

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 1096

SPONSOR: Judiciary Committee, Senator Smith and others

SUBJECT: Freedom to Worship Safely Act

DATE: April 14, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute creates the “Freedom to Worship Safely Act.”

This committee substitute provides for increased penalties for enumerated crimes of violence committed at a location where a religious institution as defined in s. 496.404, F.S., is conducting or carrying on religious services or activities at the time of the offense.

The committee substitute increases penalties for these offenses by one classification level as follows:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.

This committee substitute creates section 775.0861, Florida Statutes, and amends section 921.0022, Florida Statutes.

II. Present Situation:

Section 775.081, F.S., classifies felonies and misdemeanors. This classification determines maximum possible punishments as provided in s. 775.082 and s. 775.083, F.S. (some crimes have a specific maximum punishment in excess of these):

Maximum Punishment for Criminal Offenses (in general)		
Classification	Incarceration	Fine
Infraction	None	\$500
2nd degree misdemeanor	60 days county jail	\$500
1st degree misdemeanor	1 year county jail	\$1,000
3rd degree felony	5 years state prison	\$5,000
2nd degree felony	15 years state prison	\$10,000
1st degree felony	30 years state prison	\$10,000
Life felony	Life in state prison	\$15,000
Capital felony	Death	none

The statutory definition of a criminal offense provides the classification of the offense. The few felonies not specifically classified are considered third degree felonies, and the few misdemeanors not specifically classified are considered second degree misdemeanors under s. 775.081, F.S.

Several statutes currently reclassify an offense based on the commission of certain activities during the crime, or based on the status of the victim. The following statutes are examples of this type of reclassification:

- Wearing a mask while committing an offense, s. 775.0845, F.S.
- Evidencing prejudice while committing an offense, s. 775.085, F.S.
- Possessing or using a weapon while committing an offense, s. 775.087, F.S.
- Committing a crime while in possession of a weapon taken from a law enforcement officer, s. 775.0875, F.S.

Section 496.404(19), F.S., provides that the term “religious institution” means:

Any church, ecclesiastical or denominational organization or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and includes those bona fide religious groups which do not maintain specific places of worship. “Religious institution” also includes any separate group or corporation which forms an integral part of a religious institution which is exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, and which is not primarily supported by funds solicited outside its own membership or congregation.

III. Effect of Proposed Changes:

This committee substitute creates the “Freedom to Worship Safely Act.”

The committee substitute creates s. 775.0861, F.S., which provides for the reclassification of certain felony offenses committed at a location where a religious institution as defined in s. 496.404, F.S., is conducting or carrying on religious services or activities at the time of the offense. (See Present Situation for the statutory definition of religious institution.)

The reclassification applies to any offense that involves the use or threat of physical force or violence against an individual, including the following:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- Assault;
- Aggravated assault;
- Battery; and
- Felony battery.

This committee substitute increases penalties for these offenses by one classification level as follows:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.

The reclassification increases the maximum sentence that a court could impose for the offense, and also increases the “lowest permissible sentence” required under the Criminal Punishment Code, ss. 921.002-921.0027, F.S. (The Criminal Punishment Code prescribes a mathematical formula for calculating the lowest permissible sentence for any offense. Offenses are categorized into 10 levels; higher numbered levels accrue more sentencing points than lower numbered levels.) Under the committee substitute, a first degree misdemeanor reclassified to a third degree felony will be ranked as a Level 2 offense. (Currently, an unranked third degree felony defaults to Level 1.) A reclassified second or third degree felony will be ranked one level above its current ranking under the committee substitute.

The committee substitute also makes conforming changes to s. 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code.

This committee substitute applies to crimes committed on or after July 1, 2005.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fourth and Fifth District Courts of Appeal upheld s. 893.13(1)(e), F.S., against an establishment clause challenge under the First Amendment to the United States Constitution and Article I, Section 3 of the Florida Constitution. The statute challenged in both cases was a criminal penalty enhancement for selling drugs within 1,000 feet of a church. *Easley v. State*, 755 So.2d 692, 693 (Fla. 4th DCA 1999), and *Rice v. State*, 754 So.2d 881, 883 (Fla. 5th DCA 2000). Both courts found that the statute did have a secular legislative purpose (deterrence of drug use and sales near places where people gather); its primary effect did not advance or inhibit religion; and it did not foster “an excessive government entanglement with religion” consistent with the three-part test set forth by the United States Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

Critical to its finding, however, the *Easley* court noted, was that the Legislature did not just apply the enhanced penalty for drug sales near places of worship, but also included other places where the public gathers, such as parks, schools, child care facilities, and convenience stores. This inclusion helped the court to find there was no advancement of religion when the secular purpose of deterring drugs was equally applicable to places where the public, particularly children and families, tended to congregate. *Id.* at 693. *Cf. Todd v. State*, 643 So.2d 625 (Fla. 1st DCA 1994) (holding that s. 806.13, F.S., which criminalizes damaging property and enhances the penalty if the damage is to a church or other place of worship, did not violate the Establishment Clause. Similar to *Easley*, the *Todd* court pointed out that the enhanced penalty not only applies to criminal mischief involving places of worship, but also to criminal mischief involving telephone services in supporting its holding. *Id.* at 630).

The 5th DCA in *Rice* also upheld the statute enhancing penalties for selling drugs near places of worship against an equal protection challenge by finding that the challenged classification (the statute favors churchgoers to the detriment of others) has some rational relationship to the legitimate state purpose of protecting its citizens from drug crimes in areas where they tend to congregate. *Id.* at 885.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Senate Committee substitute 1096 will subject persons convicted under its provisions to potentially higher fines and incarceration periods.

C. Government Sector Impact:

According to the Criminal Justice Impact Conference, any fiscal impact would be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is uncertain if a potential defendant would always be on notice regarding proximity to a religious institution, as some organizations may not be clearly identified.

This Senate staff analysis does not reflect the intent or official position of the committee substitute's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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