F.S.

<sup>9</sup> See *State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

<sup>10</sup> Rule 3.704(26) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure.

<sup>11</sup> Staff found only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. See *Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.

defendant is convicted of trafficking in cocaine and has previously been convicted of trafficking in cocaine, the 3-year mandatory minimum term and mandatory fine apply.

The bill only impacts the 3-year mandatory minimum term and mandatory fine for trafficking in any of the substances specified in the bill.

The bill takes effect on July 1, 2014.

#### **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 Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will result in 456 fewer prison beds by FY 2018-19 with a projected cost savings of \$11,003,567 in operating costs and \$20,512,926 in fixed capital outlay costs.<sup>12</sup>

#### **VI. Technical Deficiencies:**

The term “second or subsequent conviction” could be subject to different interpretations. It could be interpreted to mean a second or subsequent conviction for any violation of s. 893.135, F.S., for any trafficking violation involving the same substance as the first conviction, or for a trafficking violation involving the same substance in the same weight range as the first conviction.

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<sup>12</sup> See 2014 Criminal Justice Impact Conference results at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last viewed on Feb. 25, 2014).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 893.135 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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