

By the Committee on Fiscal Policy; the Appropriations Committee on Criminal and Civil Justice; 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 specified substances or mixtures and an
11 injury or overdose of the user results; providing
12 enhanced criminal penalties for repeat offenders;
13 providing applicability and construction; amending s.
14 921.0022, F.S.; ranking an offense on the offense
15 severity ranking chart of the Criminal Punishment
16 Code; providing an effective date.

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

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

23 782.04 Murder.—

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

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

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

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

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- 30 b. Arson,
- 31 c. Sexual battery,
- 32 d. Robbery,
- 33 e. Burglary,
- 34 f. Kidnapping,
- 35 g. Escape,
- 36 h. Aggravated child abuse,
- 37 i. Aggravated abuse of an elderly person or disabled adult,
- 38 j. Aircraft piracy,
- 39 k. Unlawful throwing, placing, or discharging of a
- 40 destructive device or bomb,
- 41 l. Carjacking,
- 42 m. Home-invasion robbery,
- 43 n. Aggravated stalking,
- 44 o. Murder of another human being,
- 45 p. Resisting an officer with violence to his or her person,
- 46 q. Aggravated fleeing or eluding with serious bodily injury
- 47 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
- 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 have
- 56 caused, or is proven to be a substantial factor in producing, ~~be~~
- 57 ~~the proximate cause of~~ the death of the user:
- 58 a. A substance controlled under s. 893.03(1);

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- 59 b. Cocaine, as described in s. 893.03(2)(a)4.;
- 60 c. Opium or any synthetic or natural salt, compound,
- 61 derivative, or preparation of opium;
- 62 d. Methadone;
- 63 e. Alfentanil, as described in s. 893.03(2)(b)1.;
- 64 f. Carfentanil, as described in s. 893.03(2)(b)6.;
- 65 g. Fentanyl, as described in s. 893.03(2)(b)9.;
- 66 h. Sufentanil, as described in s. 893.03(2)(b)30.;
- 67 i. Methamphetamine, as described in s. 893.03(2)(c)5.; or
- 68 j. A controlled substance analog, as described in s.
- 69 893.0356, of any substance specified in sub-subparagraphs a.-i.,
- 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 perpetrated
- 74 without any design to effect death, by a person engaged in the
- 75 perpetration of, or in the attempt to perpetrate, any felony
- 76 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,

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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. by a person 18 years of age or
92 older, when such substance is proven to have caused, or is
93 proven to have been a substantial factor in producing, ~~be the~~
94 ~~proximate cause of~~ the death of the user,

95 (m) Carjacking,

96 (n) Home-invasion robbery,

97 (o) Aggravated stalking,

98 (p) Murder of another human being,

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

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

103 (s) Felony that is an act of terrorism or is in furtherance
104 of an act of terrorism, including a felony under s. 775.30, s.
105 775.32, s. 775.33, s. 775.34, or s. 775.35,

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

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

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

144 (2) (a) Except as provided in paragraph (b), a person 18
145 years of age or older who unlawfully distributes:

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

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

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

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

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

151 6. Fentanyl derivatives, as described in s.

152 893.03(1)(a)62.;

153 7. A controlled substance analog, as described in s.

154 893.0356, of any substance specified in subparagraphs 1.-6.; or

155 8. A mixture containing any substance specified in
156 subparagraphs 1.-7.,

157
158 and an injury or overdose of the user results, commits a felony
159 of the second degree, punishable as provided in s. 775.082, s.
160 775.083, or s. 775.084, when such substance or mixture is proven
161 to have caused or been a substantial factor in causing the
162 injury or overdose of the user.

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

168 (3) A person violates this section if he or she, either
169 directly or indirectly through another person, distributed to
170 the user who was injured or who overdosed the substance or
171 mixture specified in subparagraphs (2)(a)1.-8.

172 (4) The administration of medical care by an emergency
173 responder, including, but not limited to, a law enforcement
174 officer, a paramedic, or an emergency medical technician, or the

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175 administration of an emergency opioid antagonist by such
 176 emergency responder, is prima facie evidence that the person
 177 receiving medical care was injured or overdosed.

178 (5) A person who experiences, or has a good faith belief
 179 that he or she is experiencing, an alcohol-related or a drug-
 180 related overdose and receives medical assistance, or a person
 181 acting in good faith who seeks medical assistance for an
 182 individual experiencing, or believed to be experiencing, an
 183 alcohol-related or a drug-related overdose, is afforded the
 184 protections provided under s. 893.21.

185 Section 3. Paragraph (f) of subsection (3) of section
 186 921.0022, Florida Statutes, is amended to read:

187 921.0022 Criminal Punishment Code; offense severity ranking
 188 chart.—

189 (3) OFFENSE SEVERITY RANKING CHART

190 (f) LEVEL 6

191

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure,

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without a license.

195

499.0051(2) 2nd Knowing forgery of transaction history, transaction information, or transaction statement.

196

499.0051(3) 2nd Knowing purchase or receipt of prescription drug from unauthorized person.

197

499.0051(4) 2nd Knowing sale or transfer of prescription drug to unauthorized person.

198

775.0875(1) 3rd Taking firearm from law enforcement officer.

199

784.021(1)(a) 3rd Aggravated assault; deadly weapon without intent to kill.

200

784.021(1)(b) 3rd Aggravated assault; intent to commit felony.

201

784.041 3rd Felony battery; domestic battery by strangulation.

202

784.048(3) 3rd Aggravated stalking; credible threat.

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203

784.048 (5) 3rd Aggravated stalking of person under 16.

204

784.07 (2) (c) 2nd Aggravated assault on law enforcement officer.

205

784.074 (1) (b) 2nd Aggravated assault on sexually violent predators facility staff.

206

784.08 (2) (b) 2nd Aggravated assault on a person 65 years of age or older.

207

784.081 (2) 2nd Aggravated assault on specified official or employee.

208

784.082 (2) 2nd Aggravated assault by detained person on visitor or other detainee.

209

784.083 (2) 2nd Aggravated assault on code inspector.

210

787.02 (2) 3rd False imprisonment; restraining with purpose other than those in s. 787.01.

211

790.115 (2) (d) 2nd Discharging firearm or weapon

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on school property.

212

790.161(2)

2nd

Make, possess, or throw destructive device with intent to do bodily harm or damage property.

213

790.164(1)

2nd

False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.

214

790.19

2nd

Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

215

794.011(8)(a)

3rd

Solicitation of minor to participate in sexual activity by custodial adult.

216

794.05(1)

2nd

Unlawful sexual activity with specified minor.

217

800.04(5)(d)

3rd

Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.

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218

800.04 (6) (b) 2nd Lewd or lascivious conduct;
offender 18 years of age or
older.

219

806.031 (2) 2nd Arson resulting in great bodily
harm to firefighter or any
other person.

220

810.02 (3) (c) 2nd Burglary of occupied structure;
unarmed; no assault or battery.

221

810.145 (8) (b) 2nd Video voyeurism; certain minor
victims; 2nd or subsequent
offense.

222

812.014 (2) (b) 1. 2nd Property stolen \$20,000 or
more, but less than \$100,000,
grand theft in 2nd degree.

223

812.014 (6) 2nd Theft; property stolen \$3,000
or more; coordination of
others.

224

812.015 (9) (a) 2nd Retail theft; property stolen
\$750 or more; second or
subsequent conviction.

225

812.015 (9) (b) 2nd Retail theft; aggregated

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property stolen within 30 days
is \$3,000 or more; coordination
of others.

226

812.015 (9) (d) 2nd Retail theft; multiple thefts
within specified period.

227

812.13 (2) (c) 2nd Robbery, no firearm or other
weapon (strong-arm robbery).

228

817.4821 (5) 2nd Possess cloning paraphernalia
with intent to create cloned
cellular telephones.

229

817.49 (2) (b) 2. 2nd Willful making of a false
report of a crime resulting in
death.

230

817.505 (4) (b) 2nd Patient brokering; 10 or more
patients.

231

825.102 (1) 3rd Abuse of an elderly person or
disabled adult.

232

825.102 (3) (c) 3rd Neglect of an elderly person or
disabled adult.

233

825.1025 (3) 3rd Lewd or lascivious molestation
of an elderly person or

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disabled adult.

234

825.103(3)(c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

235

827.03(2)(c) 3rd Abuse of a child.

236

827.03(2)(d) 3rd Neglect of a child.

237

827.071(2) & (3) 2nd Use or induce a child in a sexual performance, or promote or direct such performance.

238

828.126(3) 3rd Sexual activities involving animals.

239

836.05 2nd Threats; extortion.

240

836.10 2nd Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.

241

843.12 3rd Aids or assists person to escape.

242

847.011 3rd Distributing, offering to distribute, or possessing with

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intent to distribute obscene materials depicting minors.

243

847.012 3rd Knowingly using a minor in the production of materials harmful to minors.

244

847.0135(2) 3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

245

893.131(2)(a) 2nd Distribution of controlled substances resulting in injury or overdose.

246

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

247

918.13(2)(b) 2nd Tampering with or fabricating physical evidence relating to a capital felony.

248

944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

