

Committee on Criminal Justice

CS/CS/HB 365 — Controlled Substances

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Plakon and others (CS/CS/CS/SB 280 by Fiscal Policy Committee; Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Brodeur)

The bill amends s. 782.04, F.S., to revise the causation requirement for the first degree murder offense relating to death from unlawful distribution by a person 18 years of age of a specified controlled substance or mixture. As revised, the unlawful distribution occurs when the specified controlled substance is proven to have caused, or is proven to have been a substantial factor in producing, the death of the user. The bill defines “substantial factor” as the use of the substance or mixture alone is sufficient to cause death, regardless of whether any other substance or mixture used is also sufficient to cause death. The “substantial factor” test replaces the “proximate cause” test which required that the controlled substance be the proximate cause of the death of the user.

A person commits third degree murder if he or she unlawfully kills a human being, without any design to effect death, while perpetrating or attempting to perpetrate any felony other than a felony listed in s. 782.04(4), F.S. The unlawful distribution offense previously described is listed in this subsection. The bill makes conforming changes to the description of the offense. As such, a person who causes another’s death by distributing one of these controlled substances cannot be prosecuted for third degree murder because he or she can already be prosecuted for first degree murder.

The bill creates s. 893.131, F.S., to make it a second degree felony or a first degree felony (second or subsequent offense) for an adult to unlawfully distribute heroin, fentanyl, a specified fentanyl-related substance, an analog of any of these substances, or mixture containing any of these substances or its analog, when such substance or mixture is proven to have caused or been a substantial factor in causing the overdose or serious bodily injury of the user. The bill defines “distribute,” “overdose or serious bodily injury,” and other relevant terms. The bill also amends s. 932.0022, F.S., to rank the second degree felony in level 6 of the Criminal Punishment Code offense severity ranking chart.

Section 893.131, F.S., also does the following:

- Provides that the administration of medical care by an emergency responder, including, but not limited to, a law enforcement officer, a paramedic, or an emergency medical technician is prima facie evidence that the person receiving medical care experienced an overdose or serious bodily injury.
- Provides that a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or drug-related overdose and receives medical assistance, or a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or drug-related overdose, is afforded the protections provided under s. 893.21, F.S., which, currently provides that a

person seeking such medical assistance may not be arrested, charged, prosecuted, or penalized for drug possession or use or possession of drug paraphernalia.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.

Vote: Senate 31-6; House 85-28