

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 595 Alcohol or Drug Overdose Prosecutions
SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee, Silvers and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Frost	Hall
2) Judiciary Committee	16 Y, 0 N, As CS	Frost	Poche

SUMMARY ANALYSIS

An increasing number of drug overdose deaths prompted the Legislature to pass the 911 Good Samaritan Act in 2012, creating immunity for a person who, acting in good faith, seeks medical assistance in connection with a drug overdose. A person may not be charged, prosecuted, or otherwise penalized if his or her possession of a controlled substance is discovered as a result of a good faith effort to seek medical assistance for himself, herself, or another person for a drug overdose. However, a person seeking assistance is not protected from:

- An arrest for possessing a controlled substance, even though prosecution is prohibited;
- Criminal charges or prosecution for other offenses;
- Charges, prosecution, or other penalties when seeking assistance for an alcohol overdose; or
- Charges, prosecution, or other penalties when the person mistakenly, but in good faith, believes someone is experiencing a drug overdose.

CS/CS/HB 595 incentivizes a person to seek medical assistance for an alcohol or drug overdose by providing immunity under specified circumstances for the offenses of:

- Providing alcohol to a person under 21 years old; and
- Possessing or consuming alcohol when under 21 years old.

The bill amends the 911 Good Samaritan Act by:

- Extending immunity for:
 - Use or possession of drug paraphernalia;
 - Violation of pretrial release, probation, or parole; and
 - A person seeking aid for an alcohol overdose.
- Limiting immunity for possession of a controlled substance to exclude possession of more than 10 grams of certain substances;
- Adding protection from arrest for a person seeking aid for an alcohol or drug overdose victim; and
- Extending immunity to a person mistakenly, but in good faith, believing that he, she, or another is experiencing an alcohol or drug overdose.

The bill may have a negative indeterminate impact on the number of prison and jail beds.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Controlled Substance Laws

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act (Act), classifies controlled substances into five categories, called schedules, and creates criminal penalties for manufacturing, distributing, preparing, and dispensing the substances listed therein. Under the Act, selling, manufacturing, possessing, delivering, or purchasing a controlled substance without authorization subjects a person to criminal penalties.¹ The severity of the criminal penalty is dependent on several factors, including the schedule in which the controlled substance is categorized, the amount of controlled substance possessed, and the location at which the illegal activity occurs.

Possession of up to 20 grams of cannabis is a first degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.² Possession of any other controlled substance or possession of more than 20 grams of cannabis, without a prescription, is a third degree felony, punishable by up to five years in prison and a \$5,000 fine;³ however, possession of more than 10 grams of certain controlled substances,⁴ such as heroin, methadone, fentanyl, and fentanyl derivatives, is a first degree felony, punishable by up to 30 years in prison and a \$10,000 fine.⁵

Drug paraphernalia includes all equipment, products, and materials used in the cultivation, manufacture, or transport of a controlled substance, or any objects designed for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body.⁶ Use or possession of drug paraphernalia is a first degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.⁷

Alcoholic Beverage Laws

A person under 21 years old who possesses alcohol, unless acting within the scope of his or her employment, commits a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine; a second offense is a first degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.⁸ A conviction results in the withholding of an offender's driving privilege.⁹

A person who sells, gives, serves, or permits the service or consumption of alcohol to a person under 21 years old commits a second degree misdemeanor.¹⁰ A person committing the same offense within one year of a previous conviction commits a first degree misdemeanor.¹¹ A conviction may result in the withholding of an offender's driving privilege.¹²

¹ S. 893.13(1)(a), F.S.

² Ss. 775.082, 775.083, and 893.13(6)(b), F.S.

³ Ss. 775.082, 775.083, 775.084, and 893.13(6)(a), F.S.

⁴ S. 893.03(1)(a)–(b), and (2)(b), F.S.

⁵ Ss. 775.082, 775.083, 775.084, and 893.13(6)(c)F.S.

⁶ S. 893.145, F.S.

⁷ Ss. 775.082, 775.083, and 893.147(1), F.S.

⁸ Ss. 562.111(1), 775.082, and 775.083, F.S.

⁹ S. 562.111(3), F.S.

¹⁰ S. 562.11(1), F.S.

¹¹ *Id.*

¹² Ss. 562.11(1)(a)2.–3. and 562.11(2)(c)2., F.S.

Criminal Immunity

In response to the increasing number of deaths resulting from drug-related overdoses, in 2012 the Legislature created immunity under the 911 Good Samaritan Act for a person acting in good faith who seeks medical assistance in connection with a drug-related overdose.¹³ As a result, a person seeking medical assistance for himself, herself, or another due to a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance when such possession is discovered as a result of seeking medical assistance.¹⁴

However, a person seeking medical assistance due to a drug-related overdose is not protected from:

- Arrest for possessing a controlled substance, even though prosecution is prohibited;
- Arrest, charge, prosecution, or other penalties for possessing drug paraphernalia;
- Criminal charges or prosecution for other offenses;¹⁵
- Charges, prosecution, or other penalties when seeking assistance for an alcohol overdose;
- Charges, prosecution, or other penalties when the person mistakenly, but in good faith, believes someone is experiencing a drug overdose.

Other Protections

Medical Amnesty in Student Conduct Codes

In response to a growing number of harmful incidents related to alcohol consumption, many colleges and universities adopted a medical amnesty provision within the student code of conduct. A medical amnesty provision typically provides immunity from discipline or other mandatory sanctions to a student who seeks emergency assistance for himself, herself, or another related to alcohol or drug use.¹⁶ The provision aims to diminish fear of discipline and encourage students and organizations to seek medical attention for a student in distress resulting from using alcohol or drugs.¹⁷

Sentencing Departure

The Criminal Punishment Code¹⁸ sets forth a statutory formula to determine the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.¹⁹ Some mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include when a defendant:

- Was an accomplice to and was a relatively minor participant in the offense;
- Acted under extreme duress or under the domination of another person;
- Cooperated with the state to resolve the current offense or any other offense; or
- Acted in good faith to obtain or provide medical assistance for an individual experiencing a drug-related overdose.²⁰

As such, a defendant not protected from a felony offense under the 911 Good Samaritan Act may be eligible for a reduced sentence as a result of seeking medical assistance for a person experiencing a drug-related overdose.

¹³ S. 893.21, F.S.

¹⁴ *Id.*

¹⁵ S. 893.21(3), F.S.

¹⁶ See, e.g., UF DEAN OF STUDENTS OFFICE, *Student Conduct & Conflict Resolution, Policies, Medical Amnesty Policy*, <https://sccr.dso.ufl.edu/policies/medical-amnesty-policy/> (last visited Mar. 6, 2019); DEAN OF STUDENTS FLORIDA STATE UNIVERSITY, *Student Rights and Responsibilities, Policies, Medical Amnesty Policy*, <https://dos.fsu.edu/srr/policies/medical-amnesty-policy> (last visited Mar. 6, 2019); and UNF STUDENT CODE OF CONDUCT, *Conduct Process, Medical Amnesty Program*, https://www.unf.edu/conduct/Medical_Amnesty_Program.aspx (last visited Mar. 6, 2019).

¹⁷ *Id.*

¹⁸ All felony offenses, other than capital felonies, committed on or after Oct. 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹⁹ S. 921.002, F.S.

²⁰ *Id.*

Civil Protections

The Good Samaritan Act (GSA) provides immunity from civil liability for persons acting in good faith who render emergency care and treatment to individuals in need of assistance.²¹ Under the GSA, immunity from civil liability is available to any person who gratuitously and in good faith renders emergency assistance without the objection of a victim, if the person acts as a reasonably prudent person would act under similar circumstances.²² Immunity under the GSA does not apply to damages resulting from any act or failure to provide medical care or treatment unrelated to the original situation that required immediate medical assistance.²³

The Cardiac Arrest Survival Act provides civil immunity, subject to exceptions, to a person who uses or attempts to use an automatic defibrillator device on a victim believed to be experiencing a medical emergency, when the victim does not object.²⁴

Effect of Proposed Changes

CS/CS/HB 595 creates s. 562.112, F.S., providing criminal immunity from arrest, charge, prosecution, or other penalty under specified circumstances to a person who provides alcohol to an individual under 21 years old and to a person under 21 years old who possesses or consumes alcohol. Such immunity protects a person who seeks aid for himself, herself, or another under the belief that the individual is experiencing an alcohol or drug-related overdose. A person may receive immunity only if he or she remains at the scene and cooperates with emergency medical services personnel and law enforcement upon arrival.

The bill amends the 911 Good Samaritan Act by:

- Extending immunity for:
 - Use or possession of drug paraphernalia;
 - Violation of pretrial release, probation, or parole; and
 - A person seeking aid for an alcohol overdose.
- Limiting immunity for possession of a controlled substance to exclude possession of more than 10 grams of certain substances;
- Adding protection from arrest for a person seeking aid for an alcohol or drug overdose victim; and
- Extending immunity to a person mistakenly, but in good faith, believing that he, she, or another is experiencing an alcohol or drug overdose.

The bill incentivizes seeking medical assistance for an alcohol or drug overdose, by immunizing a person seeking such assistance from arrest, charge, or prosecution for specified drug and alcohol related crimes. As such, a person who may not otherwise seek aid due to fear of criminal implication, may do so without incriminating himself, herself, or another.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Creates s. 562.112, F.S., relating to alcohol or drug-related overdoses; medical assistance; immunity from arrest, charge, prosecutions, and penalization.

Section 2: Amends s. 893.21, F.S., relating to drug-related overdoses; medical assistance; immunity from prosecution.

Section 3: Provides an effective date of July 1, 2019.

²¹ S. 768.13, F.S.

²² S. 768.13(2)(a), F.S.

²³ S. 768.13(c)(2), F.S.

²⁴ S. 768.1325(3), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative indeterminate impact on the number of prison beds by providing immunity for certain controlled substance possession offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative indeterminate impact on the number of jail beds by providing immunity for controlled substance possession and alcohol-related offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2019, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised the scope of immunity provided under s. 893.21, F.S., to apply to arrest, charge, prosecution, or penalty for use or possession of drug paraphernalia and possession of a controlled substance.

On March 21, 2019, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment extended criminal immunity:

- For misdemeanor alcohol offenses to a person seeking medical assistance for a drug-related overdose; and
- To a person who seeks aid for himself or herself to include immunity for an offense of providing alcohol to an individual under 21.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.