

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 530

INTRODUCER: Senator Brandes

SUBJECT: Alcohol or Drug Overdose Prosecutions

DATE: February 18, 2019

REVISED: _____

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

I. Summary:

SB 530 creates s. 562.112, F.S., which grants immunity from arrest, charge, prosecution, or penalty for certain alcohol-related offenses to a person who gives alcohol to an individual under 21 years of years of age and who, acting in good faith, seeks medical assistance for the individual experiencing, or believed to be experiencing, an alcohol-related overdose. Similar immunity for underage alcohol possession applies to a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related overdose and is in need of medical assistance.

The bill requires the person who gives alcohol to an individual under 21 years of age and seeks medical assistance for this individual to remain at the scene until emergency medical services personnel arrive and cooperate with such personnel and law enforcement officers at the scene.

Currently, s. 893.21, F.S., 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 under ch. 893, F.S. Similar immunity is provided for a person who experiences a drug-related overdose and is in need of medical assistance.

The bill amends s. 893.21, F.S., to grant immunity from arrest and:

- Extend immunity to the person acting in good faith who seeks medical assistance for an individual *believed to be experiencing* a drug-related overdose and the person who has a *good faith belief that he or she is experiencing* a drug-related overdose;
- Remove reference to immunity from charge, etc., for possession of a controlled substance;
- Provide immunity from arrest, etc., for homicide resulting from unlawful distribution of a specified controlled substance and various controlled substance-related offenses to the person seeking medical assistance for the overdosing (or believed to be overdosing) individual and

immunity from arrest, etc., for various controlled substance-related offenses to the overdosing (or believed to be overdosing) individual; and

- Prohibit both persons previously described from being penalized for a violation of a condition of probation, parole, or pretrial release.

The immunity provided under s. 562.112, F.S., or s. 893.21, F.S., only applies if the evidence for the offense was obtained as a result of the person's seeking medical assistance. Further, immunity protection under these statutes may not be grounds for suppression of evidence in other criminal prosecutions.

The bill is effective July 1, 2019.

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., 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 under ch. 893, F.S.² Similar immunity is provided for a person who experiences a drug-related overdose and is in need of medical assistance.³

"Good Samaritan" Laws Regarding Drug Overdoses

In addition to the 911 Good Samaritan Act, s. 381.887, F.S., 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."⁴ "Often 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."⁵ Many legislatures have enacted laws allowing naloxone administration which are often coupled with a law providing limited immunity from criminal prosecution for providing such medical assistance.⁶

¹ Ch. 2012-36, L.O.F.

² Section 893.21(1), F.S.

³ Section 893.21(2), F.S.

⁴ *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 Feb. 11, 2019).

⁵ *Id.*

⁶ *Id.*

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 this state's Good Samaritan statute. 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.⁷

Data on Drug-Overdose Deaths in Florida

A recent report by the Florida Medical Examiners Commission (FMEC) cited statistics that 104,519 deaths occurred in Florida during the first 6 months of 2017.⁸ 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 6,110 cases.⁹

Some of the general statewide trends¹⁰ noted by the FMEC in its report when comparing statewide trends for the first half of 2017 (January to June) to the first half of 2016 include:

- Total drug-related deaths increased by 11.0 percent (604 more);
- 3,353 individuals (8.0 percent more) died with one or more prescription drugs in their system;¹¹
- 1,712 individuals (4.0 percent or more) died with at least one prescription drug in their system that was identified as the cause of death;¹²
- The seven most frequently occurring drugs found in decedents were ethyl alcohol (2,594), benzodiazepines (2,506, including 912 alprazolam occurrences), cocaine (1,584), cannabinoids (1,124), morphine (1,032), fentanyl analogs (875), and fentanyl (825);¹³ and
- The drugs that caused the most deaths were cocaine (1,029), fentanyl analogs (840), morphine (679), fentanyl (667), benzodiazepines (658, including 376 alprazolam deaths), heroin (509), ethyl alcohol (490), oxycodone (306), and methamphetamine (213).¹⁴

III. Effect of Proposed Changes:

The bill creates s. 562.112, F.S., which does the following:

- Grants immunity from arrest, charge, prosecution, or penalty for:

⁷ *Id.*

⁸ *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2017 Interim Report* (April 2018), p. 1, Florida Medical Examiners Commission, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Interim-Drug-Report.aspx> (last visited on Feb. 11, 2019).

⁹ *Id.*

¹⁰ *Id.* at p. ii.

¹¹ 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. *Id.*

¹² These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol. *Id.*

¹³ Since heroin is rapidly metabolized to morphine, this may lead to a substantial over-reporting of morphine-related deaths as well as significant under-reporting of heroin-related deaths. *Id.*

¹⁴ Fentanyl analogs (96.0 percent), heroin (93.0 percent), fentanyl (81.0 percent), morphine (66.0 percent), cocaine (65.0 percent), and methamphetamine (51.0 percent) were listed as causing death in more than 50.0 percent of the deaths in which these drugs were found. *Id.*

- Certain alcohol-related offenses¹⁵ to a person who gives alcohol to an individual under 21 years of years of age and who, acting in good faith, seeks medical assistance for the individual experiencing, or believed to be experiencing, an alcohol-related overdose, if the evidence for such offense was obtained as a result of the person's seeking medical assistance, and
- Underage alcohol possession¹⁶ to a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related overdose and is in need of medical assistance, if the evidence for such offense was obtained as a result of the person's seeking medical assistance;
- Requires the person who gives alcohol to an individual under 21 years of age and seeks medical assistance for this individual to remain at the scene until emergency medical services personnel arrive and cooperate with such personnel and law enforcement officers at the scene; and
- Provides that the immunity protection under s. 562.112, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

Currently, s. 893.21, F.S., 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 under ch. 893, F.S. Similar immunity is provided for a person who experiences a drug-related overdose and is in need of medical assistance.

The bill amends s. 893.21, F.S., to:

- Grant immunity from *arrest*, charge, prosecution, or penalty for:
 - Homicide resulting from unlawful distribution of a specified controlled substance,¹⁷ various controlled substance offenses,¹⁸ drug trafficking,¹⁹ or various drug paraphernalia offenses²⁰ to a person acting in good faith who seeks medical assistance for an individual experiencing, *or believed to be experiencing*, a drug-related overdose, if the evidence for such offense was obtained as a result of the person's seeking medical assistance, and
 - Various controlled substance offenses, drug trafficking, or various drug paraphernalia offenses,²¹ to a person who experiences, *or has a good faith belief that he or she is experiencing*, a drug-related overdose and is in need of medical assistance, if the evidence for such offense was obtained as a result of the person's seeking medical assistance;
- Remove reference to immunity from charge, etc., for possession of a controlled substance;
- Prohibit both persons previously described from being penalized for a violation of a condition of probation, parole, or pretrial release, if the evidence of such violation was obtained as a result of seeking medical assistance; and

¹⁵Section 562.11, F.S. (selling alcohol to a person under 21 years of age) and s. 562.111, F.S. (underage possession of alcohol).

¹⁶ Section 562.111, F.S.

¹⁷ Section 782.04(1)(a)3., F.S.

¹⁸ Section 893.13, F.S.

¹⁹ Section 893.135, F.S.

²⁰ Section 893.147, F.S.

²¹ See footnotes 16-18, *supra*.

- Provide that the immunity protection under s. 893.21, F.S., may not be grounds for suppression of evidence in other criminal prosecutions.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

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,²² and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida’s Statewide Drug Policy Advisory Council in 2016.²³ 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.²⁴ As indicated by the NCSL, overdose immunity laws “generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]”²⁵

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.²⁶

VIII. Statutes Affected:

This bill substantially amends section 893.21 of the Florida Statutes.

This bill creates section 562.112 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.

²² 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.

²³ *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 Feb. 11, 2019).

²⁴ 720 Ill. Comp. Stat. Ann. 570/414.

²⁵ *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 Feb 11, 2019).

²⁶ The act of “trafficking” can include possession, purchase, sale, manufacture, delivery, or importation. *See generally* s. 893.135, F.S.

B. Amendments:

None.

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