

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 970

INTRODUCER: Senator Brandes

SUBJECT: Alcohol and Drug-related Overdoses

DATE: January 8, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 970 substantially amends and expands s. 893.21, F.S., which currently provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance. This immunity also extends to a person who experiences a drug-related overdose and is in need of medical assistance.

Specifically, the bill does the following:

- Extends immunity to arrests;
- Includes alcohol overdoses;
- Extends immunity to a person who seeks medical assistance for an individual “believed to be experiencing” an alcohol or drug-related overdose, and to a person who has a “good faith belief that he or she is experiencing” such overdose;
- Expands the list of crimes for which a person may receive immunity to include possession of alcoholic beverages by a person under age 21, first degree murder involving unlawful distribution of a controlled substance, and any controlled substance or drug paraphernalia offense;
- Provides that a person seeking medical assistance in accordance with the statute may not be penalized for a violation of a condition of pretrial release, probation, or parole as a result of seeking such assistance; and
- Provides that an arrest or charge for an offense listed in the statute may not be grounds for suppression of evidence in other criminal prosecutions.

II. Present Situation:

Data on Drug Overdose Deaths in Florida

The Florida Bureau of Vital Statistics reported 102,173 deaths in Florida during the first six months of 2016.¹ Of the cases seen by Florida's medical examiners, toxicology results determined that ethanol (ethyl alcohol) and/or various controlled substances were present at the time of death in 5,392 cases.² According to the Florida Medical Examiner's Commission (FMEC), the "vast majority of the 5,392 deaths had more than one drug occurrence," meaning more than one drug was detected in the decedents.³

Some general statewide trends noted by the FMEC in its most recent report for the first half of 2016 (January-June) include:

- Total drug-related deaths increased by 13.9 percent (658 more) when compared with the first half of 2015.
- 3,044 individuals (466 more deaths than the first half of 2015) died with one or more prescription drugs in their system. The drugs were identified as both the cause of death and present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol.
- 1,616 individuals (440 more deaths than the first half of 2015) died with at least one prescription drug in their system that was identified as the cause of death. These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol.
- The drugs that caused the most deaths were fentanyl (704), cocaine (643), benzodiazepines (632, including 355 alprazolam deaths), morphine (559), heroin (406), ethyl alcohol (405), oxycodone (324), methadone (156), and fentanyl analogs (149). Of these drugs, heroin (93.5 percent), fentanyl (87.5 percent), fentanyl analogs (81.4 percent), methadone (65.0 percent), morphine (63.7 percent), cocaine (56.2 percent), and oxycodone (51.3 percent) were listed as causing death in more than 50 percent of the deaths in which these drugs were found.⁴

"Good Samaritan" Laws Regarding Drug Overdoses

According to the National Conference of State Legislatures (NCSL), "[d]rug overdoses are a major cause of preventable death in the United States. Increasingly, this includes prescription opioids, along with illegal opiate drugs like heroin."⁵ The NCSL notes that "[o]pioid overdoses can be reversed with the timely administration of a medication called naloxone[.]" an FDA-

¹ *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2016 Interim Report* (May 2017), p. 1, Florida Medical Examiners Commission, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Interim-Drug-Report.aspx> (last visited on December 12, 2017).

² *Id.*

³ *Id.*

⁴ *Id.* at p. 2.

⁵ "Drug Overdose Immunity 'Good Samaritan' Laws" (July 1, 2014), National Conference of State Legislatures (on file with the Senate Committee on Criminal Justice).

approved drug that “can be administered in a number of ways that make it possible for a lay person to use.”⁶

According to the NCSL, “[o]ften family and friends are in the best position to administer this lifesaving drug to their loved ones who overdose. Access to naloxone, however, was relatively limited until legislatures provided specific statutory protections for nonmedical professionals to possess and administer naloxone without a prescription.”⁷ Many legislatures have enacted a law allowing naloxone administration and this law is often coupled with a law providing limited immunity from criminal prosecution for providing such medical assistance:

To encourage people to seek out medical attention for an overdose or for follow-up care after naloxone has been administered, 40 states⁸ and the District of Columbia have enacted some form of a Good Samaritan or 911 drug immunity law. These laws generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses when a person who is either experiencing an opiate-related overdose or observing one calls 911 for assistance or seeks medical attention. State laws are also increasingly providing immunity from violations of pretrial, probation or parole conditions and violations of protection or restraining orders.

The scope of what offenses and violations are covered by immunity provisions varies by state. Some states have opted for more restricted immunity while others, like Vermont, have provided immunity from a more expansive list of controlled substance offenses.

These laws often require a caller to have a reasonable belief that someone is experiencing an overdose emergency and is reporting that emergency in good faith. Good faith is often defined to exclude seeking help during the course of the execution of an arrest or a search warrant. Some laws also specify that immunity for covered offenses is not ground for suppression of evidence of other crimes. Other requirements frequently include remaining on scene until help arrives and cooperating with emergency personnel when they arrive.⁹

Section 381.887, F.S., is Florida’s law providing civil immunity to a person who administers an “emergency opioid antagonist”¹⁰ in compliance with that section. Section 893.21, F.S., Florida’s “Good Samaritan” overdose immunity law, provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged,

⁶ “Drug Overdose Immunity and Good Samaritan Laws” (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on December 12, 2017).

⁷ *Id.*

⁸ According to the NCSL, the following states have an overdose immunity law: Alabama; Alaska; Arkansas; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Illinois; Indiana; Kentucky; Louisiana; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Tennessee; Utah; Virginia; Vermont; Washington; West Virginia; and Wisconsin. *Supra*, n. 6.

⁹ *Supra*, n. 6.

¹⁰ “Emergency opioid antagonist” means naloxone hydrochloride or any similarly acting drug that blocks the effects of opioids administered from outside the body and that is approved by the United States Food & Drug Administration for the treatment of an opioid overdose. Section 381.887(1)(d), F.S.

prosecuted, or penalized for possession of a controlled substance. This immunity also extends to a person who experiences a drug-related overdose and is in need of medical assistance.¹¹

Section 893.21, F.S.

Section 893.21(1), F.S., provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose¹² may not be charged, prosecuted, or penalized pursuant to ch. 893, F.S. (the “Florida Comprehensive Drug Abuse Prevention and Control Act”)¹³ for possession of a controlled substance¹⁴ if the evidence for possession of a controlled substance was obtained as a result of the person’s seeking medical assistance.

Section 893.21(2), F.S., provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized pursuant to this chapter for possession of a controlled substance if the evidence for possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.

Section 893.21(3), F.S., provides that protection in s. 893.21, F.S., from prosecution for possession offenses under ch. 893, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

III. Effect of Proposed Changes:

The bill substantially amends and expands s. 893.21, F.S., Florida’s overdose immunity statute. Currently, this statute applies only to drug-related overdoses. The bill adds alcohol overdoses.

Currently, s. 893.21(1) and (2), F.S., do not address immunity from arrests. The bill adds arrests.

Currently, s. 893.21(1), F.S., applies to a person acting in good faith who seeks medical assistance for an individual “experiencing” an overdose. The bill expands immunity to a person who seeks such assistance for an individual “believed to be experiencing” an overdose.

Currently, s. 893.21(2), F.S., applies to a person who “experiences” an overdose and is in need of medical assistance. The bill expands immunity to a person who “has a good faith belief that he or she is experiencing” an overdose and is in need of medical assistance.

Currently, the only crime for which a person may obtain immunity under s. 893.21(1) or (2), F.S., is possession under ch. 893, F.S. The bill adds additional crimes:

- Possession of alcoholic beverages by a person under age 21;¹⁵

¹¹ Section 893.21(2), F.S.

¹² “Overdose” is not defined. One Florida appellate court consulted dictionary definitions of the term: “too great a dose (as of a therapeutic agent); *also*: a lethal or toxic amount (as of a drug)” (Merriam-Webster Dictionary); and “[a]n excessive and dangerous dose of a drug” (Oxford Dictionaries). *State v. Silliman*, 168 So.3d 245, 247 (Fla. 5th DCA 2015).

¹³ Section 893.01, F.S.

¹⁴ The statute does not specify whether “possession” is limited to simple possession of a controlled substance under s. 893.13(6)(b), F.S.

¹⁵ Section 562.111, F.S.

- For a person seeking medical assistance (s. 893.21(1), F.S.), first degree murder involving unlawful distribution of a specified controlled substance;¹⁶ and
- Any controlled substance or drug paraphernalia offense.¹⁷

The bill adds a new provision that provides that a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose may not be penalized for a violation of a condition of pretrial release, probation, or parole as a result of the person's seeking medical assistance.

Currently, s. 893.21(3), F.S., only provides that protection in s. 893.21, F.S., from prosecution for possession under ch. 893, F.S., may not be grounds for suppression of evidence in other criminal prosecutions. The bill expands subsection (3) to reference arrests and charges, and to reference "an offense listed in this section." As amended, subsection (3) provides that protection in s. 893.21, F.S., from arrest, charge, or prosecution for an offense listed in s. 893.21, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁶ Section 782.04(1)(a)3., F.S. This provision punishes the unlawful killing of a human being which resulted from the unlawful distribution by an adult of any substance listed in the provision, or mixture of such substance, when such substance or mixture is proven to be the proximate cause of the death of the user.

¹⁷ Any controlled substance offense under s. 893.13, F.S., or s. 893.135, F.S. (drug trafficking), and any drug paraphernalia offense under "s. 893.145, F.S." The statute which actually contains drug paraphernalia offenses is s. 893.147, F.S. (See "Technical Deficiencies" section of this analysis.

B. Private Sector Impact:

To the extent that alcohol or deaths related to overdoses are reduced based on the changes proposed by the bill, medical and other associated costs relating to such overdoses may be reduced.

C. Government Sector Impact:

To the extent that alcohol or deaths related to overdoses are reduced based on the changes proposed by the bill, costs to local first responders in responding to such overdoses may be reduced.

VI. Technical Deficiencies:

Lines 33 and 42 of the bill reference “s. 893.145.” The intent appears to be to provide immunity from arrest, charge, prosecution, and penalty for drug paraphernalia offenses. Those offenses are contained in s. 893.147, F.S., not in s. 893.145, F.S.

VII. Related Issues:

Most of the changes proposed by the bill are features of the overdose immunity laws of at least one other state,¹⁸ and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida’s Statewide Drug Policy Advisory Council.¹⁹ However, Senate Criminal Justice Committee staff was unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 782.04(1)(a)3., F.S., which punishes first degree murder involving unlawful distribution of a specified controlled substance. In fact, at least one state, Illinois, specifically states in its overdose immunity law that the law is not intended to prevent arrest or prosecution for drug-induced homicide.²⁰ As indicated by the NCSL, overdose immunity laws “generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]”²¹

While the bill does not nullify s. 782.04(1)(a)3., F.S., the bill appears to effectively bar arrest or prosecution of a person who distributed a controlled substance to a user that was the proximate cause of the user’s death but who also provided medical assistance to the user (albeit the user still died) in accordance with s. 893.21, F.S., as amended by the bill.

¹⁸ Provided are a few examples: Georgia law (Ga. Code Ann. s. 16-13-5) includes arrests; Colorado law (Colo. Rev. Stat. s. 18-1-711) includes alcohol overdose; New York law (N.Y. Penal Law s. 220.78) provides immunity for possession of alcohol by a person under 21 years of age; Mississippi law (Miss. Code. Ann. s. 41-29-149.1) provides immunity for drug paraphernalia offenses; and Tennessee law (Tenn. Code Ann. s. 63-1-156) provides immunity for pretrial, probation, or parole violations.

¹⁹ *Statewide Drug Policy Advisory Council – 2016 Annual Report* (December 1, 2016), p. 15, Florida Department of Health, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf> (last visited on December 12, 2017).

²⁰ 720 Ill. Comp. Stat. Ann. 570/414.

²¹ *Supra*, n. 6.

Staff was also unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 893.135, F.S., which punishes drug trafficking.²²

VIII. Statutes Affected:

This bill substantially amends section 893.21 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² The act of "trafficking" can include possession, purchase, sale, manufacture, delivery, or importation.