

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 Judiciary

BILL: CS/SB 970

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Alcohol and Drug-related Overdoses

DATE: January 24, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 970 expands the statute that grants a person immunity from a drug-possession prosecution that otherwise could result from the person's seeking medical help for his or her own overdose or for the overdose of another person.

Under the bill, this immunity is expanded in several ways, including that it:

- Shields a person from arrest, and not just charges, prosecution, or penalties;
- Shields a person from several crimes beyond drug-possession, including drug-trafficking, alcohol possession by a person under 21, and possession of a controlled substance with intent to sell it;
- Shields a person who is seeking medical help for another from arrest or prosecution for first-degree murder caused by giving another person a controlled substance (with or without the intent to kill the person);
- Applies to alcohol-related overdoses; and
- No longer requires a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

Additionally, the bill prohibits a person from being penalized for a violation of a condition of probation, parole, or pretrial release as the result of the person's seeking medical assistance for a person believed to be experiencing an overdose.

II. Present Situation:

Overview

The Legislature enacted Florida's "911 Good Samaritan Act" in 2012 to encourage people to seek medical assistance for persons having a drug overdose.¹ The act, which is codified in s. 893.21, F.S., prohibits a person from being charged, prosecuted, or penalized for possession of a controlled substance with evidence obtained as the result of the person's seeking medical assistance due to his or her overdose or the overdose of another person.

However, for the immunity to apply, the act requires a person seeking help for another to act in good faith. Moreover, the act specifies that it does not provide a basis for the suppression of evidence in other prosecutions.

The criminal conduct protected by the act is the "possession of a controlled substance." This general reference, however, does not clearly indicate whether the act protects a person possessing a sufficient quantity of a controlled substance to be charged with a trafficking offense. For example, a person who knowingly possesses at least 28 grams of cocaine commits the crime of trafficking in cocaine.²

"Good Samaritan" Laws Regarding Drug Overdoses

In addition to the 911 Good Samaritan Act, this state also has a statute, s. 381.887, F.S., which grants civil immunity to a person who administers a drug such as naloxone hydrochloride, which blocks the effects of opioids. Most other states have similar immunity laws, and these laws have been studied by the National Conference of State Legislatures (NCSL).

According to the NCSL, drug overdose rates continue to rise and these deaths are increasingly caused by opioids and opiates. The NCSL notes that "[o]pioid overdoses can be reversed with the timely administration of a medication called naloxone[.]" an FDA-approved drug that "can be administered in a number of ways that make it possible for a lay person to use."³

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."⁴ 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.

According to NCSL, 40 states and the District of Columbia have Good Samaritan laws. The NCSL's description of the components that these laws generally share reads quite similarly to

¹ Chapter 2012-36, Laws of Fla.

² See s. 893.135(1)(b), F.S.

³ "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 Jan. 23, 2018).

⁴ *Id.*

this state's Good Samaritan statute.⁵ One notable common component in other states' laws which Florida's statute lacks is a prohibition on the arrest of a person covered by the immunity.

Data on Drug-Overdose Deaths in Florida

A recent report by the Florida Medical Examiners Commission (FMEC) cited statistics that 102,173 deaths occurred in Florida during the first 6 months of 2016.⁶ Of the cases seen by 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.⁷

Some general statewide trends noted by the FMEC in its report include the following:

- 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.⁸

III. Effect of Proposed Changes:

The bill expands the statute that generally grants a person immunity from charges, prosecution, or penalties for possession of a controlled substance which could otherwise result from the person's seeking medical help for his or her own overdose or for the overdose of another person.

Under the bill, this immunity is expanded in several ways, including that it:

- Shields a person from arrest, and not just charges, prosecution, or penalties;
- Shields a person from several crimes beyond drug-possession, including drug-trafficking, alcohol possession by a person under 21, and possession of a controlled substance with intent to sell it;

⁵ *Id.*

⁶ *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>.

⁷ *Id.*

⁸ *Id.* at p. 2.

- Shields a person who is seeking medical help for another from arrest or prosecution for first-degree murder of the type that is caused by giving another person a controlled substance (with or without the intent to kill the person);
- Applies to alcohol-related overdoses; and
- Does not require a person seeking help for themselves to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

Additionally, the bill expands the immunity beyond the realm of criminal prosecution. Particularly, under the bill, a person who in good faith pursues medical help for an individual believed to be experiencing an overdose may not be penalized for a violation of conditions of probation, parole, or pretrial release.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

C. Government Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Most of the changes proposed by the bill are features of the overdose immunity laws of at least one other state,⁹ and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida's Statewide Drug Policy Advisory Council.¹⁰ 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.¹¹ As indicated by the NCSL, overdose immunity laws "generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]"¹²

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.

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.¹³

VIII. Statutes Affected:

This bill substantially amends section 893.21 of the Florida Statutes.

⁹ 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.

¹⁰ *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).

¹¹ 720 Ill. Comp. Stat. Ann. 570/414.

¹² "Drug Overdose Immunity 'Good Samaritan' Laws" (July 1, 2014), National Conference of State Legislatures (on file with the Senate Committee on Criminal Justice).

¹³ The act of "trafficking" can include possession, purchase, sale, manufacture, delivery, or importation.

IX. Additional Information:

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

CS by Criminal Justice on January 9, 2018:

The Committee Substitute corrects incorrect statutory references and provides for uniform word usage.

- B. **Amendments:**

None.