

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 843 Cannabis

SPONSOR(S): Criminal Justice Subcommittee; Gaetz; Edwards and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Cunningham	Cunningham
2) Appropriations Committee		McAuliffe	Leznoff
3) Judiciary Committee			

SUMMARY ANALYSIS

In recent months, a particular strain of cannabis has gained national attention as a way to treat various medical conditions, including seizure disorders in children. This strain of marijuana is high in cannabidiol (CBD), a non-psychoactive ingredient, and low in tetrahydrocannabinol (THC), which causes cannabis users to feel "high."

The bill creates s. 893.131, F.S., which establishes affirmative defenses for many of the cannabis-related controlled substance and drug paraphernalia offenses in ch. 893, F.S. For purposes of the affirmative defenses, the term "cannabis" is defined as:

A plant of the genus Cannabis, the dried flowers of which contain .8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin.

The affirmative defense for controlled substance offenses requires that:

- Cannabis was the only controlled substance involved in the violation;
- The defendant intended that the cannabis be consumed in a non-smoking manner; and
- The defendant intended that the cannabis be consumed by a person under the supervision of a physician licensed under chapters 458 or 459, F.S.

The affirmative defense for drug paraphernalia offenses requires that the defendant intended that the drug paraphernalia involved in the offense was intended to only be used to:

- Plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, or contain, cannabis; or
- Introduce cannabis into the human body in a non-smoking manner.

The bill also specifies that a person is eligible to apply for and receive a certificate of eligibility for expunction if the person is found not guilty at trial of an offense for which the person successfully raised an affirmative defense pursuant to s. 893.131, F.S.

The bill appropriates \$1 million in non-recurring funds from the General Revenue Fund to the Department of Health for FY 2014-2015 for the James and Esther King Biomedical Research Program. The funds must be deposited into the Biomedical Research Trust Fund, and are reserved for research of cannabidiol and its effect on intractable childhood epilepsy.

The research study portion of the bill is effective July 1, 2014. The remainder of the bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Drug Control Act

Cannabis Offenses

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V. Cannabis is currently a Schedule I¹ controlled substance, and is defined as:

All parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.²

The Drug Control Act contains a variety of provisions criminalizing behavior related to cannabis. The majority of these penalties are found in s. 893.13, F.S., which provides the following:

- It is a third degree felony³ for a person to sell; manufacture; deliver; or possess with intent to sell, manufacture, or deliver, cannabis;⁴
- It is a third degree felony for a person to purchase, or possess with intent to purchase, cannabis;⁵
- It is a first degree misdemeanor⁶ for a person to deliver, without consideration, not more than 20 grams of cannabis;⁷
- It is a second degree felony⁸ for a person 18 years of age or older to deliver cannabis to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of cannabis, or to use such person to assist in avoiding detection or apprehension for a violation of ch. 893, F.S.;⁹
- It is a third degree felony for a person to bring cannabis into this state unless the possession of cannabis is authorized by ch. 893, F.S., or unless such person is licensed to do so by the appropriate federal agency;¹⁰
- It is a third degree felony for a person to be in actual or constructive possession of more than 20 grams of cannabis unless otherwise authorized by ch. 893, F.S., or unless the cannabis was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.¹¹ It is a first degree misdemeanor for a person to possess 20 grams or less of cannabis;¹² and
- It is a first degree misdemeanor for a person to distribute or dispense cannabis.¹³

In addition to the above-described offenses, s. 893.135, F.S., makes it a first degree felony¹⁴ for a person to knowingly sell, purchase, manufacture, deliver, bring into this state, or possess more than 25

¹ Schedule I substances have a high potential for abuse and have no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards.

² Section 893.02(3), F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 893.13(1), F.S. It is a second degree felony if the offense occurred within 1,000 feet of specified locations (e.g., schools, churches, etc.).

⁵ Section 893.13(2), F.S.

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 893.13(3), F.S. For purposes of this offense, the term "cannabis" does not include the resin extracted from the plants of the genus *Cannabis* or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁹ Section 893.13(4), F.S.

¹⁰ Section 893.13(5), F.S.

¹¹ Section 893.13(6), F.S. For purposes of this offense, the term "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

¹² *Id.*

¹³ Section 893.13(7)(a)1. and 4., F.S.

pounds of cannabis or 300 or more cannabis plants (known as “trafficking in cannabis”).¹⁵ A person convicted of trafficking in cannabis must be sentenced to minimum mandatory terms of imprisonment that vary from 3-15 years depending on the amount of cannabis involved in the offense.¹⁶

Drug Paraphernalia

The Drug Control Act also contains a variety of provisions criminalizing behavior related to drug paraphernalia. For example, it is a crime for a person to:

- Use or possession of drug paraphernalia;
- Manufacture or delivery of drug paraphernalia;
- Delivery of drug paraphernalia to a minor;
- Transportation of drug paraphernalia; or
- Advertisement of drug paraphernalia.¹⁷

Drug paraphernalia is defined in s. 893.145, F.S., as:

All equipment, products, and materials of any kind which are used, intended for use, or designed for use in the 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 or s. 877.111, F.S.

The statute lists a variety of items that are included in the definition, such as:

- Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances; and
- Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, into the human body.¹⁸

It is important to note that the items listed above are not illegal to possess, use, manufacture, deliver, transport or advertise unless they are used, intended for use, or designed for use in a particular manner.¹⁹ In determining whether an object is drug paraphernalia, a court or other authority or jury must consider certain factors, such as the proximity of the object to controlled substances, and the existence of any residue of controlled substances on the object.²⁰

Charlotte's Web

In recent months, a particular strain of cannabis has gained national attention as a way to treat certain seizure disorders in children.²¹ This strain of marijuana is high in cannabidiol (CBD), a non-psychoactive ingredient known for treating seizures, and low in tetrahydrocannabinol (THC), which causes cannabis users to feel "high."

¹⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁵ Section 893.135(1), F.S.

¹⁶ *Id.*

¹⁷ Section 893.147, F.S.

¹⁸ Section 893.145, F.S.

¹⁹ *Id.*

²⁰ Section 893.146, F.S.

²¹ See, e.g., *Meet The Children Who Rely On Marijuana To Survive*, January 31, 2014,

http://www.huffingtonpost.com/2014/01/31/cannabis-for-children_n_4697135.html (last visited on March 10, 2104); *Moving for marijuana: Families with seizure-stricken kids relocating to Colorado for strain of pot*, February 18, 2014,

<http://www.nydailynews.com/life-style/health/kids-seizure-charlotte-web-pot-treatment-article-1.1619066> (last visited on March 10 21, 2014); *Marijuana stops child's severe seizures*, August 7, 2013, <http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/> (last visited on March 10, 2014).

Currently, more than 180 Colorado children are being treated with a special strain of medical cannabis that's helping to combat their extreme seizures and other debilitating conditions.²² The strain, known as "Charlotte's Web," was developed by a group of brothers who run the Realm of Caring Foundation in Colorado Springs, and is named for 7 year-old Charlotte Figi, who was successfully treated with the strain.²³

Charlotte's Web and similar strains of cannabis are administered in liquid or capsule form and are reported to produce little to no side effects. Because of the low THC count, users don't experience a traditional marijuana high.²⁴

Effect of the Bill

The bill creates an affirmative defense for each of the cannabis-related controlled substance and drug paraphernalia offenses described above. For purposes of the affirmative defenses, the term "cannabis" is defined as:

A plant of the genus *Cannabis*, the dried flowers of which contain .8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin.

The affirmative defense for controlled substance offenses requires that:

- Cannabis was the only controlled substance involved in the violation;
- The person committing the offense intended that the cannabis be consumed in a non-smoking manner; and
- The person committing the offense intended that the cannabis be consumed by a person under the supervision of a physician licensed under chapters 458 or 459.

The affirmative defense for drug paraphernalia offenses requires that the person committing the offense intended that the drug paraphernalia involved in the offense was intended to only be used to:

- Plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, or contain, cannabis; or
- Introduce cannabis into the human body in a non-smoking manner.

The bill includes the following legislative findings and intent:

- The Legislature finds that research has shown that cannabis has significant health benefits to individuals suffering from medical conditions, such as seizure disorders among children, when ingested in a non-smoking manner.
- The Legislature intends to discourage law enforcement from arresting, and state attorneys from prosecuting, persons who commit violations of s. 893.13 and s. 893.147 when the violation only involves cannabis.

Expunging Criminal History Records

Section 943.0585 F.S., sets forth procedures for expunging criminal history records. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record, and can only make a notation indicating compliance with an expunction order.²⁵ FDLE must retain expunged records.²⁶ Records that have been expunged are confidential and exempt from public records.²⁷

²² *Meet The Children Who Rely On Marijuana To Survive*, January 31, 2014, http://www.huffingtonpost.com/2014/01/31/cannabis-for-children_n_4697135.html (last visited on March 10, 2104).

²³ *Id.*

²⁴ *Id.*

²⁵ Section 943.0585(4), F.S.

²⁶ *Id.*

²⁷ Section 943.0585(4)(c), F.S.

Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,²⁸ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.²⁹

A person seeking an expunction must first obtain a certificate of eligibility from FDLE. In order to receive a certificate, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
 - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
 - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome was other than an adjudication of guilt; and
 - The criminal history record does not relate to a violation of specified offenses.³⁰
- Pay a \$75 processing fee.
- Submit a certified copy of the disposition of the record they wish to have expunged.
- Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in s. 943.051(3)(b), F.S.,³¹ prior to the date of their application for the certificate.³²
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged.
- Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction. A record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.³³
- No longer be under any court supervision related to the record they wish to have expunged.³⁴

In addition to the certificate, a petition to expunge a criminal history record must also include the petitioner's sworn statement that he or she:

- Has not previously been adjudicated guilty of an offense or comparable ordinance violation, or adjudicated delinquent for committing a felony or misdemeanor listed in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for committing any of the acts he or she is currently trying to have sealed or expunged;
- Has not obtained a prior sealing or expunction; and

²⁸ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

²⁹ Section 943.0585(4)(c), F.S.

³⁰ These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

³¹ These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; negligent treatment of children, as defined in s. 827.05, F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

³² Section 943.0585(2)(d), F.S.

³³ Section 943.0585(2)(h), F.S.

³⁴ Section 943.0585(2), F.S.

- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before any court.³⁵

Once a petition to expunge is submitted, the court must decide whether the expunction is appropriate.³⁶

Effect of the Bill

As noted above, in order to obtain a certificate of eligibility, a person must submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that an indictment, information, or other charging document, if filed, was dismissed, or nolle prosequi by the state attorney or statewide prosecutor or dismissed by the court with jurisdiction and that none of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

The bill specifies that a person is eligible to apply for and receive a certificate of eligibility for expunction if the person is found not guilty at trial of an offense for which the person successfully raised an affirmative defense pursuant to s. 893.131, F.S. (relating to cannabis). Such persons must obtain and submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that the person was found not guilty at trial of an offense for which the person successfully raised an affirmative defense pursuant to s. 893.131, F.S. A person will still have to comply with all of the other above-described criteria for obtaining a certificate of eligibility.

Research Study

Section 215.5602, F.S., establishes the James and Esther King Biomedical Research Program (Program) within the Department of Health (DOH). The purpose of the Program is to provide an annual and perpetual source of funding in order to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.³⁷

Funds appropriated for the Program are used to award grants and fellowships for research relating to the prevention, diagnosis, treatment, and cure of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease. Priority is given to research designed to prevent or cure disease.³⁸

Any university or established research institute may apply for biomedical research funding under the Program.³⁹ Grants and fellowships are awarded by the State Surgeon General, after consultation with the Biomedical Research Advisory Council,⁴⁰ on the basis of scientific merit, as determined by the competitively open peer-reviewed process to ensure objectivity, consistency, and high quality.⁴¹

To ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit, DOH appoints peer review panels of independent, scientifically qualified individuals to review the scientific merit of each proposal and establish its scientific priority score. The priority scores are forwarded to the Biomedical Research Advisory Council and are considered in determining which proposals are recommended for funding.⁴²

Effect of the Bill

³⁵ Section 943.0585(1)(b), F.S. Knowingly providing false information on the sworn statement is a third degree felony.

³⁶ Section 943.0585, F.S.

³⁷ Section 215.5602(1), F.S.

³⁸ Section 215.5602(2), F.S.

³⁹ Section 215.5602(5)(a), F.S.

⁴⁰ The Biomedical Research Advisory Council, created within DOH, consists of 11 members and is tasked with advising the State Surgeon General as to the direction and scope of the Program. This includes providing advice on Program priorities, developing criteria and standards for the award of research grants, and making recommendations for research grants and fellowships. Section 215.5602(3) and (4), F.S.

⁴¹ Section 215.5602(5)(b), F.S.

⁴² Section 215.5602(6), F.S.

The bill appropriates \$1 million in non-recurring general revenue to DOH for FY 2014-2015 for the James and Esther King Biomedical Research Program. The funds must be deposited into the Biomedical Research Trust Fund,⁴³ and are reserved for research of cannabidiol and its effect on intractable childhood epilepsy.

The bill requires any biomedical research funding for research of cannabidiol and its effect on intractable childhood epilepsy to be awarded pursuant to s. 215.5602, F.S. Application for such funding may be submitted by any research university in the state which has obtained approval from the U.S. Food and Drug Administration for an exploratory investigational new drug study of cannabidiol and its effect on intractable childhood epilepsy. The bill requires the Biomedical Research Advisory Council to advise the State Surgeon General as to the direction and scope of research of cannabidiol and its effect on intractable childhood epilepsy and the award of research funding.

For purposes of this section of the bill, the term "cannabidiol" means an extract from the cannabis plant that has less than 0.8 percent tetrahydrocannabinol and the chemical signature 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3-diol, or a derivative thereof, as determined by the International Union of Pure and Applied Chemistry.⁴⁴

B. SECTION DIRECTORY:

Section 1. Creates s. 893.131, F.S., relating to affirmative defense to prohibited acts.

Section 2. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 3. Appropriating \$1 million to the Department of Health to fund research of cannabidiol and its effect on intractable childhood epilepsy, effective July 1, 2014.

Section 4. Provides an effective date of upon becoming a law, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill appropriates \$1 million from the General Revenue Fund to the James and Esther King Biomedical Research Program through the Department of Health. The general revenue funds will be transferred to the Biomedical Research Trust Fund to fund research of cannabidiol and its effect on intractable childhood epilepsy.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

⁴³ The Biomedical Research Trust Fund is created in s. 20.435(8), F.S., and is administered by DOH.

⁴⁴ The International Union of Pure and Applied Chemistry (IUPAC) is a non-governmental organization of member countries that encompass more than 85% of the world's chemical sciences and industries. IUPAC addresses international issues in the chemical sciences utilizing expert volunteers from its member countries. <http://www.iupac.org/home/about/strategic-plan.html> (last visited on March 10, 2014).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appropriates \$1 million to the Department of Health to fund research of cannabidiol and its effect on intractable childhood epilepsy. Applications for such funding may be submitted by Florida research universities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Defined "cannabis;"
- Provided legislative findings and intent;
- Created an affirmative defense for specified offenses involving cannabis;
- Provided that a person was eligible to apply for a certificate of eligibility to expunge a criminal history record if the person was found not guilty at trial of an offense for which the person successfully raised an affirmative defense; and
- Appropriated \$1 million to the Department of Health to fund research of cannabidiol and its effect on intractable childhood epilepsy.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.