

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 646

INTRODUCER: Senator Gaetz

SUBJECT: Drug Paraphernalia

DATE: January 23, 2026 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Vaughan	Stokes	CJ	<u>Favorable</u>
2. _____	_____	ACJ	_____
3. _____	_____	FP	_____

I. Summary:

SB 646 amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains dangerous fentanyl or fentanyl analogues, xylazine, cocaine, amphetamines, cathinones, or any other controlled substance or adulterant.

The bill creates new legislative findings regarding drug-testing products, including test strips, reagent kits, and related products. The bill provides that testing products constitute evidence-based harm reduction strategies that do not encourage drug use, but rather prevent overdose and death by allowing individuals and communities to identify the presence of dangerous controlled substances and adulterants.

The bill may have a negative insignificant impact on prison admissions. *See Section V. Fiscal Impact Statement.*

The bill takes effect July 1, 2026.

II. Present Situation:

Drug testing kits or “drug checking” has become a common harm reduction method used to test illicit substances.¹ There are various types of drug-checking kits. Some test the potency of a substance, meaning they can provide information about the strength of a substance, by ascertaining how much of a drug it contains. Others test for the purity of a substance and the

¹ Science Direct, *Adulterants and altruism: A qualitative investigation of “drug checkers” in North America*, available at <https://www.sciencedirect.com/science/article/abs/pii/S0955395919302609?via%3Dihub> (last visited January 15, 2026)

presence of other drugs. This helps identify whether the substance content is as it has been sold, or if it also contains other drugs or harmful substances.²

Currently, testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl³ or any other controlled substance.⁴ This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.⁵

According to the Centers for Disease Control and Prevention (CDC), fentanyl test strips are “small strips of paper that can detect the presence of fentanyl in all different kinds of drugs such as cocaine, methamphetamine, heroin, etc. and drug forms (pills, powder, and injectables).”⁶

Xylazine test strips are small strips of paper that can be placed within a personal sample of drugs to detect the presence of xylazine. Such strips may be used to inform decisions about drug use practices; for example, upon receiving a positive test result, an individual may opt to not use the drugs or use them in a less risky manner.⁷

Scheduling of a Controlled Substance

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”⁸ of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.

² Recovered, Drug-Checking Test Kits, available at <https://recovered.org/drug-safety-resources/drug-checking-kits> (last visited January 15, 2026).

³ Section 893.03(2)(b)9, F.S.

⁴ Section 893.135(1)(c)4.a, F.S.

⁵ Section 893.145, F.S.

⁶ Centers for Disease Control and Prevention, *What You Can Do to Test for Fentanyl*, available at https://www.cdc.gov/stop-overdose/safety/?CDC_AAref_Val=https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html . (last visited on January 15, 2026).

⁷ Substance Abuse and Mental Health Services Administration, *Fentanyl and Xylazine Test Strips*, available at <https://www.samhsa.gov/substance-use/treatment/overdose-prevention/fentanyl-xylazine-test-strips>, (last visited January 15, 2026).

⁸ Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

“Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally.”⁹ Fentanyl is a Schedule (2)(b) controlled substance.¹⁰

Xylazine is classified as a Schedule I drug. Xylazine is FDA approved for use in animals as a sedative and pain reliever, it is not safe for use in humans and it is not known if the exposure can be reversed by naloxone.¹¹ Research has shown xylazine is often added to illicit opioids, including fentanyl, and people report using xylazine-containing fentanyl to lengthen its euphoric effects.¹²

Cocaine¹³ and amphetamines¹⁴ are classified as a Schedule II drug.

Cathinones is classified as a Schedule I drug. Cathinones is often found in bath salts or flakka.

Controlled Substance Analog

A “controlled substance analog” is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect

⁹ *Fentanyl DrugFacts*, National Institute on Drug Abuse (footnotes omitted), available at <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited on Feb. 7, 2023). As a medicine, fentanyl is “typically used to treat patients with severe pain, especially after surgery[,]” and “is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids.” *Id.*

¹⁰ Section 893.03(2)(b)9., F.S.

¹¹ U.S. Food and Drug Administration, *FDA alerts health care professionals of risks to patients exposed to xylazine in illicit drugs*, November 8, 2022, available at <https://www.fda.gov/drugs/drug-safety-and-availability/fda-alerts-health-care-professionals-risks-patients-exposed-xylazine-illicit-drugs> (last visited January 5, 2026).

¹² National Institute on Drug Abuse, *Xylazine Research Topics*, available at <https://nida.nih.gov/research-topics/xylazine> (last visited on December 11, 2025).

¹³ Section 893.03, F.S.

¹⁴ *Id.*

on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

Drug Paraphernalia Statutes

“Drug paraphernalia” means *all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.*¹⁵ Drug paraphernalia is contraband which is subject to civil forfeiture.¹⁶

Drug paraphernalia, in part includes:

- Testing equipment,
- Scales and balances,
- Separation gins and sifters, or
- Hypodermic syringes or needles.¹⁷

When determining in a criminal case whether an object constitutes drug paraphernalia, a jury or judge must consider, in addition to all other logically relevant factors, the following:

- Statements by an owner or by anyone in control of the object concerning its use.
- The proximity of the object, in time and space, to a direct violation of this act.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.
- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- Instructions, oral or written, provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- Any advertising concerning its use.
- The manner in which the object is displayed for sale.
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

¹⁵ Section 877.111, F.S., prohibits inhaling, etc., of certain substances.

¹⁶ Section 893.145, F.S.

¹⁷ Section 893.145(4), F.S., additional items considered paraphernalia include: testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl as described in s. 893.03(2)(b)9, F.S. or any other controlled substance specified in s. 893.135(1)(c)4.a, F.S. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.

- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.¹⁸

It is a first degree misdemeanor¹⁹ to:

- Use, or possess with intent to use, drug paraphernalia to test a controlled substance.²⁰
- Advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of objects designed or intended for use as drug paraphernalia.²¹

It is a third degree felony²² to:

- Deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to test a controlled substance in violation of s. 893.147, F.S.²³
- Use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1., F.S.²⁴

Immunity from Arrest, Charge, Prosecution, or Penalization

A person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, a drug-related overdose may not be arrested, charged, prosecuted, or penalized for possession of a controlled substance or use or possession of drug paraphernalia.²⁵ Similar immunity is provided for the person who experiences, or has a good faith belief that he or she is experiencing, drug-related overdose and is in need of medical assistance.²⁶²⁷

The immunity statute appears to provide immunity from arrest, etc., for a violation of s. 893.147(1), F.S. (use or possession), assuming a testing product was used or possessed and the criteria of s. 893.147, F.S., were met. However, there are other offenses in s. 893.147, F.S., which might be applicable to a testing product and that may not qualify for immunity.

III. Effect of Proposed Changes:

The bill amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains dangerous fentanyl or fentanyl analogues, xylazine, cocaine, amphetamines, cathinones, or any other controlled substance or adulterant.

¹⁸ Section 893.146, F.S.

¹⁹ A first degree misdemeanor is punishable by a term of not more than one year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁰ Section 893.147(1)(a), F.S.

²¹ Section 893.147(5), F.S.

²² A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see ss. 775.082(10) and 921.00241, F.S. (prison diversion).*

²³ Section 893.147(2), F.S.

²⁴ Section 893.147(4), F.S.

²⁵ Section 893.21(1), F.S.

²⁶ Section 893.21, F.S.

²⁷ Section 893.21(2), F.S.

The bill creates new legislative findings regarding drug-testing products, including test strips, reagent kits, and related products. The bill provides that testing products constitute evidence-based harm reduction strategies that do not encourage drug use but rather prevent overdose and death by allowing individuals and communities to identify the presence of dangerous controlled substances and adulterants.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a negative insignificant prison bed on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per DOC, in FY 24-25, there were two new commitments to prison for violations under s. 893.147, F.S.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.145

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.

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

²⁸ Office of Economic and Demographic Research, *SB 646- Drug Paraphernalia*, (on file with the Senate Committee on Criminal Justice).