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CS/HB 95, Engrossed 1

2022 Legislature

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 2 An act relating to controlled substances; amending s.
 3 782.04, F.S.; revising the elements that constitute
 4 the capital offense of murder in the first degree;
 5 revising the elements that constitute the felony
 6 offense of murder in the third degree; amending s.
 7 893.13, F.S.; prohibiting specified activities
 8 involving controlled substances within 1,000 feet of
 9 additional specified facilities; providing criminal
 10 penalties; amending s. 893.135, F.S.; renaming what
 11 the violation of specified offenses are known as from
 12 "trafficking in fentanyl" to "trafficking in dangerous
 13 fentanyl or fentanyl analogues"; increasing the
 14 mandatory minimum terms of imprisonment for specified
 15 offenses; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (a) of subsection (1) and subsection
 20 (4) of section 782.04, Florida Statutes, are amended to read:

21 782.04 Murder.—

22 (1)(a) The unlawful killing of a human being:

23 1. When perpetrated from a premeditated design to effect
 24 the death of the person killed or any human being;

25 2. When committed by a person engaged in the perpetration

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26 | of, or in the attempt to perpetrate, any:
 27 | a. Trafficking offense prohibited by s. 893.135(1),
 28 | b. Arson,
 29 | c. Sexual battery,
 30 | d. Robbery,
 31 | e. Burglary,
 32 | f. Kidnapping,
 33 | g. Escape,
 34 | h. Aggravated child abuse,
 35 | i. Aggravated abuse of an elderly person or disabled
 36 | adult,
 37 | j. Aircraft piracy,
 38 | k. Unlawful throwing, placing, or discharging of a
 39 | destructive device or bomb,
 40 | l. Carjacking,
 41 | m. Home-invasion robbery,
 42 | n. Aggravated stalking,
 43 | o. Murder of another human being,
 44 | p. Resisting an officer with violence to his or her
 45 | person,
 46 | q. Aggravated fleeing or eluding with serious bodily
 47 | injury or death,
 48 | r. Felony that is an act of terrorism or is in furtherance
 49 | of an act of terrorism, including a felony under s. 775.30, s.
 50 | 775.32, s. 775.33, s. 775.34, or s. 775.35, or

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51 s. Human trafficking; or
 52 3. Which resulted from the unlawful distribution by a
 53 person 18 years of age or older of any of the following
 54 substances, or mixture containing any of the following
 55 substances, when such substance or mixture is proven to be the
 56 proximate cause of the death of the user:
 57 a. A substance controlled under s. 893.03(1);
 58 b. Cocaine, as described in s. 893.03(2)(a)4.;
 59 c. Opium or any synthetic or natural salt, compound,
 60 derivative, or preparation of opium;
 61 d. Methadone;
 62 e. Alfentanil, as described in s. 893.03(2)(b)1.;
 63 f. Carfentanil, as described in s. 893.03(2)(b)6.;
 64 g. Fentanyl, as described in s. 893.03(2)(b)9.;
 65 h. Sufentanil, as described in s. 893.03(2)(b)30.; ~~or~~
 66 i. Methamphetamine, as described in s. 893.03(2)(c)5.; or
 67 j. A controlled substance analog, as described in s.
 68 893.0356, of any substance specified in sub-subparagraphs a.-i.
 69 ~~sub-subparagraphs a.-h.,~~
 70
 71 is murder in the first degree and constitutes a capital felony,
 72 punishable as provided in s. 775.082.
 73 (4) The unlawful killing of a human being, when
 74 perpetrated without any design to effect death, by a person
 75 engaged in the perpetration of, or in the attempt to perpetrate,

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- 76 | any felony other than any:
- 77 | (a) Trafficking offense prohibited by s. 893.135(1),
- 78 | (b) Arson,
- 79 | (c) Sexual battery,
- 80 | (d) Robbery,
- 81 | (e) Burglary,
- 82 | (f) Kidnapping,
- 83 | (g) Escape,
- 84 | (h) Aggravated child abuse,
- 85 | (i) Aggravated abuse of an elderly person or disabled
- 86 | adult,
- 87 | (j) Aircraft piracy,
- 88 | (k) Unlawful throwing, placing, or discharging of a
- 89 | destructive device or bomb,
- 90 | (l) Unlawful distribution of any substance listed in sub-
- 91 | subparagraphs (1) (a) 3.a.-j. controlled under s. 893.03(1),
- 92 | cocaine as described in s. 893.03(2) (a) 4., or opium or any
- 93 | synthetic or natural salt, compound, derivative, or preparation
- 94 | of opium by a person 18 years of age or older, when such
- 95 | substance ~~drug~~ is proven to be the proximate cause of the death
- 96 | of the user,
- 97 | (m) Carjacking,
- 98 | (n) Home-invasion robbery,
- 99 | (o) Aggravated stalking,
- 100 | (p) Murder of another human being,

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101 (q) Aggravated fleeing or eluding with serious bodily
 102 injury or death,
 103 (r) Resisting an officer with violence to his or her
 104 person, or
 105 (s) Felony that is an act of terrorism or is in
 106 furtherance of an act of terrorism, including a felony under s.
 107 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35,
 108
 109 is murder in the third degree and constitutes a felony of the
 110 second degree, punishable as provided in s. 775.082, s. 775.083,
 111 or s. 775.084.

112 Section 2. Paragraph (h) of subsection (1) of section
 113 893.13, Florida Statutes, is amended to read:

114 893.13 Prohibited acts; penalties.—

115 (1)

116 (h) Except as authorized by this chapter, a person may not
 117 sell, manufacture, or deliver, or possess with intent to sell,
 118 manufacture, or deliver, a controlled substance in, on, or
 119 within 1,000 feet of the real property comprising a mental
 120 health facility, as that term is used in chapter 394; a health
 121 care facility licensed under chapter 395 which provides
 122 substance abuse treatment; a licensed service provider as
 123 defined in s. 397.311; a facility providing services that
 124 include clinical treatment, intervention, or prevention as
 125 described in s. 397.311(26); a recovery residence as defined in

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126 s. 397.311; an assisted living facility, ~~as defined that term is~~
 127 ~~used~~ in chapter 429; or a pain management clinic as defined in
 128 s. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c. A person who
 129 violates this paragraph with respect to:

130 1. A controlled substance named or described in s.
 131 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
 132 commits a felony of the first degree, punishable as provided in
 133 s. 775.082, s. 775.083, or s. 775.084.

134 2. A controlled substance named or described in s.
 135 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7.,
 136 (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of
 137 the second degree, punishable as provided in s. 775.082, s.
 138 775.083, or s. 775.084.

139 3. Any other controlled substance, except as lawfully
 140 sold, manufactured, or delivered, must be sentenced to pay a
 141 \$500 fine and to serve 100 hours of public service in addition
 142 to any other penalty prescribed by law.

143 Section 3. Paragraph (c) of subsection (1) of section
 144 893.135, Florida Statutes, is amended to read:

145 893.135 Trafficking; mandatory sentences; suspension or
 146 reduction of sentences; conspiracy to engage in trafficking.—

147 (1) Except as authorized in this chapter or in chapter 499
 148 and notwithstanding the provisions of s. 893.13:

149 (c)1. A person who knowingly sells, purchases,
 150 manufactures, delivers, or brings into this state, or who is

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151 knowingly in actual or constructive possession of, 4 grams or
152 more of any morphine, opium, hydromorphone, or any salt,
153 derivative, isomer, or salt of an isomer thereof, including
154 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
155 (3)(c)4., or 4 grams or more of any mixture containing any such
156 substance, but less than 30 kilograms of such substance or
157 mixture, commits a felony of the first degree, which felony
158 shall be known as "trafficking in illegal drugs," punishable as
159 provided in s. 775.082, s. 775.083, or s. 775.084. If the
160 quantity involved:

161 a. Is 4 grams or more, but less than 14 grams, such person
162 shall be sentenced to a mandatory minimum term of imprisonment
163 of 3 years and shall be ordered to pay a fine of \$50,000.

164 b. Is 14 grams or more, but less than 28 grams, such
165 person shall be sentenced to a mandatory minimum term of
166 imprisonment of 15 years and shall be ordered to pay a fine of
167 \$100,000.

168 c. Is 28 grams or more, but less than 30 kilograms, such
169 person shall be sentenced to a mandatory minimum term of
170 imprisonment of 25 years and shall be ordered to pay a fine of
171 \$500,000.

172 2. A person who knowingly sells, purchases, manufactures,
173 delivers, or brings into this state, or who is knowingly in
174 actual or constructive possession of, 28 grams or more of
175 hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as

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176 described in s. 893.03(2)(a)1.g., or any salt thereof, or 28
177 grams or more of any mixture containing any such substance,
178 commits a felony of the first degree, which felony shall be
179 known as "trafficking in hydrocodone," punishable as provided in
180 s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

181 a. Is 28 grams or more, but less than 50 grams, such
182 person shall be sentenced to a mandatory minimum term of
183 imprisonment of 3 years and shall be ordered to pay a fine of
184 \$50,000.

185 b. Is 50 grams or more, but less than 100 grams, such
186 person shall be sentenced to a mandatory minimum term of
187 imprisonment of 7 years and shall be ordered to pay a fine of
188 \$100,000.

189 c. Is 100 grams or more, but less than 300 grams, such
190 person shall be sentenced to a mandatory minimum term of
191 imprisonment of 15 years and shall be ordered to pay a fine of
192 \$500,000.

193 d. Is 300 grams or more, but less than 30 kilograms, such
194 person shall be sentenced to a mandatory minimum term of
195 imprisonment of 25 years and shall be ordered to pay a fine of
196 \$750,000.

197 3. A person who knowingly sells, purchases, manufactures,
198 delivers, or brings into this state, or who is knowingly in
199 actual or constructive possession of, 7 grams or more of
200 oxycodone, as described in s. 893.03(2)(a)1.g., or any salt

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201 | thereof, or 7 grams or more of any mixture containing any such
 202 | substance, commits a felony of the first degree, which felony
 203 | shall be known as "trafficking in oxycodone," punishable as
 204 | provided in s. 775.082, s. 775.083, or s. 775.084. If the
 205 | quantity involved:

206 | a. Is 7 grams or more, but less than 14 grams, such person
 207 | shall be sentenced to a mandatory minimum term of imprisonment
 208 | of 3 years and shall be ordered to pay a fine of \$50,000.

209 | b. Is 14 grams or more, but less than 25 grams, such
 210 | person shall be sentenced to a mandatory minimum term of
 211 | imprisonment of 7 years and shall be ordered to pay a fine of
 212 | \$100,000.

213 | c. Is 25 grams or more, but less than 100 grams, such
 214 | person shall be sentenced to a mandatory minimum term of
 215 | imprisonment of 15 years and shall be ordered to pay a fine of
 216 | \$500,000.

217 | d. Is 100 grams or more, but less than 30 kilograms, such
 218 | person shall be sentenced to a mandatory minimum term of
 219 | imprisonment of 25 years and shall be ordered to pay a fine of
 220 | \$750,000.

221 | 4.a. A person who knowingly sells, purchases,
 222 | manufactures, delivers, or brings into this state, or who is
 223 | knowingly in actual or constructive possession of, 4 grams or
 224 | more of:

225 | (I) Alfentanil, as described in s. 893.03(2)(b)1.;

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226 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

227 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

228 (IV) Sufentanil, as described in s. 893.03(2)(b)30.;

229 (V) A fentanyl derivative, as described in s.

230 893.03(1)(a)62.;

231 (VI) A controlled substance analog, as described in s.

232 893.0356, of any substance described in sub-sub-subparagraphs

233 (I)-(V); or

234 (VII) A mixture containing any substance described in sub-

235 sub-subparagraphs (I)-(VI),

236

237 commits a felony of the first degree, which felony shall be

238 known as "trafficking in dangerous fentanyl or fentanyl

239 analogues," punishable as provided in s. 775.082, s. 775.083, or

240 s. 775.084.

241 b. If the quantity involved under sub-subparagraph a.:

242 (I) Is 4 grams or more, but less than 14 grams, such

243 person shall be sentenced to a mandatory minimum term of

244 imprisonment of 7 ~~3~~ years, and shall be ordered to pay a fine of

245 \$50,000.

246 (II) Is 14 grams or more, but less than 28 grams, such

247 person shall be sentenced to a mandatory minimum term of

248 imprisonment of 20 ~~15~~ years, and shall be ordered to pay a fine

249 of \$100,000.

250 (III) Is 28 grams or more, such person shall be sentenced

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251 to a mandatory minimum term of imprisonment of 25 years, and
 252 shall be ordered to pay a fine of \$500,000.

253 5. A person who knowingly sells, purchases, manufactures,
 254 delivers, or brings into this state, or who is knowingly in
 255 actual or constructive possession of, 30 kilograms or more of
 256 any morphine, opium, oxycodone, hydrocodone, codeine,
 257 hydromorphone, or any salt, derivative, isomer, or salt of an
 258 isomer thereof, including heroin, as described in s.
 259 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 260 more of any mixture containing any such substance, commits the
 261 first degree felony of trafficking in illegal drugs. A person
 262 who has been convicted of the first degree felony of trafficking
 263 in illegal drugs under this subparagraph shall be punished by
 264 life imprisonment and is ineligible for any form of
 265 discretionary early release except pardon or executive clemency
 266 or conditional medical release under s. 947.149. However, if the
 267 court determines that, in addition to committing any act
 268 specified in this paragraph:

269 a. The person intentionally killed an individual or
 270 counseled, commanded, induced, procured, or caused the
 271 intentional killing of an individual and such killing was the
 272 result; or

273 b. The person's conduct in committing that act led to a
 274 natural, though not inevitable, lethal result,

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276 | such person commits the capital felony of trafficking in illegal
277 | drugs, punishable as provided in ss. 775.082 and 921.142. A
278 | person sentenced for a capital felony under this paragraph shall
279 | also be sentenced to pay the maximum fine provided under
280 | subparagraph 1.

281 | 6. A person who knowingly brings into this state 60
282 | kilograms or more of any morphine, opium, oxycodone,
283 | hydrocodone, codeine, hydromorphone, or any salt, derivative,
284 | isomer, or salt of an isomer thereof, including heroin, as
285 | described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
286 | 60 kilograms or more of any mixture containing any such
287 | substance, and who knows that the probable result of such
288 | importation would be the death of a person, commits capital
289 | importation of illegal drugs, a capital felony punishable as
290 | provided in ss. 775.082 and 921.142. A person sentenced for a
291 | capital felony under this paragraph shall also be sentenced to
292 | pay the maximum fine provided under subparagraph 1.

293 | Section 4. This act shall take effect October 1, 2022.