

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 Criminal Justice

BILL: SB 1774

INTRODUCER: Senator Martin

SUBJECT: Rebuttable Presumption for Certain Deaths

DATE: March 17, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	Favorable
2.			ACJ	
3.			FP	

I. Summary:

SB 1774 creates s. 782.073, F.S., to provide a rebuttable presumption in favor of the defense that the death of an alleged victim was the result of a controlled substance if:

- The defendant is charged with second degree murder pursuant to s. 782.04(2), F.S. or manslaughter pursuant to s. 782.07(1), F.S.; and
- A forensic toxicology report indicates that a Schedule I controlled substance was present in the victim at the time of death.

The bill takes effect on July 1, 2025.

II. Present Situation:

On December 9, 2024, Daniel Penny was acquitted of criminally negligent homicide stemming from an encounter on a New York subway train that resulted in the death of Jordan Neely. Jordan Neely boarded the train on May 1, 2023, acting erratically and ranting about being hungry and thirsty, and stating he wanted to return to jail. In an effort to restrain Neely until law enforcement could arrive, Daniel Penny, a former Marine, placed Neely in a chokehold that lasted almost six minutes. A New York City medical examiner ruled Neely died from compression to his neck as a result of the chokehold. However, a forensic pathologist hired by the defense testified that Neely died from a combination of schizophrenia, sickle cell trait, synthetic marijuana found in his system, and the struggle from being restrained.¹

¹ NBC News, *Daniel Penny found not guilty in chokehold death of Jordan Neely*, Griffith and Ortiz (December 9, 2024), available at: <https://www.nbcnews.com/news/us-news/daniel-penny-found-not-guilty-chokehold-death-jordan-neely-rcna180775> (last visited March 11, 2025).

Homicide

Under Florida law, first degree murder is a capital felony^{2,3}. Although first degree murder is commonly thought of as requiring “premeditation,” Florida law classified three separate classes of first degree murder: premeditated first degree murder, felony murder,⁴ and death caused by the unlawful distribution of a controlled substance.⁵

The unlawful killing of a person, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is second degree murder.⁶ Additionally, pursuant to s. 782.04(3), F.S., a person commits a second degree murder, a first degree felony,⁷ if a person is killed during the perpetration of, or during the attempt to perpetrate a specified felony,⁸ by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony.⁹

Manslaughter

Manslaughter is the killing of a person by the act, procurement, or culpable negligence of another, without lawful justification and is a second degree felony.^{10,11} Manslaughter can be divided into voluntary and involuntary manslaughter:¹²

- Voluntary manslaughter is the killing of another person without deliberation, premeditation, or malice aforethought while in the heat of passion or in response to adequate provocation.
- Involuntary manslaughter is negligently causing the death of another person.

Florida Controlled Substance Schedules

Section 893.03, F.S. 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

² Section 782.04(1)(a)1., F.S.

³ A capital felony is generally punishable by a sentence of death or life imprisonment without the possibility of parole and may be sentenced to a fine. Sections 775.082 and 775.083, F.S.

⁴ Section 782.04(1)(a)2., F.S.

⁵ Section 782.04(1)(a)3., F.S.

⁶ Section 782.04(2), F.S.

⁷ A first degree felony is punishable by imprisonment for a term of years not exceeding life or not more than 30 years in state prison and a fine not exceeding \$10,000. Sections 782.04(2), 775.082, and 775.083, F.S.

⁸ Section 782.04(3)(a)-(r) lists the following felonies that apply: trafficking offense prohibited by s. 893.135(1), F.S., arson, sexual battery, robbery, burglary, kidnapping, escape, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aircraft piracy, unlawful throwing, placing, or discharging of a destructive bomb, carjacking, home-invasion robbery, aggravated stalking, murder of another human being, aggravated fleeing or eluding with serious bodily injury or death, resisting an officer with violence to his or her person, and felony that is an act of terrorism or is in furtherance of an act of terrorism.

⁹ Section 782.04(3), F.S.

¹⁰ Section 782.07, F.S.

¹¹ A second degree felony is generally punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹² Cornell Law School, Legal Information Institute, *Manslaughter*, available at: <https://www.law.cornell.edu/wex/manslaughter> (last visited March 11, 2025).

may apply to a substance are the “potential for abuse”¹³ 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.

Schedule I controlled substances include substances such as: heroin, LSD, ecstasy, and marijuana. During the fiscal year 2023-24, nearly 88,000 individuals received substance abuse disorder services through the Department of Children and Families (DCF), a 10 percent increase from the previous year.¹⁴ The 988 Florida Lifeline, a crisis hotline, reported 4,073 calls from individuals experiencing substance use and/or additional concerns.¹⁵

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.

¹³ 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.

¹⁴ Department of Children and Families, *2025 Commission on Mental Health and Substance Use Disorder Interim Report*, pg. 17, available at: <https://www.myflfamilies.com/sites/default/files/2024-12/2025%20Commission%20on%20Mental%20Health%20and%20Substance%20Use%20Disorder%20Interim%20Report.pdf> (last visited March 11, 2025).

¹⁵ *Id.* pg. 18

Rebuttable Presumptions

A rebuttable presumption is a legal principle that presumes something to be true unless proven otherwise and most often found in civil law. For example, there is a rebuttable presumption in many jurisdictions that child support payments will continue until a child reaches the age of majority. This presumption can be rebutted if the party paying child support can show that the child is no longer dependent on them.¹⁶

A mandatory irrebuttable presumption violates due process because it relieves the prosecution of the burden of persuasion on an element of the criminal offense. A rebuttable presumption does not remove the presumed element the state must prove, but it shifts the burden of proof to the defendant to persuade or provide evidence otherwise, violating due process in most cases.¹⁷ However, a rebuttable presumption in favor of the defense does not shift the burden to the defendant.

III. Effect of Proposed Changes:

The bill creates s. 782.073, F.S. to provide a rebuttable presumption in favor of the defense that the death of an alleged victim was the result of a controlled substance if:

- The defendant is charged with second degree murder pursuant to s. 782.04(2), F.S. or manslaughter pursuant to s. 782.07(1), F.S.; and
- A forensic toxicology report indicates that a Schedule I controlled substance was present in the victim at the time of death.

The bill takes effect on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require the cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ WH.Law, *What is a rebuttable presumption?* John Butler (2022), available at: <https://whlawoffices.com/blog/what-is-a-rebuttable-presumption/> (last visited March 12, 2025).

¹⁷ *Ibarrondo v. State*, 1 So. 3d 226 (Fla. 5th DCA 2008).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 782.073 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.