

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 Criminal Justice Committee

BILL: CS/SB 794

INTRODUCER: Criminal Justice Committee and Senator Diaz de la Portilla

SUBJECT: Drug Abuse Prevention and Control

DATE: March 28, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			CF	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill enhances the felony degree and penalties of certain drug offenses when those offenses are committed within 1,000 feet of the real property comprising a “homeless shelter,” a term defined in the bill.

This bill substantially amends section 893.13 of the Florida Statutes.

II. Present Situation:

Felony Degree and Penalty Enhancements for Drug Offenses Committed Within 1,000 Feet of a Place of Worship or Convenience Business

Several paragraphs of subsection (1) of s. 893.13, F.S.,¹ enhance the felony degree and penalties for certain drugs offenses when those offenses are committed within 1,000 feet of specified locations. For example, s. 893.13(1)(e), F.S., provides that, except as authorized by ch. 893.13,

¹ See s. 893.13(1)(c), F.S. (1,000 feet of a child care facility, school, park, community center, or publicly owned recreational center), s. 893.13(1)(d), F.S. (1,000 feet of a college or university), s. 893.13(1)(e), F.S. (1,000 feet of place of worship or convenience business), s. 893.13(1)(f), F.S. (1,000 feet of a public housing facility), and s. 893.13(1)(c), F.S. (1,000 feet of an assisted living facility).

F.S., it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet² of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171, F.S.

Any person who violates this paragraph with respect to:

- A controlled substance in Schedule (1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. of the controlled substance schedules in ch. 893.03, F.S., commits a first degree felony.
- A controlled substance in Schedule (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) of the controlled substance schedules in ch. 893.03, F.S., commits a second degree felony.
- Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

If the drug offenses were not committed within 1,000 feet of a location for which such offenses would be subject to felony degree and penalty enhancements, the offenses 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 substance³) and this sale was not committed within 1,000 feet of a location subject to felony degree and penalty enhancements, this sale would be a second degree felony.⁴ However, if the person sold a non-trafficking amount of cocaine within 1,000 feet of a convenience business, this sale would be a first degree felony, as provided in s. 893.13(1)(e), F.S.

Drug 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 any of the following:

- 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.
- 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.”

² “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). Stated another way, distance is established “as the crow flies, *not* as the car drives.” *Id.*

³ s. 893.03(2)(a)4., F.S.

⁴ s. 893.13(1)(a), F.S.

Current law does not enhance the felony degree and penalty for drug offenses committed within 1,000 feet of a homeless shelter.

III. Effect of Proposed Changes:

The bill creates a new paragraph (1)(i) of s. 893.13(1)(e), F.S., which enhances the felony degree and penalties for sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver a controlled substance when any of those offenses is committed within 1,000 feet of the real property comprising a “homeless shelter.” Any person who violates this new paragraph with respect to:

- A controlled substance in Schedule (1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. of the controlled substance schedules in ch. 893.03, F.S., commits a first degree felony, ranked in Level 5 of the Criminal Punishment Code offense severity ranking chart.
- A controlled substance in Schedule (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) of the controlled substance schedules in ch. 893.03, F.S., commits a second degree felony, ranked in Level 3 of the Criminal Punishment Code offense severity ranking chart.⁵

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 various parts of s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank the offenses for which felony degree and penalties are enhanced under new paragraph (1)(i) of s. 893.13, F.S., as previously described.

The effective date of the bill is July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ The bill does not reference an enhanced penalty for an offense involving a controlled substance not specifically referenced, such as a Schedule V controlled substances. Therefore, the enhanced penalty provisions would not apply to offenses involving non-referenced controlled substances.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill could have a potentially significant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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:**

- 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.