

HB 365

2023

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.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
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,
 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

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 have been a substantial factor in
57 producing, ~~be the proximate cause of~~ the death of the user:

58 a. A substance controlled under s. 893.03(1);

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
74 perpetrated without any design to effect death, by a person
75 engaged in the perpetration of, or in the attempt to perpetrate,

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. 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
 104 furtherance of an act of terrorism, including a felony under s.
 105 775.30, s. 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 a substance
 112 or mixture alone is sufficient to cause death or that the use of
 113 the substance or mixture contributed to the resulting death,
 114 regardless of whether any other substance or mixture used is
 115 also sufficient to cause death or contributed to the death.

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

117 ~~(a)1.a.~~ Involves a violent act or an act dangerous to
 118 human life which is a violation of the criminal laws of this
 119 state or of the United States; or

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

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

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

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

125 ~~c.3.~~ Affect the conduct of government through destruction

126 of property, assassination, murder, kidnapping, or aircraft
 127 piracy.

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

130 893.131 Distribution of controlled substances resulting in
 131 injury or overdose.—

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

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

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

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

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

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

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

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

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

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

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

155 6. Fentanyl derivatives, as described in s.

156 893.03(1)(a)62.;

157 7. A controlled substance analog, as described in s.
158 893.0356, of any substance specified in subparagraphs 1.-6.; or

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

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

167 (b) A person 18 years of age or older who commits a
168 violation of paragraph (a) and who has previously been convicted
169 of a violation of paragraph (a) commits a felony of the first
170 degree, punishable as provided in s. 775.082, s. 775.083, or s.
171 775.084.

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

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176 | unlawful distribution, delivery, sale, or dispensing of such
177 | substance or mixture to another person.

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

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