

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 718

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Collins and others

SUBJECT: Exposures of First Responders to Fentanyl and Fentanyl Analogs

DATE: February 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u>Vaughan</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 718 creates s. 893.132, F.S., relating to fentanyl exposure for first responders causing overdose or serious bodily injury. First responders as outlined in the bill include emergency medical technicians and paramedics, firefighters, correctional officers, correctional probation officers, and state or local law enforcement officers.

The bill provides that it is a second degree felony for a person 18 years of age or older who, in the course of unlawfully possessing dangerous fentanyl or fentanyl analogs, recklessly exposes a first responder to a specified substance that results in an overdose or serious bodily injury of the first responder. The specified substances in the bill include fentanyl or fentanyl analogs.

Such substance or mixture must be proved to have caused or been a substantial factor in causing the overdose or serious bodily injury.

The bill provides that it is a defense to a violation of this section that a first responder acted outside the scope of ordinary care generally exercised by a member of his or her profession, and in doing so, caused or substantially contributed to his or her exposure.

The bill will have a positive insignificant prison bed impact. See Section V., Fiscal Impact Statement.

The bill takes effect October 1, 2024.

II. Present Situation:

Fentanyl is a controlled substance as defined in s. 893.03, F.S., which classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the potential for abuse¹ of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

“Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally.”² Fentanyl is a Schedule (2)(b) controlled substance.³ Drug offenses currently account for 23.6 percent of all new prison admissions in the Department of Corrections.⁴

¹ Section 893.035(3)(a), F.S., defines potential for abuse as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

² National Institute on Drug Abuse, *Fentanyl DrugFacts*, (footnotes omitted), available at <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited on December 21, 2023). As a medicine, fentanyl is “typically used to treat patients with severe pain, especially after surgery[,]” and “is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids.” Id.

³ Section 893.03(2)(b)9., F.S.

⁴ Florida Department of Corrections, *Florida’s Criminal Punishment Code: Assessment and Analysis*, available at, <https://fdc.myflorida.com/pub/scoresheet/criminal%20Punishment%20Code%202023.pdf> (last visited January 16, 2024).

Controlled Substance Analog

A “controlled substance analog” is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

Crimes Related to Fentanyl and Related Substances

Sale of a Controlled Substance

Section 893.13(1), F.S., prohibits a person from selling, manufacturing,⁵ or delivering,⁶ or possessing with the intent to sell, manufacture, or deliver a controlled substance. The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold, and the location where the sale takes place.

Under current law, selling, manufacturing, or delivering, or possessing with the intent to sell, manufacture, or deliver, fentanyl, alfentanil, carfentanil, sufentanil, a fentanyl derivative, a controlled substance analog is punishable as a second degree felony.^{7,8}

Sale of a Controlled Substance to a Minor

Section 893.13(4), F.S., prohibits a person 18 years of age or older from:

- Delivering a controlled substance to a person younger than 18 years of age;
- Using or hiring a person younger than 18 years of age as an agent or employee in the sale or delivery of a controlled substance; or
- Using a person younger than 18 years of age to assist in avoiding detection or apprehension for a violation of ch. 893, F.S.

A violation is punishable as either a first, second, or third degree felony depending on the controlled substance that is sold or delivered.

⁵ “Manufacture” means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by: a practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice; a practitioner, or his or her authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale. Section 893.02(15)(a), F.S.

⁶ “Deliver” or “delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. Section 893.02(6), F.S.

⁷ A second degree felony is punishable by a term of imprisonment not exceeding 30 years and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 893.13(1)(a)1., F.S.

Under current law, delivering fentanyl or fentanyl derivatives to a person younger than 18 years of age is punishable as a first degree felony.⁹

Distribution Resulting in Overdose or Serious Bodily Injury

Section 893.131, F.S., provides that a person 18 years of age or older who unlawfully distributes¹⁰ the following substances and an overdose or serious bodily injury of the user results, commits a second degree felony:

- Heroin, as described in s. 893.03(1)(b)11., F.S.;
- Alfentanil, as described in s. 893.03(2)(b)1., F.S.;
- Carfentanil, as described in s. 893.03(2)(b)6., F.S.;
- Fentanyl, as described in s. 893.03(2)(b)9., F.S.;
- Sufentanil, as described in s. 893.03(2)(b)30., F.S.;
- Fentanyl derivatives, as described in s. 893.03(1)(a)62., F.S.;
- A controlled substance analog, as described in s. 893.0356, F.S., of any substance specified above; or
- A mixture containing any substance specified above.

The substance or mixture must be proved to have caused or been a substantial factor in causing the overdose or serious bodily injury.

A second or subsequent violation is a first degree felony.¹¹

Drug Trafficking

Drug trafficking occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into the state, or is in actual or constructive possession of, a specified quantity of a controlled substance.¹² Generally, a drug trafficking offense is punishable as a first degree felony.^{13,14} Section 893.135, F.S., outlines threshold amounts of the applicable controlled substance for each trafficking offense. Drug trafficking offenses are subject to mandatory minimum sentences and heightened fines, which are determined by the threshold amounts.

Under s. 893.135(1)(c)4., F.S., a person commits the first degree felony offense of trafficking in dangerous fentanyl or fentanyl analogues if he or she knowingly sells, purchases, manufactures,

⁹ Section 893.13(4)(a), F.S.

¹⁰ Sections 893.131(1)(a) and 893.02, F.S., defines distribute as to deliver, other than by administering or dispensing, a controlled substance.

¹¹ Section 893.131(2)(b), F.S.

¹² Florida law criminalizes trafficking in cannabis; cocaine; illegal drugs, which include morphine, opium, hydromorphone, or any salt derivative, isomer, or salt of an isomer thereof, including heroin; hydrocodone, oxycodone; fentanyl; phencyclidine; methaqualone; amphetamine; flunitrazepam; gamma-hydroxybutyric (GHB); gamma-butyrolactone (GBL); 1,4-Butanediol; phenethylamines; lysergic acid diethylamide (LSD); synthetic cannabinoids; and n-benzyl phenethylamines. Section 893.135, F.S.

¹³A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ Trafficking in certain controlled substances can be a capital offense under specified circumstances. See, e.g., s. 893.135(1)(h)2., F.S. (Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine . . . who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony).

delivers, or brings into this state, or is knowingly in actual or constructive possession of four grams or more of:

- Alfentanil, as described in s. 893.03(2)(b)1., F.S.;
- Carfentanil, as described in s. 893.03(2)(b)6., F.S.;
- Fentanyl, as described in s. 893.03(2)(b)9., F.S.;
- Sufentanil, as described as in s. 893.03(2)(b)30., F.S.;
- A fentanyl derivative, as described in s. 893.03(1)(a)62., F.S.;
- A controlled substance analog, as described in s. 893.0356, F.S., of any substance described in sub-sub-subparagraphs (I)-(V); or
- A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI).

In regards to the weighing of a mixture containing a controlled substance, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture.¹⁵

III. Effect of Proposed Changes:

The bill creates s. 893.132, F.S., relating to fentanyl exposure for first responders causing overdose or serious bodily injury.

The bill provides that it is a second degree felony for a person 18 years of age or older who, in the course of unlawfully possessing dangerous fentanyl or fentanyl analogs, recklessly exposes a first responder to a specified substance that results in an overdose or serious bodily injury of the first responder. The specified substances in the bill include fentanyl or fentanyl analogs as described in s. 893.135(1)(c)4.a.(I)-(VII), F.S.

Such substance or mixture must be proved to have caused or been a substantial factor in causing the overdose or serious bodily injury.

“Expose,” means to cause any of the following, including, but not limited to skin contact, inhalation, ingestion, contact with a needle stick that pricks the skin, or contact with a mucous membrane.

The bill defines first responder to include: emergency medical technicians and paramedics as defined in s. 401.23, F.S.,^{16,17} firefighters as defined in s. 633.102, F.S.,¹⁸ correctional officers as

¹⁵ Section 893.135(6), F.S.

¹⁶ Section 401.23, F.S., defines emergency medical technician as a person who is certified by the department to perform basic life support pursuant to this part.

¹⁷ Section 401.23, F.S., defines Paramedic as a person who is certified by the department to perform basic and advanced life support pursuant to this part.

¹⁸ Section 633.102, F.S., defines Firefighter as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

defined in s. 943.10(2), F.S.,¹⁹ correctional probation officers as defined in s. 943.10(3), F.S.,²⁰ and state or local law enforcement officers as defined in s. 943.10, F.S.²¹

Additionally, the bill defines overdose or serious bodily injury as drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

The bill also defines recklessly as a willful or wanton disregard for safety of other persons.

The bill provides that it is a defense to a violation of this section that a first responder acted outside the scope of ordinary care generally exercised by a member of his or her profession, and in doing so, caused or substantially contributed to his or her exposure.

The bill establishes a criminal penalty of a second degree felony for individuals that recklessly expose first responders to fentanyl resulting in serious bodily injury.

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ Section 943.10(2), F.S., defines “Correctional officer” as any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.

²⁰ Section 943.10(3), F.S. defines “Correctional probation officer” as a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

²¹ Section 943.10, F.S., defines Law enforcement Officers as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined the bill may have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).²² The EDR provides the following information relevant to these felonies and its estimate:

It is not known how many incidents occur each year, but news reports on the matter and research by medical professionals indicate that exposure to fentanyl by first responders is a rare event. Therefore, this new language is not expected to have a significant impact on the prison population. In FY 2022-23, the incarceration rate for a Level 4, 2nd degree felony was 27.6%.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 893.132 of the Florida Statutes.

²²Office of Economic and Demographic Research, SB 718,
<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB718.pdf>

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Criminal and Civil Justice on February 13, 2024:

The committee substitute:

- Provides intent by adding “recklessly” to mean willful or wanton disregard for the safety of other persons in regards to the new 2nd degree felony offense created for exposing fentanyl to responders causing serious bodily injury.
- Provides a defense if the first responder acted outside the scope of ordinary care generally exercised by his or her profession and in doing so contributed to his or her exposure.
- Makes technical and conforming changes.

CS by Criminal Justice on January 23, 2024:

The committee substitute:

- Adds language to include correctional officers or correctional probation officers as first responders relating to fentanyl exposure.
- Reduces the penalty from a first degree felony to a second degree felony and includes language that protects the scope of ordinary care.
- Revises the crime to provide penalties for those persons who expose a first responder to fentanyl or fentanyl analogs be 18 years of age or older.

- B. **Amendments:**

None.