

CS/CS/SB 280 – Controlled Substances

This bill amends multiple statutes. First, it amends the Level 9, 1st degree felony under s. 782.04(1), F.S. for “the unlawful killing of a human being...when perpetrated from a premeditated design to effect the death of the person killed or any human being,” deleting that the unlawful killing of a human being can be defined as someone unlawfully distributing a controlled substance and that substance being the proximate cause of the death of the user. It is replaced with (new language in bold): “proven to **have caused, or is proven to have been a substantial factor in producing**, the death of the user.” Furthermore, it amends s. 782.04(4), F.S., including this new language as part of the offenses that are not part of “the unlawful killing of a human being, when perpetrated without any design to effect death.” Similar to the changes earlier in the statute, it deletes that the unlawfully distributed substance must be the proximate cause of the death of the user. This is also replaced with (new language in bold): “proven to **have caused, or is proven to have been a substantial factor in producing**, the death of the user.” It then defines substantial factor as “the use of a substance or mixture alone is sufficient to cause death or that the use of the substance or mixture contributed to the resulting death, regardless of whether any other substance or mixture used is also sufficient to cause death or contributed to the death.”

This bill also creates s. 893.131, F.S., providing several definitions, including that “injury or overdose” means drug toxicity or the temporary loss of locomotor activity, motor coordination, or consciousness or cognitive impairment.” Additionally, substantial factor has a slightly different definition where “the use of a substance or mixture alone is sufficient to cause an injury or overdose or that the use of the substance or mixture contributed to a resulting injury or overdose, regardless of whether any other substance or mixture used is also sufficient to cause an injury or overdose.” It is then stated that “a person 18 years of age or older who unlawfully distributes, delivers, sells, or dispenses...heroin...alfentanil...carfentanil...fentanyl...sufentanil...fentanyl derivatives...a controlled substance analog” of the drugs listed “or a mixture containing any substance specified” of these drugs and their analogs “and an injury or overdose of the user results” commits an **unranked, 2nd degree felony (Level 4 by default)** “when such substance or mixture is proven to have caused or been a substantial factor in causing the injury or overdose suffered by the user.” One who commits this act and has previously been convicted of one of these violations would now have committed an **unranked, 1st degree felony (Level 7 by default)**. It is also stated that “the unlawful distribution, delivery, sale, or dispensing of a substance or mixture...may be from a person who directly, or indirectly through another person, provided the substance or mixture to the user who was injured or overdosed.” It also states that “the administration of medical care by an emergency responder, including, but not limited to, a law enforcement officer, a paramedic, or an emergency medical technician, or the administration of an emergency opioid antagonist by such emergency responder, is prima facie evidence that the person receiving medical care was injured or overdosed.” Finally, it adds that “a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or a drug related overdose and receives medical assistance, or a person acting in good faith who seeks medical assistance for an

individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose, is afforded the protections provided under s. 893.21, F.S.

In FY 18-19, the incarceration rate for a Level 4, 2nd degree felony was 28.7%, and in FY 19-20 the incarceration rate was 27.3%. In FY 20-21, the incarceration rate for a Level 4, 2nd degree felony was 23.8%, and in FY 21-22 the incarceration rate was 29.7%. In FY 18-19, the incarceration rate for a Level 7, 1st degree felony was 67.1%, and in FY 19-20 the incarceration rate was 66.5%. In FY 20-21, the incarceration rate for a Level 7, 1st degree felony was 65.5%, and in FY 21-22 the incarceration rate was 63.1%.

Per DOC, in FY 18-19, there was 1 new commitment under s. 782.04, F.S. relating to drugs, and no new commitments in FY 19-20, FY 20-21, or FY 21-22. Per Florida Department of Health, in CY 2021, there were 50,803 non-fatal drug overdose emergency department visits and 8,093 fatal drug overdoses. While it is not known what drug or drugs were in their systems, prior reports have indicated mixtures of the drugs included in this bill. The drugs listed under s. 782.04(1), F.S. and s. 893.131, F.S. showed similar high numbers as contributing to fatal overdoses, so it is likely that the non-fatal overdoses also have these drugs involved. It is not known how prison admissions will be impacted by this new language, nor is it known if this language will expand how a non-fatal overdose is defined.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: Senate