

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 Rules

BILL: SB 530

INTRODUCER: Senators Brandes and Stewart

SUBJECT: Alcohol or Drug Overdose Prosecutions

DATE: April 9, 2019

REVISED: 3/05/19

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 530 expands the current law's grant of immunity for a person who seeks medical assistance to counteract a drug overdose. The bill creates a similar grant of immunity for a person who seeks help for an alcohol overdose by an underage drinker.

Under current law, a person acting in good faith who seeks medical assistance for his or her drug overdose, or the drug overdose of another person, may not be charged, prosecuted, or penalized for possession of a controlled substance. However, the immunity only applies if the evidence of the crime was obtained as a result of the person's seeking help.

Under the bill, the immunity related to drug overdoses is expanded to:

- Shield a person from arrest, and not just charges, prosecution, or penalties;
- Shield a person from several crimes beyond drug possession, including drug trafficking, and possession of a controlled substance with intent to sell it;
- Shield a person who is seeking medical help for another from arrest or prosecution for first-degree murder caused by giving another person a controlled substance; and
- No longer require a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

In addition to expanding immunity relating to drug offenses, the bill grants similar immunity to persons who seek medical assistance due to alcohol overdoses by underage drinkers. The immunity applies to a person who gives alcohol to a person younger than 21 years of age and in good faith seeks medical assistance for the underage person. The immunity also applies to an underage person if he or she seeks medical assistance when having a good faith belief that he or she is experiencing an alcohol overdose. However, one notable difference between the grants of immunity is that the immunity relating to alcohol-overdoses does not shield a person from penalties for a violation of a condition of probation, parole, or pretrial release. Another

difference is that the immunity granted to a person who provides alcohol to an underage person applies only if the person remains at the scene and cooperates with authorities.

The bill may increase costs to individuals, insurance companies, and the state.

II. Present Situation:

Overview

The Legislature enacted Florida's "911 Good Samaritan Act" in 2012 to encourage people to seek medical assistance for persons having a drug overdose.¹ The act, which is codified in s. 893.21, F.S., provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance under ch. 893, F.S.²

However, the immunity only applies if the evidence for the crime was obtained as a result of the person's seeking medical assistance.³ Moreover, the act specifies that it does not provide a basis for the suppression of evidence in other prosecutions.⁴

The act provides similar immunity for a person who seeks necessary medical assistance for his or her own overdose.⁵

"Good Samaritan" Laws Regarding Drug Overdoses

In addition to the 911 Good Samaritan Act, s. 381.887, F.S., grants civil immunity to a person who administers a drug such as naloxone hydrochloride, which blocks the effects of opioids. Most other states have similar immunity laws, and these laws have been studied by the National Conference of State Legislatures (NCSL).

According to the NCSL, drug overdose rates continue to rise and these deaths are increasingly caused by opioids and opiates. The NCSL notes that "[o]pioid overdoses can be reversed with the timely administration of a medication called naloxone[,] an FDA-approved drug that "can be administered in a number of ways that make it possible for a lay person to use."⁶

According to the NCSL, "[o]ften family and friends are in the best position to administer this lifesaving drug to their loved ones who overdose. Access to naloxone, however, was relatively limited until legislatures provided specific statutory protections for nonmedical professionals to possess and administer naloxone without a prescription."⁷ Many legislatures have enacted a law

¹ Ch. 2012-36, L.O.F.

² Section 893.21(1), F.S.

³ *Id.*

⁴ Section 893.21(3), F.S.

⁵ Section 893.21(2), F.S.

⁶ *Drug Overdose Immunity and Good Samaritan Laws* (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on Feb. 27, 2019).

⁷ *Id.*

allowing naloxone administration, and this law is often coupled with a law providing limited immunity from criminal prosecution for providing such medical assistance.

According to NCSL, 40 states and the District of Columbia have Good Samaritan laws. This state's Good Samaritan law lacks one component that is common in other states' Good Samaritan laws: a prohibition on the arrest of a person covered by the immunity.⁸

Data on Drug-Overdose Deaths in Florida

A recent report by the Florida Medical Examiners Commission (FMEC) cited statistics that 104,519 deaths occurred in Florida during the first 6 months of 2017.⁹ Of the cases seen by medical examiners, toxicology results determined that ethanol (ethyl alcohol) and/or various controlled substances were present at the time of death in 6,110 cases.¹⁰

Some of the general statewide trends¹¹ noted by the FMEC in its report when comparing statewide trends for the first half of 2017 (January to June) to the first half of 2016 include:

- Total drug-related deaths increased by 11.0 percent (604 more);
- 3,353 individuals (8.0 percent more) died with one or more prescription drugs in their system;¹²
- 1,712 individuals (4.0 percent or more) died with at least one prescription drug in their system that was identified as the cause of death;¹³
- The seven most frequently occurring drugs found in decedents were ethyl alcohol (2,594), benzodiazepines (2,506, including 912 alprazolam occurrences), cocaine (1,584), cannabinoids (1,124), morphine (1,032), fentanyl analogs (875), and fentanyl (825);¹⁴ and
- The drugs that caused the most deaths were cocaine (1,029), fentanyl analogs (840), morphine (679), fentanyl (667), benzodiazepines (658, including 376 alprazolam deaths), heroin (509), ethyl alcohol (490), oxycodone (306), and methamphetamine (213).¹⁵

III. Effect of Proposed Changes:

The bill expands the statutory grant of immunity from charges, prosecution, or penalties for possession of a controlled substance which could otherwise result from the person's seeking medical help for his or her own overdose or for the overdose of another person.

⁸ See *Id* and s. 893.21, F.S.

⁹ *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2017 Interim Report* (April 2018), p. 1, Florida Medical Examiners Commission, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Interim-Drug-Report.aspx> (last visited on Feb. 27, 2019).

¹⁰ *Id.*

¹¹ *Id.* at p. ii.

¹² The drugs were identified as both the cause of death and present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. *Id.*

¹³ These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol. *Id.*

¹⁴ Since heroin is rapidly metabolized to morphine, this may lead to a substantial over-reporting of morphine-related deaths as well as significant under-reporting of heroin-related deaths. *Id.*

¹⁵ Fentanyl analogs (96.0 percent), heroin (93.0 percent), fentanyl (81.0 percent), morphine (66.0 percent), cocaine (65.0 percent), and methamphetamine (51.0 percent) were listed as causing death in more than 50.0 percent of the deaths in which these drugs were found. *Id.*

Under the bill, this grant of immunity is expanded to:

- Shield a person from arrest, and not just charges, prosecution, or penalties;
- Shield a person from several crimes beyond drug possession, including drug trafficking, and possession of a controlled substance with intent to sell it;
- Shield a person who is seeking medical help for another from arrest or prosecution for first-degree murder of the type that is caused by giving another person a controlled substance (with or without the intent to kill the person);and
- No longer require a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

In addition to expanding the statutory grant of immunity relating to drug overdoses, the bill creates a new grant of immunity statute related to alcohol overdoses. Under the new statute, a person who gives alcohol to an underage person and then seeks medical assistance, in good faith, for the underage person's apparent overdose may not be arrested, charged, prosecuted, or penalized for:

- Providing alcohol to a minor;
- Permitting a minor to consume alcohol on his or her premises;
- Misrepresenting his or her age in order to purchase alcohol; or
- Possessing alcohol as a minor.

However, for the immunity to apply, the person must remain at the scene and cooperate with the medical personnel and law enforcement officers who come to the scene. Moreover, the immunity applies only if the evidence for a crime was obtained as a result of the person's seeking medical help.

The bill provides a similar immunity provision for an underage person who seeks necessary medical assistance for his or her own overdose. However, this grant of immunity applies only to the crime of underage possession of alcohol.

A key difference between the alcohol-overdose statute and the drug-overdose statute is that the alcohol-overdose statute does not provide immunity from violations of probation, parole, or pretrial release. Another notable difference is that the alcohol-overdose statute requires a person who seeks help for another person's overdose to remain at the scene and cooperate with authorities.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

C. Government Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Most of the changes proposed by the bill are features of the overdose immunity laws of at least one other state,¹⁶ and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida's Statewide Drug Policy Advisory Council in 2016.¹⁷ However, Senate Criminal Justice Committee staff was unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to

¹⁶ Provided are a few examples: Georgia law (Ga. Code Ann. s. 16-13-5) includes arrests; Colorado law (Colo. Rev. Stat. s. 18-1-711) includes alcohol overdose; New York law (N.Y. Penal Law s. 220.78) provides immunity for possession of alcohol by a person under 21 years of age; Mississippi law (Miss. Code. Ann. s. 41-29-149.1) provides immunity for drug paraphernalia offenses; and Tennessee law (Tenn. Code Ann. s. 63-1-156) provides immunity for pretrial, probation, or parole violations.

¹⁷ *Statewide Drug Policy Advisory Council – 2016 Annual Report* (December 1, 2016), p. 15, Florida Department of Health, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf> (last visited on Feb. 11, 2019).

s. 782.04(1)(a)3., F.S., which punishes first degree murder involving unlawful distribution of a specified controlled substance. In fact, at least one state, Illinois, specifically states in its overdose immunity law that the law is not intended to prevent arrest or prosecution for drug-induced homicide.¹⁸ As indicated by the NCSL, overdose immunity laws “generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]”¹⁹

While the bill does not nullify s. 782.04(1)(a)3., F.S., the bill appears to effectively bar arrest or prosecution of a person who distributed a controlled substance to a user that was the proximate cause of the user’s death but who also provided medical assistance to the user (albeit the user still died) in accordance with s. 893.21, F.S., as amended by the bill.

Staff was also unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 893.135, F.S., which punishes drug trafficking.²⁰

VIII. Statutes Affected:

This bill substantially amends section 893.21 of the Florida Statutes.

This bill creates section 562.112 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.

¹⁸ 720 Ill. Comp. Stat. Ann. 570/414.

¹⁹ *Drug Overdose Immunity and Good Samaritan Laws* (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on Feb 11, 2019).

²⁰ The act of “trafficking” can include possession, purchase, sale, manufacture, delivery, or importation. *See generally* s. 893.135, F.S.