

HB 1159 – Controlled Substances

This bill amends s. 893.05, F.S., creating an **unranked, 1st degree felony** for “possessing, with intent to unlawfully manufacture any pill, tablet, or capsule containing a controlled substance, a mechanical device capable of compressing powder into pills, tablets, or capsules of uniform size and weight.”

This bill also amends s. 893.135, F.S., deleting language for hydrocodone, oxycodone, and fentanyl trafficking, and moving these offenses into “trafficking in illegal drugs,” as well as creating new trafficking language with thresholds for these same substances in pill form. Furthermore, it expands the list of drugs included in “trafficking in illegal drugs” to include fentanyl derivatives and analogs for these controlled substances, while removing cocaine or ecgonine.

Under current law, for trafficking in illegal drugs (1st degree felonies):

- between 4-14 grams – 3 year mandatory minimum (Level 7)
- between 14-28 grams – 15 year mandatory minimum (Level 8)
- between 28 grams-30 kilograms – 25 year mandatory minimum (Level 9)
- 30 kilograms or more – Life mandatory minimum (unranked, Level 7 by default)
- 60 kilograms or more, probable result is death of a person – Life mandatory minimum (unranked, Level 7 by default)

Under current law, for trafficking in hydrocodone (1st degree felonies):

- between 14-28 grams – 3 year mandatory minimum (Level 7)
- between 28-50 grams – 7 year mandatory minimum (Level 7)
- between 50-200 grams – 15 year mandatory minimum (Level 8)
- between 200 grams-30 kilograms – 25 year mandatory minimum (Level 9)
- 30 kilograms or more – Life mandatory minimum (unranked, Level 7 by default)
- 60 kilograms or more, probable result is death of a person – Life mandatory minimum (unranked, Level 7 by default)

Under current law, for trafficking in oxycodone (1st degree felonies):

- between 7-14 grams – 3 year mandatory minimum (Level 7)
- between 14-25 grams – 7 year mandatory minimum (Level 7)
- between 25-100 grams – 15 year mandatory minimum (Level 8)
- between 100 grams-30 kilograms – 25 year mandatory minimum (Level 9)
- 30 kilograms or more – Life mandatory minimum (unranked, Level 7 by default)
- 60 kilograms or more, probable result is death of a person – Life mandatory minimum (unranked, Level 7 by default)

Under current law, for trafficking in fentanyl:

- between 4-14 grams – 3 year mandatory minimum (Level 7)
- between 14-28 grams – 15 year mandatory minimum (Level 8)
- 28 grams or more – 25 year mandatory minimum (Level 9)

While hydrocodone, oxycodone, and fentanyl would be included under the trafficking in illegal drugs thresholds, the entirety of the trafficking in illegal drugs category will also be included under the following thresholds (unranked, 1st degree felonies, Level 7 by default):

- between 100-300 pills – 3 year mandatory minimum
- between 300-700 pills – 7 year mandatory minimum
- between 700-1,000 pills – 10 year mandatory minimum
- between 1,000-2,000 pills – 15 year mandatory minimum

Finally, this bill alters the discretionary multiplication of sentence points by the court for drug trafficking, now increasing it to 2.0 (currently multiplying by 1.5) for a Level 7 or Level 8 offense. Additionally, it deletes the requirement that an offender provide substantial assistance in order for a state attorney to move the sentencing court to reduce or suspend the sentence of a person convicted of a Level 7 or Level 8 offense.

Per DOC, in FY 16-17, there were 436 (adj.) offenders sentenced for trafficking in illegal drugs between 4-14 grams. Of those sentenced, 329 (adj.) of these offenders were sentenced to prison (mean sentence length=67.3 m, incarceration rate: 75.5% adj.-75.3% unadj.). For 14-28 grams, 120 (adj.) were sentenced, and 93 (adj.) received a prison sentence (mean sentence length=89.8 m, incarceration rate: 77.5% adj.-78.0% unadj.). Under 28 grams-30 kilograms, 98 (adj.) were sentenced, and 80 (adj.) received a prison sentence (mean sentence length=142.9 m, incarceration rate: 81.6% adj.-82.0% unadj.). For 30-60 kilograms, 3 (adj.) were sentenced, and 3 (adj.) received a prison sentence (mean sentence length=65.7 m, incarceration rate: 100). There were no prison sentences for greater than 60 kilograms.

Per DOC, in FY 16-17, there were 25 (adj.) offenders sentenced for trafficking in hydrocodone between 14-28 grams, and 23 (adj.) of these offenders were sentenced to prison (mean sentence length=56.0 m, incarceration rate: 92.0% adj.-91.3% unadj.). For 28 grams-50 grams, 19 (adj.) were sentenced, and 16 (adj.) received a prison sentence (mean sentence length=66.4 m, incarceration rate: 84.2% adj.-88.2% unadj.). Under 50 grams-200 grams, 2 (adj.) were sentenced, and 1 (adj.) received a prison sentence (sentence length=71.0 m, incarceration rate: 50% adj.-50% unadj.). And for 200 grams-30 kilograms, 3 (adj.) were sentenced, and nobody received a prison sentence. Nobody was sentenced to 30 kilograms or more, or 60 kilograms or more.

Per DOC, in FY 16-17, there were 35 (adj.) offenders sentenced for trafficking in oxycodone between 7-14 grams, and 22 (adj.) of these offenders were sentenced to prison (mean sentence length=65.2 m, incarceration rate: 62.9% adj.-62.5% unadj.). For 14 grams-25 grams, 15 (adj.) were sentenced, and 10 (adj.) received a prison sentence (mean sentence length=117.6 m, incarceration rate: 66.7% adj.-64.3% unadj.). Under 25 grams-100 grams, 11 (adj.) were sentenced, and 9 (adj.) received a prison sentence (sentence length=97.3 m, incarceration rate: 81.8% adj.-80.0% unadj.). And for 100 grams-30 kilograms, 2 (adj.) were sentenced, and nobody received a prison sentence. Nobody was sentenced to 30 kilograms or more, or 60 kilograms or more.

Trafficking in fentanyl did not go into effect until October 1st, 2017. Data from that month through December 31st, 2017 indicates that nobody has been sentenced for this offense.

It is not known which of the offenses above involved substances in pill form. Additionally, the current incarceration thresholds cannot be broken down any further to examine how trafficking offense sentences might be structured under the new substance and pill thresholds. There is no data available on mechanical devices used to unlawfully manufacture pills. Furthermore, the changes to the rules for court discretion cannot be analyzed with the available data.

CONFERENCE ADOPTED ESTIMATE: Positive Significant

Requested by: House