

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: SB 794

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Drug Abuse Prevention and Control

DATE: March 23, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill enhances the felony degree and penalties of certain drug offenses when those offenses are committed within 1,000 feet of a shelter for the homeless.

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

Section 893.13(1)(e), F.S., provides that, except as authorized by ch. 893.13, 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 feet¹ 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.

Any person who violates this paragraph with respect to:

¹ “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.*

- 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.²
- 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.³
- 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.

This paragraph and other similar paragraphs of subsection (1) of s. 893.13, F.S.,⁴ enhance the felony degree and penalty for certain drugs offenses when those offenses are committed within 1,000 feet of specified locations. 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 substance⁵) 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.⁶ 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 “shelter for the homeless” or “homeless shelter.”

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

² A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000 may also be imposed. ss. 775.082 and 775.083, F.S.

³ A second degree felony is generally punishable by up to 15 years in state prison and a fine of up to \$10,000 may also be imposed. ss. 775.082 and 775.083, F.S.

⁴ 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)(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).

⁵ s. 893.03(2)(a)4., F.S.

⁶ s. 893.13(1)(a), F.S.

III. Effect of Proposed Changes:

The bill amends s. 893.13(1)(e), F.S., to enhance 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 are committed within 1,000 feet of a “shelter for the homeless as defined in s. 414.0252.” (See “Present Situation” section of this bill analysis for a description of the felony degree and penalty enhancements.)

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.

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:

On line 20 of the bill, the bill references “shelter for the homeless as defined in s. 414.0252.” Section 414.0252, F.S., defines the term “homeless” but does not specifically define the term “shelter for the homeless” or “homeless shelter.” A House bill that substantively addresses the same subject (HB 897) defines what a homeless shelter is.

The bill does not amend the offense severity ranking chart in s. 921.0022, F.S., to reference the changes to s. 893.13(1)(e), F.S., in the ranking descriptions relevant to s. 893.13(1)(e), F.S. HB 879 amends ranking descriptions.⁷

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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁷ The House bill also appears to be different than the Senate bill by creating a new paragraph within subsection (1) of s. 893.13, F.S., rather than amending paragraph (e) of that subsection.