

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/HB 457](#)

TITLE: Unlawful Distribution of Controlled Substances
Resulting in Death

SPONSOR(S): Koster

COMPANION BILL: [CS/SB 612](#) (Burgess)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Criminal Justice](#)

17 Y, 0 N, As CS



[Judiciary](#)

22 Y, 0 N

SUMMARY

Effect of the Bill:

CS/HB 457 creates an additional offense of third degree murder if:

- A person under 18 years of age unlawfully distributes a substance or mixture that he or she knew or should have known contained dangerous fentanyl or fentanyl analogs; and
- The substance or mixture is proven to have caused, or is proven to have been a substantial factor in producing, the death of the user.

The offense of third degree murder created by the bill is punishable as a second degree felony.

Fiscal or Economic Impact:

The bill may have an indeterminate fiscal impact to state government expenditures by creating a new felony offense that is applicable to persons under 18 years of age, which may result in increased admissions to juvenile justice detention and commitment facilities or prisons.

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ANALYSIS

EFFECT OF THE BILL:

CS/HB 457 creates an additional offense of [third degree murder](#) if the unlawful killing of a human being, perpetrated without any design to effect death, resulted from:

- The unlawful distribution by a person less than 18 years of age of any substance or mixture that he or she knew or reasonably should have known contained [dangerous fentanyl or fentanyl analogs](#); and
- Such substance or mixture is proven to have been a substantial factor in producing the death of the user.

Under the bill, a violation is punishable as a second degree felony.¹ (Section [1](#))

The bill provides the following definitions:

- “Dangerous fentanyl or fentanyl analogs” means any controlled substance listed in [s. 893.135\(1\)\(c\)4.a.\(I\)-\(VII\), F.S.](#), which includes the following substances: fentanyl, alfentanil, carfentanil, sufentanil, or other fentanyl derivatives or analogs.
- “Distribute” means to deliver, other than by administering or dispensing, a controlled substance.²

The effective date of the bill is July 1, 2025. (Section [2](#))

¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. [Ss. 775.082, 775.083](#), or [775.084, F.S.](#)
² [S. 893.02\(8\), F.S.](#)

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate fiscal impact to state government expenditures by creating a new felony offense that is applicable to persons under 18 years of age, which may result in increased admissions to juvenile justice detention and commitment facilities or prisons.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

First Degree Murder

[Section 782.04\(1\), F.S.](#), specifies three different ways that a person can commit first degree murder: premeditated murder, murder during the commission of a specified felony, or by the unlawful distribution of a controlled substance that results in death. A conviction for any of the types of first degree murder is a capital felony, which is punishable by death or mandatory life imprisonment without the possibility of parole.³

Premeditated Murder

Premeditated first degree murder is the unlawful killing of a human being when perpetrated from a premeditated design to effect the death of the person or any human being.⁴

Felony Murder

First degree felony murder is the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

- Trafficking offense prohibited by [s. 893.13, F.S.](#)
- Arson.
- Sexual battery.
- Robbery.
- Burglary.
- Kidnapping.
- Escape.
- Aggravated child abuse.
- Aggravated abuse of an elderly person or disabled adult.
- Aircraft piracy.
- Unlawful throwing, placing, or discharging of a destructive device or bomb.
- Carjacking.
- Home-invasion robbery.
- Aggravated stalking.
- Murder of another human being.
- Aggravated fleeing or eluding with serious bodily injury or death.
- Resisting an officer with violence to his or her person.
- Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under [s. 775.30, F.S.](#), [s. 775.32, F.S.](#), [s. 775.33, F.S.](#), [s. 775.34, F.S.](#), [s. 775.35, F.S.](#)⁵

Unlawful Distribution of a Controlled Substance Resulting in Death

First degree murder by the unlawful distribution of a controlled substance that results in death is the unlawful killing of a human being which resulted from the unlawful distribution by a person *18 years of age or older* of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to have caused, or is proven to have been a substantial factor⁶ in producing, the death of the user:

- A substance controlled under [s. 893.03\(1\), F.S.](#);

³ [S. 775.082\(1\), F.S.](#)

⁴ [S. 782.04\(1\)\(a\)1., F.S.](#)

⁵ [S. 782.04\(1\)\(a\)2., F.S.](#)

⁶ "Substantial factor" means that 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. [S. 782.04\(5\)\(a\), F.S.](#)

- Cocaine, as described in [s. 893.03\(2\)\(a\)4., F.S.](#);
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- Methadone;
- Alfentanil, as described in [s. 893.03\(2\)\(b\)1., F.S.](#);
- Carfentanil, as described in [s. 893.03\(2\)\(b\)6., F.S.](#);
- Fentanyl, as described in [s. 893.03\(2\)\(b\)9., F.S.](#);
- Sufentanil, as described in [s. 893.03\(2\)\(b\)30., F.S.](#);
- Methamphetamine, as described in [s. 893.03\(2\)\(c\)5., F.S.](#); or
- A controlled substance analog, as described in [s. 893.0356, F.S.](#), of any of the above substances.⁷

Third Degree Murder

Third degree murder is the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate any felony *other* than a felony listed in [s. 782.04\(4\), F.S.](#) The felony offenses that are *excluded* from third degree murder are identical to the felony offenses that are enumerated for first degree felony murder, and includes the unlawful distribution of a controlled substance by a person 18 years of age or older that results in death. As such, a person who causes another's death by distributing a specified controlled substance cannot be prosecuted for third degree murder because he or she can already be prosecuted for first degree murder under [s. 782.04\(1\)\(a\)3., F.S.](#)

A person who is convicted of third degree murder commits a second degree felony.

Dangerous Fentanyl or Fentanyl Analogs

The penalty for unlawfully possessing a controlled substance depends on several factors, including the type and amount of the controlled substance possessed and whether a person possessed such substance with the intent to sell or deliver the substance to another person. Generally, the unlawful possession of less than four grams of fentanyl⁸ is a third degree felony.⁹ If a person unlawfully possesses less than four grams of fentanyl with the intent to sell, manufacture, or deliver such fentanyl, a person commits a second degree felony.¹⁰ If a person unlawfully possesses fentanyl, alfentanil, carfentanil, sufentanil, or other fentanyl derivatives or analogs and the weight is four grams or more, a person commits the offense of "trafficking in dangerous fentanyl or fentanyl analogues," which is punishable as a first degree felony.¹¹

Generally, for offenses relating to the possession, sale, manufacture, or delivery of a controlled substance under ch. 893, F.S., the knowledge of the illicit nature of a controlled substance is not an element of the offense (i.e. the prosecution does *not* have to prove that that a defendant knew that the substance was illegal).¹² However, lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to offenses relating to controlled substances.¹³ If a defendant asserts such an affirmative defense, a jury may, but is not required to, infer that the defendant knew of the illicit nature of the substance.¹⁴

⁷ [S. 782.04\(1\)\(a\)3., F.S.](#)

⁸ The same penalties apply if a person unlawfully possesses a fentanyl derivative, controlled substance analog, or a mixture containing a fentanyl derivative or analog.

⁹ [S. 893.13\(6\)\(a\), F.S.](#)

¹⁰ [S. 893.13\(1\)\(a\), F.S.](#)

¹¹ [S. 893.135\(1\)\(c\)4.b., F.S.](#) A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. [Ss. 775.082, 775.083, or 775.084, F.S.](#) A person convicted of trafficking in dangerous fentanyl and fentanyl analogues is subject to specified mandatory minimum sentences and fines that vary depending on the amount of fentanyl possessed.

¹² [S. 893.101\(2\), F.S.](#)

¹³ *Id.*

¹⁴ [S. 893.101\(3\), F.S.](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Criminal Justice Subcommittee	17 Y, 0 N, As CS	4/1/2025	Hall	Padgett
THE CHANGES ADOPTED BY THE COMMITTEE:				
<ul style="list-style-type: none">Defined the terms “dangerous fentanyl or fentanyl analogs” and “distribute.”Required, as an element of third degree murder under the bill, that a person under 18 years of age knew or should have known that a substance or mixture that he or she distributed contained dangerous fentanyl analogs.Made technical changes to align the bill with the existing offense of third degree murder.				
Judiciary Committee	22 Y, 0 N	4/8/2025	Kramer	Padgett

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.
