

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 794

INTRODUCER: Criminal Justice Committee and Senator Diaz de la Portilla

SUBJECT: Controlled Substances

DATE: April 1, 2011                      REVISED: 04/04/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Fav/CS</b>
2.	Daniell	Walsh	CF	<b>Favorable</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill enhances the felony degree and penalties of certain controlled substances offenses when those offenses are committed within 1,000 feet of the real property comprising a “homeless shelter.” The bill defines a “homeless shelter” as a “supervised publicly or privately operated shelter designed to provide temporary living accommodations for persons who otherwise lack a fixed, regular, and adequate nighttime residence.”

This bill substantially amends sections 893.13 and 921.0022, Florida Statutes.

**II. Present Situation:**

**Felony Degree and Penalty Enhancements**

Chapter 893, F.S., relating to drug abuse prevention and control, is called the Florida Comprehensive Drug Abuse Prevention and Control Act (Act). The Act identifies controlled substances and places them in a “schedule” depending on the level of potential for abuse and

whether it is accepted for a medicinal purpose.<sup>1</sup> Section 893.13, F.S., provides penalties for certain prohibited acts relating to the controlled substances listed in the Act. This section of law also provides for enhanced felony degrees and penalties for certain offenses. Specifically, there are felony degree and penalty enhancements for selling, manufacturing, or delivering, or possessing with the intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet<sup>2</sup> of the real property comprising:

- A child care facility or a public or private elementary, middle, or secondary school;
- A state, county, or municipal park, a community center, or a publicly owned recreational facility;
- A public or private college, university, or other postsecondary educational institution;
- A physical place for worship;
- A convenience business;
- A public housing facility; or
- An assisted living facility.<sup>3</sup>

If a person violates these provisions, it is a first or second degree penalty, depending on the controlled substance. For example:

- For a controlled substance in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., F.S., the person commits a felony of the first degree;<sup>4</sup>
- For a controlled substance in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4), F.S., the person commits a felony of the second degree.<sup>5</sup>

Additionally, if a person has any other illegal controlled substance within 1,000 feet of the above locations, the person shall receive a \$500 fine and be sentenced to serve 100 hours of public service.<sup>6</sup>

If an offense is not committed within 1,000 feet of one of the locations above, the offense would be of a lesser felony degree and subject to a lesser penalty. For example, if a person sold a non-trafficking amount of cocaine (a Schedule (2)(a) controlled substance<sup>7</sup>) and this sale was not committed within 1,000 feet of a child care facility, the sale would be a second degree felony.<sup>8</sup>

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<sup>1</sup> Section 893.03, F.S.

<sup>2</sup> “We construe the legislative intent to measure within a 1,000-foot radius, not by local idiosyncrasies of pedestrian or automobile travel.” *Howard v. State*, 591 So. 2d 1067, 1068 (Fla. 4th DCA 1991). Essentially, the distance is established “as the crow flies, *not* as the car drives.” *Id.*

<sup>3</sup> See s. 893.13(1)(c), (1)(d), (1)(e), (1)(f), and (1)(h), F.S.

<sup>4</sup> A felony of the first degree is punishable by up to 30 years in prison and a fine of up to \$10,000 may also be imposed. Sections 775.082(3)(b) and 775.083(1), F.S.

<sup>5</sup> A felony of the second degree is punishable by up to 15 years in prison and a fine of up to \$10,000 may also be imposed. Sections 775.082(3)(c) and 775.083(1), F.S.

<sup>6</sup> This penalty does not apply to persons who have an illegal controlled substance within 1,000 feet of the real property comprising of an assisted living facility. See s. 893.13(1)(h), F.S.

<sup>7</sup> Section 893.03(2)(a)4., F.S.

<sup>8</sup> Section 893.13(1)(a), F.S.

However, if the person sold the same cocaine within 1,000 feet of a child care facility, the sale would be a first degree felony.

### **Controlled Substances Offenses Committed Near Homeless Shelters**

Section 414.0252(7), F.S., defines the term “homeless” to mean an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;
- An institution that provides a temporary residence for individuals intended to be institutionalized; or
- A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Current law does not define the term “homeless shelter.”

Current law does not provide for felony degree or penalty enhancements for offenses related to controlled substances within 1,000 feet of a homeless shelter.

### **III. Effect of Proposed Changes:**

This bill amends s. 893.13, F.S., to provide an enhanced felony degree and penalty for the sale, manufacture, or delivery, or possession with the intent to sell, manufacture, or deliver, a controlled substance when the offense is committed within 1,000 feet of the real property comprising a homeless shelter. Any person who violates this provision with respect to:

- A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., F.S., commits a felony of the first degree.
- A controlled substance in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4), F.S., commits a felony of the second degree.<sup>9</sup>

The bill defines the term “homeless shelter” to mean a “supervised publicly or privately operated shelter designed to provide temporary living accommodations for persons who otherwise lack a fixed, regular, and adequate nighttime residence.”

The bill also amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank the new offenses created by the bill.

The bill provides an effective date of July 1, 2011.

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<sup>9</sup> The bill does not reference an enhanced penalty for an offense involving a controlled substance not specifically referenced. Therefore, the enhanced penalty provisions would not apply to offenses involving non-referenced controlled substances.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

This bill was heard by the Criminal Justice Impact Conference (conference), which provides the final, official estimate of the prison bed impact, if any, of legislation, on April 4, 2011. The conference estimates that the bill will have an unquantifiable prison bed impact.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>10</sup> Office of Economic and Demographic Research, *Criminal Justice Impact Conference* (April 4, 2011), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (follow "Conference Results" hyperlink) (last visited April 4, 2011).

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 28, 2011:**

The committee substitute:

- Defines the term “homeless shelter.”
- Clarifies that felony degree and penalty enhancements apply to certain controlled substance offenses committed within 1,000 feet of the real property comprising a homeless shelter.
- Amends the offense severity ranking chart of the Criminal Punishment code to rank offenses for which felony degree and penalties are enhanced.

- B. **Amendments:**

None.