

## HB 477 – Controlled Substances

Amends s. 782.07, F.S., adding that “a person who by act, procurement, or culpable negligence, knowingly and intentionally sells or delivers a quantity of a substance containing detectable amounts of heroin...fentanyl...or an analog...or any combination thereof, and the drug or drug combination results in the death of a person, commits manslaughter,” an **unranked, 3<sup>rd</sup> degree felony**.

Amends s. 893.03, F.S., including additional fentanyl derivatives and multiple substances used as synthetic drugs under Schedule I substances.

Amends s. 893.13, F.S., adding “trafficking in fentanyl” for a “person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of Carfentanil, Fentanyl Derivatives, an analog, or any salt, derivative, isomer, or salt of an isomer thereof, or any mixture containing any such substance,” if the quantity involved is:

- between 4-14 grams – Unranked, 1<sup>st</sup> degree felony; 3 year mandatory minimum
- between 14-28 grams – Unranked, 1<sup>st</sup> degree felony; 7 year mandatory minimum
- 28 grams or more – Unranked, 1<sup>st</sup> degree felony; 15 year mandatory minimum

Under current law, for similar substances:

- between 4-14 grams – 3 year mandatory minimum
- between 14-28 grams – 15 year mandatory minimum
- between 28 grams-30 kilograms – 25 year mandatory minimum

Further amending s. 893.13, F.S., this bill also adds “trafficking in synthetic drugs for a “person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of” a number of drugs from s. 893.03(1)(c), F.S., if the quantity involved is:

- between 280-500 grams – Level 7, 1<sup>st</sup> degree felony; 3 year mandatory minimum
- between 500-1,000 grams – Level 7, 1<sup>st</sup> degree felony; 7 year mandatory minimum
- between 1,000 grams-30 kilograms – Level 8, 1<sup>st</sup> degree felony; 15 year mandatory minimum
- 30 kilograms or more – Unranked, 1<sup>st</sup> degree felony; 25 year mandatory minimum

Under current law, for similar substances:

- between 10-200 grams – 3 year mandatory minimum
- between 200-400 grams – 7 year mandatory minimum
- between 400 grams-30 kilograms – 15 year mandatory minimum
- 30 kilograms or more would be a capital felony

S. 782.04, F.S. includes a list of drugs in which the killing of a human being resulted from their unlawful distribution, with “opium or any synthetic or natural salt, compound, derivative, or preparation of opium” included. Per DOC, one person was charged under this statute with drug related first degree murder, and that person was sentenced to prison (sentence length=24 m, incarceration rate: 100%). Per FDLE, in FY 15-16, there were 1,200 people arrested for heroin sales/distribution, and 543 people received a conviction/adjudication withheld. Only one person was arrested for selling fentanyl, and 2 people received a conviction/adjudication withheld.

Per DOC, in FY 15-16, 493 (adj.) offenders were sentenced for selling, manufacturing, or delivering heroin, with 214 (adj.) receiving a prison sentence (mean sentence length=35.2 m, incarceration rate: 43.4% adj.-43.4% unadj.). DOC does not track the number of admissions to prison for fentanyl, so that population is not known. Per FDLE, citing the *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2015 Annual Report*, there were 911 deaths (fentanyl) and 779 deaths (heroin), in which these drugs were present or deemed the cause of death. Furthermore, 99 of the deaths associated with fentanyl only had that in their system, while the rest were in combination with another drug.

Per DOC, in FY 15-16, there were 487 (adj.) offenders sentenced for trafficking offenses similar to fentanyl (heroin included) between 4 and 14 grams. There were 363 (adj.) sentenced to prison (mean sentence length=62.1 m, incarceration rate: 74.6% adj.-74.5% unadj.). There were 126 (adj.) offenders sentenced for trafficking between 14 and 28 grams, and 102 (adj.) of these offenders were sentenced to prison (mean sentence length=94.6 m, incarceration rate: 81.0% adj.-81.0% unadj.). There were 81 (adj.) offenders sentenced for trafficking between 28 grams and 30 kilograms, and 64 (adj.) of these offenders were sentenced to prison (mean sentence length=144.5 m, incarceration rate: 79.0% adj.-79.1% unadj.). No offenders were sentenced above 30 kilograms.

The only other current trafficking offenses that exist out of s. 893.03(1)(c), F.S. are MDMA and phenethylamines, both of them combined in DOC’s data. Per DOC, in FY 15-16, there were 41 (adj.) offenders sentenced for trafficking between 10 and 200 grams of these drugs. There were 26 (adj.) sentenced to prison (mean sentence length=45.6 m, incarceration rate: 63.4% adj.-64.7% unadj.). There were 2 offenders sentenced for trafficking between 200 and 400 grams of these drugs, and none of those offenders were sentenced to prison. There was also 1 (adj.) offender sentenced for trafficking in over 400 grams of these drugs in FY 15-16, and that offender was

sentenced to prison (sentence length=84.0 m, incarceration rate: 100%). No offenders were sentenced above 30 kilograms.

**CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate**

- Revised from “Positive Significant” to “Positive Indeterminate” on 3/29/2017.

**Requested by: House**