

CS/CS/HB 365 – 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 the substance or mixture alone is sufficient to cause death, regardless of whether any other substance or mixture used is also sufficient to cause death.”

This bill also creates s. 893.131, F.S., providing several definitions, including that “‘overdose or serious bodily injury’ means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.” Additionally, substantial factor has a slightly different definition where “the use of a substance or mixture alone is sufficient to cause an overdose or serious bodily injury, regardless of whether any other substance or mixture used is also sufficient to cause an overdose or serious bodily injury.” It is then stated that “a person 18 years of age or older who unlawfully distributes...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 overdose or serious bodily injury of the user results” commits a **Level 6, 2nd degree felony** “when such substance or mixture is proven to have caused or been a substantial factor in causing the overdose or serious bodily injury of 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 someone who was injured or overdosed could also be charged with these violations if that person committed these acts. Furthermore, it 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 is prima facie evidence that the person receiving medical care experienced an overdose or serious bodily injury.” 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 6, 2nd degree felony was 44.6%, and in FY 19-20 the incarceration rate was 41.6%. In FY 20-21, the incarceration rate for a Level 6, 2nd degree felony was 40.6%, and in FY 21-22 the incarceration rate was 39.8%. 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 APPROVED ESTIMATE: Positive
Indeterminate**