

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 Committee on Criminal Justice

BILL: CS/SB 570

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Sentencing

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 570 amends s. 893.13, F.S., which enhances the penalty for controlled substances offenses when those offenses are committed within 1,000 feet of certain places or facilities. These protected areas are sometimes referred to as “drug-free zones.”

The bill reduces from 1,000 feet to 250 feet the distance for drug free zones around parks, community centers, publicly owned recreational facilities, colleges and universities, public housing facilities, and convenience businesses. The bill does not reduce the distance (1,000 feet) for drug free zones around K-12 schools, child care facilities, places of worship, and assisted living facilities.

The bill also provides that only the sale or manufacture of a controlled substance in any drug free zone is subject to an enhanced penalty under s. 893.13, F.S. Currently, controlled substance acts applicable to drug free zone violations include controlled substance sales, manufacture, delivery, and possession with intent to sell, manufacture, or deliver.

The bill will likely result in some decrease in prison beds because the bill decreases the distance around several drug free zones and limits the enhanced penalty to the sale or manufacture of controlled substances, which means that fewer persons will likely be arrested and prosecuted for a drug free zone violation. See Section V. Fiscal Impact Statement.

II. Present Situation:

Drug Free Zones

Florida law enhances the penalty for certain controlled substances offenses when those offenses are committed within 1,000 feet of certain places or facilities.¹ These protected areas are sometimes referred to as “drug-free zones” or “DFZs.”²

Florida’s DFZ provisions are found in s. 893.13(1)(c), (d), (e), (f), and (h), F.S. While not articulated in these provisions or in the chapter laws creating them, purposes that have typically been articulated for DFZs include, but are not limited to, enhancing public safety (e.g., reducing drug activity and drug-related crimes in the DFZs), reducing nuisance, and improving quality of life. Florida’s first DFZ provision was created in 1987³ and applied only to K-12 schools, but subsequent enactments created new types of DFZs. Florida created its K-12 school DFZ approximately three years after Congress enacted a school DFZ law, which the sponsor, former U.S. Senator Paula Hawkins, stated was intended to “deter drug distribution in and around schools” and help “eliminate outside negative influences” around schools.⁴

Section 893.13(1)(a), F.S., punishes the sale, manufacture, or delivery, or possession with intent to sell manufacture, or deliver, a controlled substance as a first degree misdemeanor,⁵ third degree felony,⁶ or second degree felony,⁷ depending upon the type of controlled substance involved in the drug activity.⁸ For example, selling cocaine (a Schedule (2)(a) controlled substance)⁹ is a second degree felony¹⁰ but selling cannabis (a Schedule (1)(c) controlled substance)¹¹ is a third degree felony.¹²

¹ *Thomas v. State*, 61 So. 3d 1157, 1159 (Fla. 1st DCA 2011). Some of the information reported in this section of the analysis was obtained from *Review Penalties for Drug-free Zone Violations*, Interim Report 2012-166 (Oct. 2011), Senate Criminal Justice Committee, The Florida Senate, available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-116cj.pdf> (last visited on Feb. 19, 2018).

² The DFZ provisions discussed in this analysis differ from similarly-named provisions enacted by local ordinance that punish with trespassing penalties those who engage in drug activity in designated zones.

³ Chapter 87-243, L.O.F.

⁴ 130 Cong. Rec. S559 (daily ed. Jan. 31, 1984).

⁵ A first degree misdemeanor is punishable by up to one year in county jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁶ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

⁷ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁸ Controlled substances appear in one of five schedules under s. 893.03, F.S. Penalties are generally greatest for drug activity (like drug sales) that involves Schedule 1 and 2 controlled substances. Scheduling is determined by specific criteria set forth in s. 893.03, F.S. For example, a Schedule 1 substance is a substance which has a high potential for abuse and has no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Section 893.03(1), F.S.

⁹ Section 893.03(2)(a)4., F.S.

¹⁰ Section 893.13(1)(a)1., F.S.

¹¹ Section 893.03(1)(c)7., F.S.

¹² Section 893.13(1)(a)2., F.S.

Generally, this described drug activity is punished under s. 893.13(1)(a), F.S.¹³ However, when this drug activity is committed in, on, or within 1,000 feet¹⁴ of certain places and facilities, the degree of the offense is increased by one degree and the penalty is enhanced. For example, it is a first degree felony to sell cocaine within 1,000 feet of the real property of a K-12 school.¹⁵ In contrast, if this sale occurs outside of a K-12 school DFZ (or another DFZ), the offense is a second degree felony.¹⁶

Florida's current DFZs are created in, on, or within 1,000 feet of:

- The real property comprising a child care facility¹⁷ between the hours of 6 a.m. and 12 midnight, if the owner or operator of the facility posts a sign according to specifications set forth in s. 893.13, F.S.;¹⁸
- The real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight;¹⁹
- The real property comprising a state, county, or municipal park (no time restriction);²⁰
- The real property comprising a community center (no time restriction);²¹
- The real property comprising a publicly owned recreational facility (no time restriction);²²
- The real property comprising a public or private college, university, or other postsecondary educational institution (no time restriction);²³
- A physical place of worship at which a church or religious organization regularly conducts religious services (no time restriction);²⁴
- A convenience business (between the hours of 11 p.m. and 5 a.m.);²⁵

¹³ However, s. 893.13(1)(b), F.S., provides that it is a first degree felony to unlawfully sell or deliver more than 10 grams of any Schedule (1)(a) or (1)(b) controlled substance. Further, some controlled substances when possessed, sold, etc., in a specified quantity can be punished as drug trafficking under s. 893.135, F.S., which is generally a first degree felony. A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹⁴ Distance is measured "as the crow flies, not as the car drives." *Howard v. State*, 591 So. 2d 1067, 1068 (Fla. 4th DCA 1991). For example, with the K-2 school DFZ, distance is measured in a straight line from the boundary of the school's real property.

¹⁵ Section 893.13(1)(c)1., F.S.

¹⁶ Section 893.13(1)(a)1., F.S.

¹⁷ Section 402.302(2), F.S., provides that a "child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. "Child care facility" does not include: public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.; summer camps having children in full-time residence; summer day camps; bible schools normally conducted during vacation periods; and operators of transient establishments, as defined in ch. 509, F.S., which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of ch. 435, F.S. *Id.*

¹⁸ Section 893.13(1)(c), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* "Community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. *Id.*

²² *Id.*

²³ Section 893.13(1)(d), F.S.

²⁴ Section 893.13(1)(e), F.S.

²⁵ *Id.* Section 812.171, F.S., defines a "convenience business" as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term "convenience business" does not include: a business that is solely or primarily a restaurant; a business that

- The real property comprising a public housing facility (no time restriction);²⁶ and
- The real property comprising an assisted living facility,²⁷ as that term is used in ch. 429, F.S. (no time restriction).²⁸

The DFZ provisions do not require either intent to commit a drug offense in a DFZ²⁹ or knowledge that the offense is being committed within a DFZ.³⁰ Like the penalties for violations of s. 893.13(1)(a), F.S., the enhanced penalties for DFZ violations depend on the type of controlled substance involved. For example, selling cocaine in a K-12 school DFZ is a first degree felony³¹ but selling cannabis in the same DFZ (or another DFZ) is a second degree felony.³²

Controlled substance acts committed in a DFZ are sometimes ranked higher in the offense severity ranking chart of the Criminal Punishment Code than those same acts when committed outside a DFZ.³³ This impacts the scoring of the lowest permissible sentence, which is based on sentence points accrued. Higher-ranked offenses score more sentence pointed than lower-ranked offenses.³⁴ Further, a three-year mandatory minimum term of imprisonment must be imposed for some controlled substance offenses when committed in any of the following DFZs: K-12 school; park; community center; and publicly owned recreational facility.³⁵

Data on Florida Drug Free Zone Violations

According to recent information compiled by the Office of Program Policy Analysis and Government Accountability (OPPAGA) from the Department of Corrections data, there were 2,019 inmates in state prison as of October 31, 2017, with a primary offense consisting of a DFZ violation. The OPPAGA provided the following breakdown regarding DFZ violators in state prison:

- Forty-six percent of these inmates (919 inmates) committed a violation of s. 893.13(1)(c), F.S. (K-12 school, child care facility, park, community center, or publicly owned recreational facility);
- Forty-five percent of these inmates (916 inmates) committed a violation of s. 893.13(1)(e), F.S. (place of worship or convenience business);

always has at least five employees on the premises after 11 p.m. and before 5 a.m.; and a business that has at least 10,000 square feet of retail floor space.

²⁶ Section 893.13(1)(f), F.S. “Real property comprising a public housing facility” means real property, as defined in s. 421.03(12), F.S., of a public corporation created as a housing authority pursuant to part I of ch. 421, F.S. *Id.*

²⁷ Section 429.02(5), F.S., defines an “assisted living facility” as any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

²⁸ Section 893.13(1)(h), F.S.

²⁹ *Spry v. State*, 912 So. 2d 384, 386 (Fla. 2d DCA 2005).

³⁰ *Dickerson v. State*, 783 So. 2d 1144, 1148 (Fla. 5th DCA 2001), *review denied*, 819 So. 2d 134 (Fla. 2002).

³¹ Section 893.13(1)(c)1., F.S.

³² Section 893.13(1)(c)2., F.S.

³³ For example, selling cannabis in violation of s. 893.13(1)(a)2., F.S., is a level 3 offense; selling cannabis within 1,000 feet of a K-12 school is a level 5 offense. Section 921.0022(3)(c) and (e), F.S.

³⁴ Section 921.0024(1)(a), F.S. For example, in the example cited, *supra*, at n. 33, a level 3 primary offense scores 16 sentence points and a level 5 primary offense scores 28 sentence points.

³⁵ Section 893.13(1)(c)1., F.S.

- Five percent of these inmates (111 inmates) committed a violation of s. 893.13(1)(d), F.S. (college, university or postsecondary institution);
- Three percent of these inmates (67 inmates) committed a violation of s. 893.13(1)(f), F.S. (public housing facility); and
- One percent of these inmates (6 inmates) committed a violation of s. 893.13(1)(h), F.S. (assisted living facility).³⁶

Further, according to the OPPAGA, 47 percent of drug offenders in Florida prisons are black, but 84 percent of inmates with DFZ violations are black.³⁷

State Studies on the Impact on Drug Free Zones

Studies of municipalities in other states suggest significant proliferation of DFZs in densely populated (primarily urban) areas. In 2005, a legislative committee of the Connecticut General Assembly found that, of twelve municipalities studied, a significant percentage of the total geographical areas of urban and “urban-like” suburban municipalities were in DFZs.³⁸ In 2006, the Utah Sentencing Commission found that DFZs covered 75 to 85 percent of all livable space in the four cities it studied (Randolph, Richfield, Murray, and St. George).³⁹ In a 2007 report, the New Jersey Commission to Review Criminal Sentencing concluded from data in a previous report of the commission that “New Jersey’s densely populated urban areas have been literally transformed into massive, unsegmented ‘drug free’ zones. Consequently, the protected areas demarcated by the statutes no longer exist, having merged with contiguous zones.”⁴⁰

III. Effect of Proposed Changes:

The bill amends s. 893.13, F.S., which enhances the penalty for controlled substances offenses when those offenses are committed within 1,000 feet of certain places or facilities.

The bill reduces from 1,000 feet to 250 feet the DFZ around parks, community centers, publicly owned recreational facilities, colleges and universities, public housing facilities, and convenience businesses. The bill does not reduce the distance (1,000 feet) for drug free zones around K-12 schools, child care facilities, places of worship, and assisted living facilities.

³⁶ This data was included in an OPPAGA presentation on DFZs before the Senate Appropriations Subcommittee on Criminal and Civil Justice on Feb. 8, 2018, available at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/ACJ/MeetingRecords/MeetingPacket_4218.pdf (last visited on Feb. 19, 2018).

³⁷ *Id.*

³⁸ *Mandatory Minimum Sentences* (Dec. 2005), Legislative Program Review & Investigations Committee, Connecticut General Assembly, available at https://www.cga.ct.gov/2005/pridata/Studies/Mandatory_Minimum_Sentences_Final_Report.htm (last visited on Feb. 19, 2018). “Almost the total geographical areas of Bridgeport, Hartford, and New Haven are within ‘drug free’ zones.” *Id.* These municipalities were categorized by the committee as “urban.” *Id.*

³⁹ *Annual Report* (2016), p. 2, Utah Sentencing Commission, available at <https://justice.utah.gov/Sentencing/AnnualReports/Sentencing2006.pdf> (last visited on Feb. 19, 2018).

⁴⁰ *Supplemental Report on New Jersey’s Drug Free Zone Crimes & Proposal for Reform* (April 2007), p. 4, New Jersey Commission to Review Criminal Sentencing, available at <http://www.sentencing.nj.gov/downloads/supplemental%20schoolzonereport.pdf> (last visited on Feb. 19, 2018).

The bill also provides that only the sale or manufacture of a controlled substance in any DFZ is subject to an enhanced penalty under s. 893.13, F.S. Currently, controlled substance acts applicable to DFZ violations include controlled substance sales, manufacture, delivery, and possession with intent to sell, manufacture, or deliver.

The bill also amends s. 921.0024, F.S., the offense severity ranking chart of the Criminal Punishment Code, to amend descriptions of drug free zone violations ranked in the chart to reflect the changes made by the bill to s. 893.13, F.S. The bill does not change the ranking of these offenses.

The effective date of the bill is October 1, 2018.

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 prison bed impact, if any, of legislation has not yet reviewed CS/SB 570. However, the bill will likely result in some decrease in prison beds because the bill decreases the distance around several DFZs and limits the enhanced penalty to the sale or manufacture of controlled substances, which means that fewer persons will likely be arrested and prosecuted for a DFZ violation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Crime and Justice Institute's Recommendations Regarding Drug Free Zones

In a 2018 report prepared for the Legislature by the Crime and Justice Institute (Institute), the Institute recommended narrowing Florida's DFZs. Specifically, the Institute recommended "[removing] locations within the enumerated list that are not exclusively or primarily focused on a vulnerable population," and "[requiring] an intent to commit the offense in the designated zone or that the conduct occurred within the presence of a minor."⁴¹

The Institute included several findings in support of its recommendations. The Institute found:

[P]iecemeal policy making in many states led to expansion of these zones well beyond their original intent. Locations were added to include places where children might be rather than those primarily children-centered and the perimeter around these protected locations expanded from 100 or 300 feet to 1,000 feet or more. The result has been far more people receiving more severe penalties for the same criminal conduct, and the impact is often far greater in urban areas where these locations are more prevalent.⁴²

Regarding Florida's DFZs, the Institute found that "[t]he quantity of drugs is irrelevant and there is no requirement that the individual be aware that he or she is in proximity to the particular location or that they are selling or intending to sell to the vulnerable population protected by the zone."⁴³ Further, "Florida's [DFZs] are significantly broader than in many other states."⁴⁴

The Institute also noted efforts in Utah, South Carolina, and Indiana to limit their drug free zones:

Utah removed locations such as parks, shopping malls, sports facilities, arenas, and movie theatres from the list of drug-free zone locations and reduced the zone surrounding the location from 1,000 feet to 100 feet. South Carolina, amended its drug-free zone statute to require an intent by the defendant to engage in commercial drug activity within the protected location. In a bill signed by then Governor Mike Pence, Indiana reduced their perimeter from 1,000 feet to 500 feet and eliminated public housing complexes and youth program centers from the zone list. In the same measure, it also added the requirement that a minor must be reasonably expected to be present when the underlying drug offense occurs.⁴⁵

⁴¹ Len Engel and Maura McNamara, *Data-Driven Solutions to Improve Florida's Criminal Justice System* (Feb. 2018), Crime and Justice Institute, p. 19, available at http://www.crj.org/assets/2018/01/FINAL_Data-Driven-Solutions-to-Improve-Floridas-Criminal-Justice-System.pdf (last visited on Feb. 19, 2018).

⁴² *Id.* at p. 18.

⁴³ *Id.* at p. 19.

⁴⁴ *Id.* at p. 19.

⁴⁵ *Id.* at p. 19 (footnotes omitted).

Senate Criminal Justice Staff's Proposed Options for Drug Free Zones

In a 2012 interim report on DFZs, Senate Criminal Justice Committee staff proposed a number of options for amending Florida's DFZ provisions, including modifying the distance standard (1,000 feet) for some or all of the DFZs and limiting the type of controlled substance offenses subject to an enhanced penalty under the DFZ provisions.⁴⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.13 and 921.0024.

IX. 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 February 20, 2018:

The Committee Substitute:

- Deletes all provisions of the original bill which amended several sentencing provisions to raise the sentencing point ceiling for determining the lowest permissible sentence a court may impose under the Criminal Punishment Code;
- Reduces from 1,000 feet to 250 feet the distance for drug free zones around parks, community centers, publicly owned recreational facilities, colleges and universities, public housing facilities, and convenience businesses;
- Provides that only sale or manufacture of a controlled substance in any drug free zone is subject to an enhanced penalty under s. 893.13, F.S.; and
- Amends descriptions of drug free zone violations ranked in the offense severity ranking chart of the Criminal Punishment Code to reflect the changes made by the bill to s. 893.13, F.S.

- B. Amendments:

None.

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

⁴⁶ *Review Penalties for Drug-free Zone Violations*, Interim Report 2012-166 (Oct. 2011), p. 10, Senate Criminal Justice Committee, The Florida Senate, available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-116cj.pdf> (last visited on Feb. 19, 2018).