

By the Committee on Criminal Justice; and Senator Brodeur

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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 applicability and construction; providing an effective
15 date.

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

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

22 782.04 Murder.—

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

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

26 2. When committed by a person engaged in the perpetration
27 of, or in the attempt to perpetrate, any:

28 a. Trafficking offense prohibited by s. 893.135(1),

29 b. Arson,

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- 30 c. Sexual battery,
31 d. Robbery,
32 e. Burglary,
33 f. Kidnapping,
34 g. Escape,
35 h. Aggravated child abuse,
36 i. Aggravated abuse of an elderly person or disabled 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 person,
45 q. Aggravated fleeing or eluding with serious bodily injury
46 or death,
47 r. Felony that is an act of terrorism or is in furtherance
48 of an act of terrorism, including a felony under s. 775.30, s.
49 775.32, s. 775.33, s. 775.34, or s. 775.35, or
50 s. Human trafficking; or
51 3. Which resulted from the unlawful distribution by a
52 person 18 years of age or older of any of the following
53 substances, or mixture containing any of the following
54 substances, when such substance or mixture is proven to have
55 caused, or is proven to have been a substantial factor in
56 producing, ~~be the 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.;

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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.;
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
70 is murder in the first degree and constitutes a capital felony,
71 punishable as provided in s. 775.082.

72 (4) The unlawful killing of a human being, when perpetrated
73 without any design to effect death, by a person engaged in the
74 perpetration of, or in the attempt to perpetrate, any felony
75 other than any:

- 76 (a) Trafficking offense prohibited by s. 893.135(1),
77 (b) Arson,
78 (c) Sexual battery,
79 (d) Robbery,
80 (e) Burglary,
81 (f) Kidnapping,
82 (g) Escape,
83 (h) Aggravated child abuse,
84 (i) Aggravated abuse of an elderly person or disabled
85 adult,
86 (j) Aircraft piracy,
87 (k) Unlawful throwing, placing, or discharging of a

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88 destructive device or bomb,

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

94 (m) Carjacking,

95 (n) Home-invasion robbery,

96 (o) Aggravated stalking,

97 (p) Murder of another human being,

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

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

102 (s) Felony that is an act of terrorism or is in furtherance
103 of an act of terrorism, including a felony under s. 775.30, s.
104 775.32, s. 775.33, s. 775.34, or s. 775.35,

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

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

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

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

116 ~~(a)~~ 1.a. Involves a violent act or an act dangerous to human

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117 life which is a violation of the criminal laws of this state or
118 of the United States; or

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

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

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

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

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

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

129 893.131 Distribution of controlled substances resulting in
130 injury or overdose.-

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

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

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

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

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

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146 (2) (a) Except as provided in paragraph (b), a person 18
147 years of age or older who unlawfully distributes, delivers,
148 sells, or dispenses:

149 1. Heroin, as described in s. 893.03(1) (b)11.;

150 2. Alfentanil, as described in s. 893.03(2) (b)1.;

151 3. Carfentanil, as described in s. 893.03(2) (b)6.;

152 4. Fentanyl, as described in s. 893.03(2) (b)9.;

153 5. Sufentanil, as described in s. 893.03(2) (b)30.;

154 6. Fentanyl derivatives, as described in s.
155 893.03(1) (a)62.;

156 7. A controlled substance analog, as described in s.
157 893.0356, of any substance specified in subparagraphs 1.-6.; or

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

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

166 (b) A person 18 years of age or older who commits a
167 violation of paragraph (a) and who has previously been convicted
168 of a violation of paragraph (a) commits a felony of the first
169 degree, punishable as provided in s. 775.082, s. 775.083, or s.
170 775.084.

171 (3) The unlawful distribution, delivery, sale, or
172 dispensing of a substance or mixture specified in subparagraphs
173 (2) (a)1.-8. may be from a person who directly, or indirectly
174 through another person, provided the substance or mixture to the

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175 user who was injured or overdosed.

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.