

CS/HB 477 – Controlled Substances

Amends s. 782.04, F.S., adding “mixture containing any of the following substances” to the list of drugs in which the killing of a human being resulted from their unlawful distribution, as well as adding alfentanil, carfentanil, fentanyl, sufentanil, and a controlled substance analog of any of the drugs in this list. This would be murder in the first degree.

Amends s. 893.03, F.S., including additional fentanyl derivatives and multiple substances used as synthetic drugs under Schedule I substances.

Amends, s. 893.135(1)(c)2, F.S., adding codeine to “trafficking in hydrocodone,” as well as removing “derivative, isomer, or salt of an isomer,” since codeine is the only known isomer of hydrocodone. This bill also amends, s. 893.135(1)(c)3, F.S., removing any “derivative, isomer, or salt of an isomer,” since there have been no drugs identified as these under oxycodone.

Creates s. 893.135(1)(c)4, F.S., adding “trafficking in fentanyl” for a “person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of” Alfentanil, Carfentanil, Fentanyl, Sufentanil, a Fentanyl Derivative, an analog, or any mixture containing any such substance, if the quantity involved is:

- between 4-14 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- between 14-28 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 28 grams or more – Level 9, 1st degree felony; 25 year mandatory minimum

Under current law, for similar substances:

- between 4-14 grams – 3 year mandatory minimum
- between 14-28 grams – 15 year mandatory minimum
- between 28 grams-30 kilograms – 25 year mandatory minimum

Amending s. 893.135(1)(c)5, F.S. and s. 893.135(1)(c)6, F.S., this bill adds codeine to the list of drugs under “trafficking in illegal drugs” and “capital importation of illegal drugs.”

Amending s. 893.135(1)(d), F.S, trafficking in phencyclidine, this bill adds substituted phenylcyclohexylamines, five analogs to phenylcyclohexylamines, and any mixture thereof. Also amending trafficking in phenethylamines (s. 893.135(1)(k), F.S.), 60 controlled substances that are identified as phenethylamines or cathinones, substituted cathinones and phenethylamines, any mixture thereof, or any mixture of the salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers thereof.

This bill also creates s. 893.135(1)(m), F.S., adding “trafficking in synthetic cannabinoids” for a “person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of” a number of drugs from s. 893.03(1)(c), F.S. identified as synthetic cannabinoids, if the quantity involved is:

- between 280-500 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- between 500-1,000 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- between 1,000 grams-30 kilograms – Level 8, 1st degree felony; 15 year mandatory minimum
- 30 kilograms or more – Level 9, 1st degree felony; 25 year mandatory minimum

Finally, this bill creates s. 893.135(1)(n), F.S., adding “trafficking in n-benzyl phenethylamines” for a “person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of” a number of drugs from s. 893.03(1)(c), F.S. identified as n-benzyl phenethylamines or their compounds, if the quantity involved is:

- between 14-100 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- between 100-200 grams – Level 8, 1st degree felony; 7 year mandatory minimum
- 200 grams or more – Level 9, 1st degree felony; 15 year mandatory minimum
- 400 grams or more – capital felony

Under current law, for similar substances:

- between 10-200 grams – 3 year mandatory minimum
- between 200-400 grams – 7 year mandatory minimum
- between 400 grams-30 kilograms – 15 year mandatory minimum
- 30 kilograms or more would be a capital felony

Per DOC, one person was charged with drug related first degree murder, and that person was sentenced to prison (sentence length=24 m, incarceration rate: 100%). Per FDLE, in FY 15-16, one person was arrested for selling fentanyl, and 2 people received a conviction/adjudication withheld. DOC does not track the number of admissions to prison for fentanyl, so that population is not known. Per FDLE, citing the *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2015 Annual Report*, there were 911 deaths in which these fentanyl was present or deemed the cause of death. Furthermore, 99 of the deaths associated with fentanyl only had that in their system, while the rest were in combination with another drug.

Per DOC, in FY 15-16, there were 44 (adj.) offenders sentenced for trafficking in hydrocodone and oxycodone, and 34 (adj.) were sentenced to prison (mean sentence length=70.5 m, incarceration rate: 77.3% adj.-75.7% unadj.). However, the changes in the bill should not affect these offenses.

Per DOC, in FY 15-16, there were 487 (adj.) offenders sentenced for trafficking offenses similar to fentanyl (heroin included) between 4 and 14 grams. There were 363 (adj.) sentenced to prison (mean sentence length=62.1 m, incarceration rate: 74.6% adj.-74.5% unadj.). There were 126 (adj.) offenders sentenced for trafficking between 14 and 28 grams, and 102 (adj.) of these offenders were sentenced to prison (mean sentence length=94.6 m, incarceration rate: 81.0% adj.-81.0% unadj.). There were 81 (adj.) offenders sentenced for trafficking between 28 grams and 30 kilograms, and 64 (adj.) of these offenders were sentenced to prison (mean sentence length=144.5 m, incarceration rate: 79.0% adj.-79.1% unadj.). No offenders were sentenced above 30 kilograms.

Per DOC, in FY 15-16, there were 2 (adj.) offenders sentenced for trafficking in phencyclidine between 28 and 200 grams, and both offenders received a prison sentence (mean sentence length=96.0 m, incarceration rate: 100%). There was one offender sentenced for trafficking between 400 and 800 grams, but that person did not receive a prison sentence.

The only other current trafficking offenses that exist out of s. 893.03(1)(c), F.S. are MDMA and phenethylamines, both of them combined in DOC's data. Per DOC, in FY 15-16, there were 41 (adj.) offenders sentenced for trafficking between 10 and 200 grams of these drugs. There were 26 (adj.) sentenced to prison (mean sentence length=45.6 m, incarceration rate: 63.4% adj.-64.7% unadj.). There were 2 offenders sentenced for trafficking between 200 and 400 grams of these drugs, and none of those offenders were sentenced to prison. There was also 1 (adj.) offender sentenced for trafficking in over 400 grams of these drugs in FY 15-16, and that offender was sentenced to prison (sentence length=84.0 m, incarceration rate: 100%). No offenders were sentenced above 30 kilograms.

EDR RECOMMENDATION AFTER FINAL PASSAGE: Positive Indeterminate

Requested by: House