

CHAPTER 2023-196

Committee Substitute for Committee Substitute for House Bill No. 365

An act relating to controlled substances; amending s. 782.04, F.S.; revising the elements that constitute the capital offense of murder in the first degree; revising the elements that constitute the offense of murder in the third degree and constitute a felony of the second degree; defining the term “substantial factor”; creating s. 893.131, F.S.; providing definitions; providing criminal penalties for adults who unlawfully distribute specified substances or mixtures and an overdose or serious bodily injury of the user results; providing enhanced criminal penalties for repeat offenders; providing construction; providing that specified persons have certain protections from arrest and prosecution; amending s. 921.0022, F.S.; ranking an offense on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 782.04, Florida Statutes, are amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

- a. Trafficking offense prohibited by s. 893.135(1),
- b. Arson,
- c. Sexual battery,
- d. Robbery,
- e. Burglary,
- f. Kidnapping,
- g. Escape,
- h. Aggravated child abuse,
- i. Aggravated abuse of an elderly person or disabled adult,

- j. Aircraft piracy,
- k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- l. Carjacking,
- m. Home-invasion robbery,
- n. Aggravated stalking,
- o. Murder of another human being,
- p. Resisting an officer with violence to his or her person,
- q. Aggravated fleeing or eluding with serious bodily injury or death,
- r. Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, or
- s. Human trafficking; or

3. 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 factor in producing, ~~be the proximate cause of~~ the death of the user:

- a. A substance controlled under s. 893.03(1);
- b. Cocaine, as described in s. 893.03(2)(a)4.;
- c. Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- d. Methadone;
- e. Alfentanil, as described in s. 893.03(2)(b)1.;
- f. Carfentanil, as described in s. 893.03(2)(b)6.;
- g. Fentanyl, as described in s. 893.03(2)(b)9.;
- h. Sufentanil, as described in s. 893.03(2)(b)30.;
- i. Methamphetamine, as described in s. 893.03(2)(c)5.; or
- j. A controlled substance analog, as described in s. 893.0356, of any substance specified in sub-subparagraphs a.-i.,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(4) 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 any:

- (a) Trafficking offense prohibited by s. 893.135(1),
- (b) Arson,
- (c) Sexual battery,
- (d) Robbery,
- (e) Burglary,
- (f) Kidnapping,
- (g) Escape,
- (h) Aggravated child abuse,
- (i) Aggravated abuse of an elderly person or disabled adult,
- (j) Aircraft piracy,
- (k) Unlawful throwing, placing, or discharging of a destructive device or bomb,

(l) Unlawful distribution of any substance listed in sub-subparagraphs (1)(a)3.a.-j. by a person 18 years of age or older, when such substance is proven to have caused, or is proven to have been a substantial factor in producing, ~~be the proximate cause of~~ the death of the user,

- (m) Carjacking,
- (n) Home-invasion robbery,
- (o) Aggravated stalking,
- (p) Murder of another human being,
- (q) Aggravated fleeing or eluding with serious bodily injury or death,
- (r) Resisting an officer with violence to his or her person, or
- (s) Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) As used in this section, the term:

(a) “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.

(b) “Terrorism” means an activity that:

(a)1.a. Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or

b.2. Involves a violation of s. 815.06; and

2.(b) Is intended to:

a.1. Intimidate, injure, or coerce a civilian population;

b.2. Influence the policy of a government by intimidation or coercion; or

c.3. Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Section 2. Section 893.131, Florida Statutes, is created to read:

893.131 Distribution of controlled substances resulting in overdose or serious bodily injury.—

(1) As used in this section, the term:

(a) “Distribute” has the same meaning as in s. 893.02, and includes the direct or indirect delivery of a controlled substance to a user.

(b) “Emergency opioid antagonist” has the same meaning as in s. 381.887(1).

(c) “Medical care” means the administration of treatment for the purposes of preserving or sustaining life or the administration of an emergency opioid antagonist.

(d) “Overdose or serious bodily injury” means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

(e) “Substantial factor” means that the use of a substance or mixture alone is sufficient to cause an overdose or serious bodily injury, regardless of whether any other substance or mixture used is also sufficient to cause an overdose or serious bodily injury.

(2)(a) Except as provided in paragraph (b), a person 18 years of age or older who unlawfully distributes:

1. Heroin, as described in s. 893.03(1)(b)11.;

2. Alfentanil, as described in s. 893.03(2)(b)1.;

- 3. Carfentanil, as described in s. 893.03(2)(b)6.;
- 4. Fentanyl, as described in s. 893.03(2)(b)9.;
- 5. Sufentanil, as described in s. 893.03(2)(b)30.;
- 6. Fentanyl derivatives, as described in s. 893.03(1)(a)62.;
- 7. A controlled substance analog, as described in s. 893.0356, of any substance specified in subparagraphs 1.-6.; or
- 8. A mixture containing any substance specified in subparagraphs 1.-7.,

and an overdose or serious bodily injury of the user results, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, when such substance or mixture is proven to have caused or been a substantial factor in causing the overdose or serious bodily injury of the user.

(b) A person 18 years of age or older who commits a violation of paragraph (a) and who has previously been convicted of a violation of paragraph (a) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The administration of medical care by an emergency responder, including, but not limited to, a law enforcement officer, a paramedic, or an emergency medical technician is prima facie evidence that the person receiving medical care experienced an overdose or serious bodily injury.

(4) A person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or a drug-related overdose and receives medical assistance, or a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose, is afforded the protections provided under s. 893.21.

Section 3. Paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.

Florida Statute	Felony Degree	Description
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.

Florida Statute	Felony Degree	Description
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen \$750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.
812.015(9)(d)	2nd	Retail theft; multiple thefts within specified period.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

Florida Statute	Felony Degree	Description
817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
828.126(3)	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
<u>893.131</u>	<u>2nd</u>	<u>Distribution of controlled substances resulting in overdose or serious bodily injury.</u>
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.

Florida Statute	Felony Degree	Description
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

Section 4. This act shall take effect July 1, 2023.

Approved by the Governor June 5, 2023.

Filed in Office Secretary of State June 5, 2023.