

By Senator Brodeur

10-00273B-23

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1 A bill to be entitled
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 offense of
6 murder in the third degree and constitute a felony of
7 the second degree; defining the term "substantial
8 factor"; creating s. 893.131, F.S.; defining terms;
9 providing criminal penalties for adults who unlawfully
10 distribute, deliver, sell, or dispense specified
11 substances or mixtures and an injury or overdose of
12 the user results; providing enhanced criminal
13 penalties for repeat offenders; providing
14 construction; providing an effective date.

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

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18 Section 1. Paragraph (a) of subsection (1) and subsections
19 (4) and (5) of section 782.04, Florida Statutes, are amended to
20 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
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,

10-00273B-23

2023280__

- 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 adult,
36 j. Aircraft piracy,
37 k. Unlawful throwing, placing, or discharging of a
38 destructive device or bomb,
39 l. Carjacking,
40 m. Home-invasion robbery,
41 n. Aggravated stalking,
42 o. Murder of another human being,
43 p. Resisting an officer with violence to his or her person,
44 q. Aggravated fleeing or eluding with serious bodily injury
45 or death,
46 r. Felony that is an act of terrorism or is in furtherance
47 of an act of terrorism, including a felony under s. 775.30, s.
48 775.32, s. 775.33, s. 775.34, or s. 775.35, or
49 s. Human trafficking; or
50 3. Which resulted from the unlawful distribution by a
51 person 18 years of age or older of any of the following
52 substances, or mixture containing any of the following
53 substances, when such substance or mixture is proven to have
54 caused, or is proven to have been a substantial factor in
55 producing, ~~be the proximate cause of~~ the death of the user:
56 a. A substance controlled under s. 893.03(1);
57 b. Cocaine, as described in s. 893.03(2)(a)4.;
58 c. Opium or any synthetic or natural salt, compound,

10-00273B-23

2023280__

59 derivative, or preparation of opium;
60 d. Methadone;
61 e. Alfentanil, as described in s. 893.03(2)(b)1.;
62 f. Carfentanil, as described in s. 893.03(2)(b)6.;
63 g. Fentanyl, as described in s. 893.03(2)(b)9.;
64 h. Sufentanil, as described in s. 893.03(2)(b)30.;
65 i. Methamphetamine, as described in s. 893.03(2)(c)5.; or
66 j. A controlled substance analog, as described in s.
67 893.0356, of any substance specified in sub-subparagraphs a.-i.,
68
69 is murder in the first degree and constitutes a capital felony,
70 punishable as provided in s. 775.082.
71 (4) The unlawful killing of a human being, when perpetrated
72 without any design to effect death, by a person engaged in the
73 perpetration of, or in the attempt to perpetrate, any felony
74 other than any:
75 (a) Trafficking offense prohibited by s. 893.135(1),
76 (b) Arson,
77 (c) Sexual battery,
78 (d) Robbery,
79 (e) Burglary,
80 (f) Kidnapping,
81 (g) Escape,
82 (h) Aggravated child abuse,
83 (i) Aggravated abuse of an elderly person or disabled
84 adult,
85 (j) Aircraft piracy,
86 (k) Unlawful throwing, placing, or discharging of a
87 destructive device or bomb,

10-00273B-23

2023280__

88 (1) Unlawful distribution of any substance listed in sub-
89 subparagraphs (1)(a)3.a.-j. by a person 18 years of age or
90 older, when such substance is proven to have caused, or is
91 proven to have been a substantial factor in producing, ~~be the~~
92 ~~proximate cause of~~ the death of the user,

93 (m) Carjacking,

94 (n) Home-invasion robbery,

95 (o) Aggravated stalking,

96 (p) Murder of another human being,

97 (q) Aggravated fleeing or eluding with serious bodily
98 injury or death,

99 (r) Resisting an officer with violence to his or her
100 person, or

101 (s) Felony that is an act of terrorism or is in furtherance
102 of an act of terrorism, including a felony under s. 775.30, s.
103 775.32, s. 775.33, s. 775.34, or s. 775.35,

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105 is murder in the third degree and constitutes a felony of the
106 second degree, punishable as provided in s. 775.082, s. 775.083,
107 or s. 775.084.

108 (5) As used in this section, the term:

109 (a) "Substantial factor" means that the use of a substance
110 or mixture alone is sufficient to cause death or that the use of
111 the substance or mixture contributed to the resulting death,
112 regardless of whether any other substance or mixture used is
113 also sufficient to cause death or contributed to the death.

114 (b) "Terrorism" means an activity that:

115 ~~(a)1.a.~~ 1.a. Involves a violent act or an act dangerous to human
116 life which is a violation of the criminal laws of this state or

10-00273B-23

2023280__

117 of the United States; or

118 ~~b.2.~~ Involves a violation of s. 815.06; and

119 ~~2.(b)~~ Is intended to:

120 ~~a.1.~~ Intimidate, injure, or coerce a civilian population;

121 ~~b.2.~~ Influence the policy of a government by intimidation
122 or coercion; or

123 ~~c.3.~~ Affect the conduct of government through destruction
124 of property, assassination, murder, kidnapping, or aircraft
125 piracy.

126 Section 2. Section 893.131, Florida Statutes, is created to
127 read:

128 893.131 Distribution of controlled substances resulting in
129 injury or overdose.—

130 (1) As used in this section, the term:

131 (a) "Emergency opioid antagonist" has the same meaning as
132 in s. 381.887.

133 (b) "Injury or overdose" means drug toxicity or the
134 temporary loss of locomotor activity, motor coordination, or
135 consciousness or cognitive impairment.

136 (c) "Medical care" means the administration of treatment
137 for the purposes of preserving or sustaining life or the
138 administration of an emergency opioid antagonist.

139 (d) "Substantial factor" means that the use of a substance
140 or mixture alone is sufficient to cause an injury or overdose or
141 that the use of the substance or mixture contributed to a
142 resulting injury or overdose, regardless of whether any other
143 substance or mixture used is also sufficient to cause an injury
144 or overdose.

145 (2) (a) Except as provided in paragraph (b), a person 18

10-00273B-23

2023280__

146 years of age or older who unlawfully distributes, delivers,
147 sells, or dispenses:

- 148 1. Heroin, as described in s. 893.03(1)(b)11.;
- 149 2. Alfentanil, as described in s. 893.03(2)(b)1.;
- 150 3. Carfentanil, as described in s. 893.03(2)(b)6.;
- 151 4. Fentanyl, as described in s. 893.03(2)(b)9.;
- 152 5. Sufentanil, as described in s. 893.03(2)(b)30.;
- 153 6. Fentanyl derivatives, as described in s.

154 893.03(1)(a)62.;

155 7. A controlled substance analog, as described in s.
156 893.0356, of any substance specified in subparagraphs 1.-6.; or

157 8. A mixture containing any substance specified in
158 subparagraphs 1.-7.,

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160 and an injury or overdose of the user results, commits a felony
161 of the second degree, punishable as provided in s. 775.082, s.
162 775.083, or s. 775.084, when such substance or mixture is proven
163 to have caused or been a substantial factor in causing the
164 injury or overdose suffered by the user.

165 (b) A person 18 years of age or older who commits a
166 violation of paragraph (a) and who has previously been convicted
167 of a violation of paragraph (a) commits a felony of the first
168 degree, punishable as provided in s. 775.082, s. 775.083, or s.
169 775.084.

170 (3) The unlawful distribution, delivery, sale, or
171 dispensing of a substance or mixture specified in subparagraphs
172 (2)(a)1.-8. may be attributed directly or indirectly to the
173 person who was injured or who overdosed or as a result of a
174 further unlawful distribution, delivery, sale, or dispensing of

10-00273B-23

2023280__

175 such substance or mixture to another person.

176 (4) The administration of medical care by an emergency
177 responder, including, but not limited to, a law enforcement
178 officer, a paramedic, or an emergency medical technician, or the
179 administration of an emergency opioid antagonist by such
180 emergency responder, is prima facie evidence that the person
181 receiving medical care was injured or overdosed.

182 Section 3. This act shall take effect July 1, 2023.