

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 369

Murder

SPONSOR(S): Snyder

TIED BILLS:

IDEN./SIM. BILLS: SB 808

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Padgett	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 782.04(1)(a)3, F.S. provides the unlawful killing of a human being which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4, or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

In a recent court opinion, Florida’s 4th District Court of Appeal upheld the dismissal of 1st degree murder charges against a defendant who sold methadone to a victim who later overdosed on the drug, holding that methadone is not a drug enumerated in Schedule I or a derivative of opium.

As a result of the court’s decision, a death resulting from the unlawful distribution of methadone must be prosecuted as manslaughter under s. 782.07, F.S., which is a second degree felony.

The bill amends s. 782.04, F.S., to add methadone to the list of opium and opium derivatives in the first degree murder statute. This allows the state to prosecute a death resulting from the unlawful distribution of methadone as a capital felony in the same manner as a death resulting from opium and opium derivatives.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 782.04(1)(a)3, F.S. provides the unlawful killing of a human being which resulted from the unlawful distribution of any substance controlled under s. 893.03(1)<sup>1</sup>, cocaine as described in s. 893.03(2)(a)4, or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user is murder in the first degree and constitutes a capital felony<sup>2</sup>, punishable as provided in s. 775.082.

In State v. McCartney, 1 So.3d. 326 (Fla. 4th DCA, 2009) defendant was charged with first degree murder as the result of a death caused by an overdose of methadone which was sold to the victim by the defendant. The trial court granted a motion to dismiss the case because methadone is not a drug enumerated in Schedule I under the above statute. The state appealed, arguing that methadone does fall within the statute because it is a synthetic of opium. The Fourth District Court of Appeal held that methadone is not a synthetic of opium, but a substance that affects the body in the same manner as opium.<sup>3</sup>

As a result of the court's decision, a death resulting from the unlawful distribution of methadone must be prosecuted as manslaughter under s. 782.07, F.S., which is a second degree felony<sup>4</sup>.

##### Proposed Changes

The bill amends s. 782.04, F.S., to add methadone to the list of opium and opium derivatives in the first degree murder statute. This allows the state to prosecute a death resulting from the unlawful distribution of methadone as a capital felony in the same manner as a death resulting from opium and opium derivatives.

#### B. SECTION DIRECTORY:

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<sup>1</sup> Section 893.03(1), F.S. contains a list of Schedule I illegal substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in treatment and use under medical supervision does not meet accepted safety standards.

<sup>2</sup> A capital felony is punishable by death, or life imprisonment without the possibility of parole. Section 775.082(1), F.S.

<sup>3</sup> The court also noted that methadone is specifically listed as a Schedule II substance under s. 893.03(2)(b)14, F.S.

<sup>4</sup> A second degree felony is punishable by up to 15 years imprisonment and a maximum \$10,000 fine. Section 775.082, 775.083, 775.084, F.S.

Section 1: Amends s. 782.04, F.S., relating to murder.

Section 2: Reenacts s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

Section 3: Reenacts s. 782.065, F.S., relating to murder; law enforcement officer.

Section 4: Reenacts s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

Section 5: Reenacts s. 947.146, F.S., relating to control release authority.

Section 6: Provides effective date of October 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill.

## **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:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**