

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 325 Controlled Substance Offenses
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	15 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	13 Y, 1 N	Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

On April 1, 2019, Governor DeSantis created the Statewide Task Force on Opioid Abuse (Task Force). The Governor directed the Task Force to develop a statewide strategy to identify best practices to combat the opioid epidemic through education, treatment, prevention, recovery, and law enforcement, and compile a report containing legislative recommendations.

CS/HB 325 contains two of the Task Force's legislative recommendations relating to law enforcement. The bill adds methamphetamine to the list of specified controlled substances which, if the substance is the proximate cause of the victim's death, can subject the person who distributed the controlled substance to a conviction for first degree felony murder. Under the bill, a person convicted of first degree felony murder involving the unlawful distribution of methamphetamine commits a capital felony.

The bill implements a second recommendation of the Task Force by enhancing the penalties for sale of a controlled substance within 1,000 feet of a substance abuse treatment center. Because of the varied nature of drug treatment and recovery programs and facilities, there is not a single comprehensive definition of substance abuse treatment center in statute. To cover the continuum of substance abuse treatment facilities, the bill enhances penalties for the sale of a controlled substance within 1,000 feet of the real property of:

- Any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have or who have been diagnosed as having a mental illness or substance abuse impairment;
- A health care facility licensed under chapter 395, F.S., that provides substance abuse treatment;
- A substance abuse facility licensed under chapter 397, F.S.;
- A clinical treatment, intervention, or prevention facility as defined in s. 397.311(26), F.S.;
- A recovery residence as defined in s. 397.311, F.S.; or
- A pain management clinic as defined in ss. 458.3265 or s. 459.0137, F.S.

Under the bill, the penalties for sale of a controlled substance increase from a third degree felony to a second degree felony, and from a second degree felony to a first degree felony, when committed within 1,000 feet of a specified substance abuse treatment facility.

The Criminal Justice Impact Conference considered the bill on March 24, 2021 and determined it may increase the prison population by an indeterminate amount.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Controlled Substances

Florida Law

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, classifies controlled substances¹ into five categories, called schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”² of the substance and whether there is a currently accepted medical use for the substance.³

The controlled substance schedules are as follows:

- Schedule I substances have a high potential for abuse and currently have no accepted medical use in the United States, including substances such as cannabis and heroin.⁴
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States, including substances such as raw opium, fentanyl, and codeine.⁵
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States, including substances such as stimulants and anabolic steroids.⁶
- Schedule IV substances have a low potential for abuse relative to substances in Schedule III and have a currently accepted medical use in the United States, including substances such as benzodiazepines and barbiturates.⁷
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States, including substances such as mixtures that contain small quantities of opiates, narcotics, or stimulants.⁸

Federal Law

The Federal Controlled Substances Act⁹ also classifies controlled substances into schedules based on the potential for abuse and whether there is a currently accepted medical use for the substance. The Drug Enforcement Administration (DEA) is required to consider the following when determining where to schedule a substance:¹⁰

¹ “Controlled substance” means any substance named or described in Schedules I-V of s. 893.03, F.S. S. 893.02(4), F.S.

² “Potential for abuse” means that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user’s health or safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user’s own initiative rather than on the basis of professional medical advice. S. 893.035(3)(a), F.S.

³ See s. 893.03, F.S.

⁴ S. 893.03(1), F.S.

⁵ S. 893.03(2), F.S.

⁶ S. 893.03(3), F.S.

⁷ S. 893.03(4), F.S.

⁸ S. 893.03(5), F.S.

⁹ 21 U.S.C. § 812.

¹⁰ 21 U.S.C. § 811(c).

- The substance’s actual or relative potential for abuse;
- Scientific evidence of the substance’s pharmacological effect, if known;
- The state of current scientific knowledge regarding the substance;
- The substance’s history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to public health;
- The substance’s psychic or physiological dependence liability; and
- Whether the substance is an immediate precursor of a substance already controlled.

Methamphetamine

Methamphetamine is a highly addictive stimulant that affects the central nervous system that is classified as a Schedule II controlled substance under state and federal law.¹¹ Overdoses from methamphetamine increased ten-fold in the period from 2009-2019.¹² During the 12 month period ending August 2020, there were 21,405 methamphetamine overdose deaths in the United States, and 1,273 methamphetamine overdose deaths in Florida.¹³ Recent studies have shown an increase in the use of methamphetamine in combination with opioids, with users reporting the stimulant effect of the methamphetamine acts to balance out the sleepiness that accompanies opioid use.¹⁴ However, the combination can enhance the lethality of the drugs by exacerbating the individual cardiovascular and pulmonary effects of each drug.¹⁵

Statewide Task Force on Opioid Abuse

On April 1, 2019, Governor DeSantis created the Statewide Task Force on Opioid Abuse (Task Force).¹⁶ The Governor directed the Task Force to develop a statewide strategy to identify best practices to combat the opioid epidemic through education, treatment, prevention, recovery, and law enforcement, and compile a report containing legislative recommendations.¹⁷ Two of the recommendations made by the Task Force relating to law enforcement were:

- Include distribution of methamphetamine which proximately causes a user’s death as a first degree felony murder offense; and
- Enhance criminal penalties for the sale of a controlled substance within 1,000 feet of a substance abuse treatment facility.¹⁸

Murder

Under current law, a person 18 years of age or older who unlawfully distributes specified controlled substances commits first degree felony murder if the proximate cause of a victim’s death was the use of such controlled substances. These enumerated controlled substances include:

- A substance controlled under s. 893.03(1), F.S.;¹⁹
- Cocaine, as described in s. 893.03(2)(a)4., F.S.;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- Methadone;
- Alfentanil, as described in s. 893.03(2)(b)1., F.S.;
- Carfentanil, as described in s. 893.03(2)(b)6., F.S.;

¹¹ National Institutes of Health, *Methamphetamine Research Report*, <https://www.drugabuse.gov/publications/research-reports/methamphetamine/overview> (last visited Mar. 22, 2021). S.893.03(2)(c)2., F.S.

¹² *Id.*

¹³ National Center for Health Statistics, *Provisional Drug Overdose Death Counts*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited Mar. 22, 2021).

¹⁴ National Institute on Drug Abuse, *Rising Stimulant Deaths Show that We Face More than Just an Opioid Crisis*, <https://www.drugabuse.gov/about-nida/noras-blog/2020/11/rising-stimulant-deaths-show-we-face-more-than-just-opioid-crisis> (last visited Mar. 22, 2021).

¹⁵ *Id.*

¹⁶ Dose of Reality, *Findings and Recommendation of the Statewide Task Force on Opioid Abuse*, <https://doseofrealityfl.com/pdfs/opioid-task-force-findings-recommendations-opioid-abuse.pdf> (last visited Mar. 22, 2021).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 893.03(1), F.S., contains Schedule I controlled substances.

- Fentanyl, as described in s. 893.03(2)(b)9., F.S.;
- Sufentanil, as described in s. 893.03(2)(b)30., F.S.; or
- A controlled substance analog²⁰ of any substance specified in sub-subparagraphs a.-h.

First degree felony murder is a capital felony²¹, punishable by a sentence of death or life imprisonment without the possibility of parole.²²

Sale of a Controlled Substance

Section 893.13, F.S., prohibits a person from selling, manufacturing²³, or delivering²⁴ a controlled substance. The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold, and the location where the sale takes place. Generally, sale of a controlled substance is punishable as either a second degree felony²⁵ or third degree felony.²⁶ The penalties are enhanced to a second degree felony and first degree felony if the sale occurs within 1,000 feet of the real property of specified locations, including a:

- Child care facility;
- Public or private elementary, middle, or secondary school;
- State, county, or municipal park;
- Community center or publicly owned recreational facility;
- Public or private college, university, or other postsecondary institution;
- Place of worship that conducts religious services;
- Convenience business;
- Public housing facility; or
- Assisted living facility.

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code (CPC) are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.²⁷ If an offense is unranked, the CPC specifies a default level on the OSRC depending on the felony degree of the offense.²⁸

²⁰ A "controlled substance analog" is defined as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- Is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03; and
- Has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03.

²¹ S. 784.02(1)(a), F.S.

²² S. 775.082(1)(a), F.S.

²³ "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

- A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.
- A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale. S. 893.02(15)(a), F.S.

²⁴ "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. S. 893.02(6), F.S.

²⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

²⁶ S. 893.13(1), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

²⁷ S. 921.0022, F.S.

²⁸ S. 921.0023, F.S.

Effect of Proposed Changes

Murder

CS/HB 325 adds methamphetamine, as described in s. 893.03(2)(c)5., F.S., to the list of specified controlled substances which, if the substance is the proximate cause of the victim's death, can subject the person who distributed the controlled substance to a conviction for first degree felony murder. Under the bill, a person convicted of first degree felony murder in a case where the victim died of an overdose of methamphetamine commits a capital felony.

Sale of a Controlled Substance

The bill enhances the penalties for sale of a controlled substance within 1,000 feet of a substance abuse treatment center. Because of the varied nature of drug treatment and recovery programs and facilities, there is not a single comprehensive definition of substance abuse treatment center in statute. To cover the continuum of substance abuse treatment facilities, the bill enhances penalties for the sale of a controlled substance within 1,000 feet of the real property of:

- Any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have or who have been diagnosed as having a mental illness or substance abuse impairment;
- A health care facility licensed under chapter 395, F.S., that provides substance abuse treatment;
- A substance abuse facility licensed under chapter 397, F.S.;
- A clinical treatment, intervention, or prevention facility as defined in s. 397.311(26), F.S.;
- A recovery residence as defined in s. 397.311, F.S.; or
- A pain management clinic as defined in ss. 458.3265 or s. 459.0137, F.S.

Under the bill, the penalties for sale of a controlled substance increase from a third degree felony to a second degree felony, and from a second degree felony to a first degree felony, when committed within 1,000 feet of a specified substance abuse treatment facility. The bill does not rank the enhanced penalties in the OSRC, so the penalty for a second degree felony defaults to a Level 4 offense, and the penalty for a first degree felony defaults to a Level 7 offense.

The bill provides an effective date of October 1, 2021.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered the bill on March 24, 2021 and determined it may increase the prison population by an indeterminate amount.²⁹

²⁹ Criminal Justice Impact Conference, *PCS for HB 325 – Controlled Substance Offenses*, March 24, 2021, On file with the House Justice Appropriations Subcommittee.

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. There were 2 new commitments for drug activity near an assisted living facility in FY 18-19 and no new commitments in FY 19-20. Although this number is low, there are generally over 500 new commitments a year for selling drugs near a restricted place. Per Florida Department of Health, in CY 2019, there were 38,985 nonfatal overdoses and 5,352 fatal overdoses. Of the fatal overdoses, methamphetamine showed 896 instances where it was a contributing drug. It is not known how prison admissions will be impacted by this new language.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2021, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the original bill as it:

- Deleted a provision that changed the standard of proof for causation in a first degree felony murder case involving an overdose of specified controlled substances.
- Deleted provisions creating the crime of culpable negligence resulting in an overdose.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.

³⁰ *Id.*