

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 588

INTRODUCER: Senator Passidomo

SUBJECT: Drug Overdoses

DATE: March 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 588 creates s. 893.22, F.S., which defines the term “overdose”; and requires certain health care professionals, institutions, and their employees, who attend or treat a controlled substance overdose, to report specific information about the overdose to the chief county law enforcement office where the attention or treatment occurred.

The bill requires the chief county law enforcement officer to share the general data, excluding data relating to criminal charges, with health care professionals and the county health department (CHD). The bill requires each CHD to summarize the data received and report to the Statewide Drug Policy Advisory Council (council). The bill authorizes the council to use the reports to maximize the utilization of available federal, state and private funds for substance abuse services.

The bill requires the chief county law enforcement officer, or a third party designee, to maintain the records regarding the attention and treatment of overdoses for a specific period and make records available for inspection and copying by state law enforcement officers enforcing the state’s controlled substance laws. A subpoena, court order or search warrant is not required.

The bill provides criminal penalties for anyone failing to report, or willfully refusing to report, within 24 hours, treatment of a controlled substance overdose. The bill provides immunity for those persons who make such a report in good faith.

The bill has an effective date of October 1, 2017.

II. Present Situation:

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.² Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.³ Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.⁵ The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.⁶

Opioid Abuse and Overdose

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.⁷ Drug overdose is now the leading cause of injury-related death in the United States.⁸ In 2015, Florida ranked fourth in the nation with 3,228 deaths from drug overdoses,⁹ and the presence of at least one opioid in a person's body caused 2,530 of those deaths.¹⁰ Statewide, in 2015, heroin caused 733 deaths, fentanyl caused 705, oxycodone caused 565, and hydrocodone caused 236; deaths caused by heroin and fentanyl increased more than 75 percent statewide when compared with 2014.¹¹

¹ World Health Organization, *Substance Abuse* http://www.who.int/topics/substance_abuse/en/, (last visited Mar. 23, 2017).

² Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, (last updated Oct. 27, 2015) available at: <http://www.samhsa.gov/disorders/substance-use>, (last visited Mar. 23, 2017).

³ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction* (last updated July 2014), available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction>, (last visited Mar. 23, 2017).

⁴ Id.

⁵ Supra note 2.

⁶ Supra note 2.

⁷ World Health Organization, *Information Sheet on Opioid Overdose* (November 2014), available at http://www.who.int/substance_abuse/information-sheet/en/ (last visited Mar. 23, 2107).

⁸ Trust for America's Health, *The Facts Hurt: A State-by-State Injury Prevention Policy Report 2015*, <http://healthyamericans.org/reports/injuryprevention15/>, (last visited March 23, 2017).

⁹ Centers for Disease Control and Prevention, *Drug Overdose Death Data* (Dec. 16, 2016), available at <https://www.cdc.gov/drugoverdose/data/statedeaths.html>, (last visited Mar. 23, 2017).

¹⁰ Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners-2015 Annual Report* (Sept. 2016), available at <https://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2015-Annual-Drug-Report.aspx>, (last visited on Mar. 23, 2017).

¹¹ Id. at pg. 3.

Drug overdose deaths doubled in Florida from 1999 to 2012.¹² Over the same time period, drug overdose deaths occurred at a rate 13.2 deaths per 100,000 persons.¹³ The crackdown on “pill mills” dispensing prescription opioid drugs, such as oxycodone and hydrocodone, reduced the rate of death attributable to prescription drugs,¹⁴ but may have generated a shift to heroin use, contributing to the rise in heroin addiction.¹⁵

Emergency Response to Overdose

Opioid overdose can occur when an individual deliberately misuses a prescription opioid or an illicit drug such as heroin.¹⁶ It can also occur when a patient takes an opioid as directed, but the prescriber miscalculated the opioid dose, an error was made by the dispensing pharmacist, or the patient misunderstood the directions for use.¹⁷ Opioid overdose is life threatening and requires immediate emergency attention.¹⁸

To treat an opioid overdose, emergency personnel or a physician may administer an opioid antagonist such as Narcan® or Nalaxone. An opioid antagonist is a drug that blocks the effects of exogenously administered opioids. Opioid antagonists are used in opioid overdoses to counteract life-threatening depression of the central nervous system and respiratory system, allowing an overdose victim to breathe normally.¹⁹ This occurs because opioid antagonists create a stronger bond with opioid receptors than opioids. This forces the opioids from the opioid receptors and allows the transmission of signals for respiration to resume.²⁰

From 2004 through 2009, emergency department visits nationally involving the nonmedical use of pharmaceuticals increased 98.4 percent, from 627,291 visits to 1,244,679 visits.²¹ In 2009, almost one million emergency room visits nationally involved illicit drugs, either alone or in combination with other drugs.²²

From 2008 to 2011, about half of all emergency department visits nationally for both unintentional and self-inflicted drug poisoning involved drugs in the categories of analgesics,²³

¹² Department of Health, *Special Emphasis Report: Drug Poisoning (Overdose) Deaths (1999-2012)*, available at <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/documents/CDC-Special-Emphasis-Drug-poisoning-overdose-1999-2012-B-Poston-FINAL.pdf>, (last visited on Mar. 11,2017).

¹³ Id.

¹⁴ *Supra* note 10.

¹⁵ World Health Organization, *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Mar. 23, 2017).

¹⁶ Substance Abuse and Mental Health Services Administration, *Opioid Overdose Prevention Toolkit* (Rev. 2016), available at <http://store.samhsa.gov/shin/content/SMA16-4742/SMA16-4742.pdf>, (last visited Mar. 23, 2017).

¹⁷ Id.

¹⁸ Id.

¹⁹ Harm Reduction Coalition, “*Understanding Naloxone*,” available at: <http://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/understanding-naloxone/>, (last visited March 23, 2017).

²⁰ Harm Reduction Coalition, *Guide to Developing and Managing Overdose Prevention and Take-Home Naloxone Projects*, (2012), available at <http://harmreduction.org/our-work/overdose-prevention/> (last visited Mar. 23, 2017).

²¹ National Institute on Drug Abuse, *Drug-Related Hospital Emergency Room Visits* (May 2011), available at <https://www.drugabuse.gov/publications/drugfacts/drug-related-hospital-emergency-room-visits>, (last visited Mar. 23, 2017).

²² Id.

²³ Analgesics are drugs that produce insensibility to pain.

antipyretics.²⁴ and antirheumatics²⁵ or sedatives, hypnotics, tranquilizers, and other psychotropic agents.²⁶

Opiates or related narcotics, including heroin and methadone, accounted for 14 percent of emergency department visits nationally for unintentional drug poisoning from 2008 to 2011.²⁷ In Florida, there were approximately 21,700 opioid-related emergency department visits in 2014.²⁸

Privacy Rights of Individuals Receiving Substance Abuse Treatment

Florida Protections

Section 397.501, F.S., establishes statutory rights for individuals receiving substance abuse services, including the right to dignity, non-discriminatory services, quality services, confidentiality, counsel and habeas corpus. In particular it prohibits service providers from disclosing records containing the identity, diagnosis, prognosis, and services provided to any individual without written consent of the individual, with certain exceptions.²⁹ The law makes service providers who violate these rights liable for damages, unless acting in good faith, reasonably, and without negligence.

Federal Protections of Personal Health Information

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. Privacy rules were initially issued in 2000 by the U.S. Department of Health and Human Services and later modified in 2002.³⁰ The rules address the use and disclosure of an individual's personal health information and create standards for information security. Only certain entities, "covered entities," are subject to HIPAA's provisions. Covered entities are obligated to meet HIPAA's requirements to ensure privacy and confidentiality of personal health information. These "covered entities" include:³¹

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.

²⁴ Antipyretics are drugs that reduce fever.

²⁵ Anti-rheumatics are drugs that alleviate or prevent inflammation or pain in muscles, joints, or fibrous tissue.

²⁶ Albert, M. et al., *Emergency Department Visits for Drug Poisoning: United States, 2008–2011*, NCHS Data Brief No. 196, April 2015, available at <https://www.cdc.gov/nchs/data/databriefs/db196.htm>, (last visited Mar. 23, 2017).

²⁷ Id.

²⁸ Weiss, A.J., et al., *Opioid-Related Inpatient Stays and Emergency Department Visits by State, 2009-2014*, HCUP Statistical Brief No. 219, January 2017, available at <https://www.hcup-us.ahrq.gov/reports/statbriefs/sb219-Opioid-Hospital-Stays-ED-Visits-by-State.pdf>, (last visited Mar. 23, 2017).

²⁹ Disclosure is permitted to: health service providers in cases of medical emergency if the information is necessary to provide services to the individual; DCF for the purposes of scientific research; comply with state-mandated child abuse and neglect reporting; comply with a valid court order; report crimes that occur on program premises or against staff; federal, state or local governments for audit purposes; or third party payors providing financial assistance or reimbursement.

³⁰ United States Department of Health and Human Services, *The Privacy Rule*, <http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/> (last visited on Mar. 23, 2017).

³¹ United States Department of Health and Human Services, *For Covered Entities and Business Associates* <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/> (last visited on Mar. 23, 2017).

Additionally, federal law restricts the disclosure of alcohol and drug patient records maintained by federally assisted alcohol and drug abuse programs, which identify a patient as an alcohol or drug abuser.³² Disclosure of patient-identifying information is permitted in certain cases and patients may consent in writing to the disclosure of such information.³³

Statewide Drug Policy Advisory Council

The Legislature created the Office of Drug Control and the Drug Policy Advisory Council³⁴ in the Executive Office of the Governor in 1999. In 2011, the Legislature replaced it with the Statewide Drug Policy Advisory Council (the Council)³⁵ under the Florida Department of Health (DOH). The Council, among other things, submits annual reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives with recommendations concerning developing and implementing a state drug control strategy.³⁶

The Council's 2016 Report concluded that a key problem in combating drug overdoses in Florida is that there is "no sustainable process to compile massive amounts of data and information, perform analysis, and develop an evidence-based call to action."³⁷ To improve data collection and surveillance, the Council recommends that DOH collaborate with other agencies, organizations, and institutions to create a comprehensive statewide strategy addressing the fentanyl and heroin overdoses in the state.³⁸

DOH Data Systems

Florida Injury Surveillance Data System

DOH's Injury Surveillance Data System is a passive data reporting mechanism that utilizes data resources from other agencies and systems, including:

- Vital records (death certificates);
- Hospital discharge data;
- Emergency department discharge data;
- Motor vehicle crash records;
- Behavioral Risk Factor Surveillance System;
- Youth Risk Behavior Surveillance System;
- Child Death Review;
- Uniform Crime Reporting System; and

³² 42 CFR Part 2 (2016).

³³ Disclosure is allowed to comply with state-mandated child abuse and neglect reporting; to report the cause of death; to comply with a valid court order; in cases of medical emergency; to report crimes that occur on program premises or against staff; to entities having administrative control; to qualified service organizations and to outside auditors, evaluators, central registries, and researchers.

³⁴ Section 397.332, F.S., created by s. 3, ch. 99-187, Laws of Fla.

³⁵ Section 397.333, F.S., created by s. 8, ch. 2011-51, Laws of Fla.

³⁶ Section 397.333(3), F.S.

³⁷ Florida Department of Health, *Statewide Drug Policy Advisory Council 2016 Annual Report* (Dec. 1, 2016), p. 4, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf>, (last visited Mar. 23, 2017).

³⁸ *Id.* at 14.

- Emergency medical services.³⁹

The Injury Surveillance Data System is used to monitor the frequency of fatal and non-fatal injuries, determine the risk factors for these injuries, evaluate the completeness, timeliness, and quality of data sources, provide information to Florida's injury prevention community for program planning and evaluation, and provide a foundation for injury prevention strategies.⁴⁰ One of the injury mechanisms it receives information on is poisoning, which includes drug overdoses;⁴¹ however it is not currently set up to actively receive data regarding overdoses, or any other injury mechanism.⁴²

III. Effect of Proposed Changes:

Legislative Findings, Intent, and Goals

SB 588 makes the following legislative findings:

- Substance abuse and drug overdose are a major health problems that affects the lives of many people, and multiple service systems, leading to profoundly disturbing consequences;
- These overdoses are a crisis and stress financial, health care, and public safety resources; and
- A central database that could quickly help address this problem does not currently exist.

The bill sets out the intent of the Legislature to:

- Require the collaboration of local, regional, and state agencies; service systems; and program offices to address the needs of the public;
- Establish a comprehensive system addressing the problems associated with drug overdoses;
- Reduce duplicative requirements across local, county, state, and health care agencies;
- Maximize the efficiency of financial, public education, health professional, and public safety resources so that these resources may be concentrated on areas and groups in need on the performance of professional functions; and
- Maximize the utilize funding programs for the dissemination of available federal, state, and private funds through contractual agreements with community based organizations or units of state or local government that deliver local substance abuse services.

The goals of the Legislature for the bill are identified as:

- Discouraging substance abuse and overdoses by quickly identifying the type of drug involved, the age of the individual involved, and the areas where drug overdoses pose a potential risk to the public, schools, workplaces, and communities; and
- Providing a central data point so that data can be shared between the health care community and municipal, county, and state agencies to quickly identify needs and provide short and long term solutions while protecting and respecting the rights of individuals.

³⁹ Department of Health, *Florida Injury Surveillance Data System*, available at: <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/index.html>, (last visited March 23, 2017).

⁴⁰ Id.

⁴¹ Department of Health, *External Cause of Injury Intent and Mechanism Classifications and Descriptions* (Sept. 8, 2008), available at <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/documents/icd-code-explanations.pdf>, (last visited Mar. 13, 2017).

⁴² Department of Health, *House Bill 249 Analysis* (similar to SB 588), p. 6, (Jan. 17, 2017) (on file with Senate Committee on Health Policy).

Mandatory Overdose Reporting

The bill creates s. 893.22, F.S., which requires mandatory reporting of controlled substance overdoses. The bill defines “overdose” as a condition which includes, but is not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death resulting from the consumption or use of a controlled substance that requires medical attention, assistance, or treatment, and a clinical suspicion for drug overdose, such as respiratory depression, unconsciousness, or an altered mental state which is not explained by any other clinical condition.

The mandatory reporting requirement applies to physicians, nurses, paramedics, emergency medical technicians, health care workers, or their employees, and any employee of a hospital, sanatorium, or other institution who knowingly attends or treats, or is requested to attend or treat, an overdose of a controlled substance. A person who attends or treats, or is requested to attend or treat, a controlled substance overdose must report the event to the sheriff or chief law enforcement officer in the county within 24 hours; and the report must include the following:

- The date of the overdose;
- The approximate age of the person receiving the attention or treatment;
- The suspected kind and quantity of controlled substances involved in the overdose; and
- The approximate address of where the person was picked up, where the overdose took place, or where the person resides.

The bill makes it a second-degree misdemeanor for failing to report the treatment of a controlled substance overdose within the 24 hours and a first-degree misdemeanor for anyone who willfully refuses to report the treatment of a controlled substance overdose within 24 hours. Anyone who files a controlled substance overdose report in good faith is not subject to civil or criminal liability for making the report.

Use of Report

The bill authorizes the sheriff or chief law enforcement officer in each county, at his or her discretion, to designate, or partner with, a public organization or agency, such as the medical examiner, to receive, store and manage the reports and data received. The bill requires the sheriff or chief law enforcement officer to maintain the records and share the data, excluding any data relating to a criminal charge, with health care professionals and the CHD. The records must also be made available for at least five years for the inspection and copying by law enforcement officers, without subpoena, court order or warrant, whose duty it is to enforce state law relating to controlled substances.

The bill requires the CHDs to make semiannual reports to the Council that summarizes the data it receives. The Council may use the reports to maximize the utilization of funding programs for the dissemination of available federal, state and private fund for local substance abuse services.

The bill has an effective date of October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The mandatory reporting by so many health care professionals and health care workers may result in a very large volume of duplicative reports being made to the chief county law enforcement officer by members of the team working on a patient. This may result in additional administrative expenses associated with maintaining and storing those records for at least 5 years.

VI. Technical Deficiencies:

The bill does not indicate how the Council will use the data it receives to maximize the use of funding, since it is merely advisory.

VII. Related Issues:

The information collected by the county chief law enforcement officer, and shared with health care professionals and the county health department, and made available to law enforcement officers enforcing state law relating to controlled substances, may require a separate bill for a public records exception to protect the information from being obtained by other third parties.

VIII. Statutes Affected:

This bill creates section 893.22 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
