

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1233 Drug-enhancement Zones

SPONSOR(S): Campbell

TIED BILLS: IDEN./SIM. **BILLS:** SB 1520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 5 N, As CS	Loyed	Hall
2) Judiciary Committee			

SUMMARY ANALYSIS

Under Florida law, certain drug-free zones exist wherein a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of such areas without facing an increased criminal penalty. Examples of drug-free zones include areas within 1,000 feet of schools, childcare facilities, parks, community centers, churches, religious organizations, and public housing facilities.

CS/HB 1233 amends s. 893.13, F.S., to:

- Revise the hours of operation applicable to a drug-free zone around child care facilities and public or private elementary, middle, or secondary schools which currently apply from the hours of 6 a.m. to 12 midnight to instead apply during the hours of operation of the child care facility or school, including when the child care facility or school is providing services to children or students outside of normal hours of operation;
- Limit the hours of operation applicable to a drug-free zone around a place of worship to only when the church or religious organization is conducting services or other activities.

The bill may have a negative indeterminate jail and prison bed impact because it narrows the application of drug-free zone offenses involving child care facilities, K-12 schools, and places of worship.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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,¹ third degree felony,² or second degree felony,³ depending upon the type of controlled substance involved in the drug activity.⁴ For example, selling cocaine (a Schedule (2)(a) controlled substance)⁵ is a second degree felony⁶ but selling cannabis (a Schedule (1)(c) controlled substance)⁷ is a third degree felony.⁸

Generally, this described drug activity is punished under s. 893.13(1)(a), F.S.⁹ However, when this drug activity is committed in, on, or within 1,000 feet¹⁰ of certain places and facilities, the degree of the offense is increased by one degree and the penalty is enhanced. These areas are sometimes referred to as “drug-free zones.” For example, it is a first degree felony to sell cocaine within 1,000 feet of the real property of a K-12 school.¹¹ In contrast, if this sale occurs outside of a K-12 school drug-free zone, the offense is a second degree felony.¹²

Florida’s current drug-free zones are located in, on, or within 1,000 feet of:

- The real property comprising a child care facility¹³ 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.;¹⁴
- The real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight;¹⁵
- The real property comprising a state, county, or municipal park (no time restriction);¹⁶
- The real property comprising a community center (no time restriction);¹⁷

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

² A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Ss. 775.082 and 775.083, F.S.

³ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Ss. 775.082 and 775.083, F.S.

⁴ 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. S. 893.03(1), F.S.

⁵ S. 893.03(2)(a)4, F.S.

⁶ S. 893.13(1)(a)1, F.S.

⁷ S. 893.03(1)(c)7, F.S.

⁸ S. 893.13(1)(a)2, F.S.

⁹ 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. Ss. 775.082 and 775.083, F.S.

¹⁰ 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-12 school drug-free zone, distance is measured in a straight line from the boundary of the school’s real property.

¹¹ S. 893.13(1)(c)1, F.S.

¹² S. 893.13(1)(a)1, F.S.

¹³ S. 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.*

¹⁴ S. 893.13(1)(c), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *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.*

- The real property comprising a publicly owned recreational facility (no time restriction);¹⁸
- The real property comprising a public or private college, university, or other postsecondary educational institution (no time restriction);¹⁹
- A physical place of worship at which a church or religious organization regularly conducts religious services (no time restriction);²⁰
- A convenience business (between the hours of 11 p.m. and 5 a.m.);²¹
- The real property comprising a public housing facility (no time restriction);²² and
- The real property comprising:
 - A mental health facility, as that term is used in ch. 394, F.S.;
 - A health care facility licensed under ch. 395, F.S., which provides substance abuse treatment;
 - A licensed service provider as defined in s. 397.311, F.S.;
 - A facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26), F.S.;
 - A recovery residence as defined in s. 397.311, F.S.;
 - An assisted living facility as defined in ch. 429, F.S.; or
 - A pain management clinic as defined in s. 458.3265(1)(a)1.c., F.S., or s. 459.0137(1)(a)1.c, F.S. (no time restriction).²³

The drug-free zone provisions do not require either intent to commit a drug offense in a drug-free zone²⁴ or knowledge that the offense is being committed within a drug-free zone.²⁵ Like the penalties for violations of s. 893.13(1)(a), F.S., the enhanced penalties for drug-free zone violations depend on the type of controlled substance involved. For example, selling cocaine in a K-12 school drug-free zone is a first degree felony²⁶ but selling cannabis in the same drug-free zone is a second degree felony.²⁷

Controlled substance acts committed in a drug-free zone are sometimes ranked higher in the offense severity ranking chart of the Criminal Punishment Code than those same acts when committed outside a drug-free zone.²⁸ This impacts the scoring of the lowest permissible sentence, which is based on sentence points accrued. Higher-ranked offenses score more sentence points than lower-ranked offenses.²⁹ Further, a three-year mandatory minimum term of imprisonment must be imposed for some controlled substance offenses when committed in any of the following drug-free zones: K-12 schools; parks; community centers; and publicly owned recreational facilities.³⁰

Effect of Proposed Changes

CS/HB 1233 amends s. 893.13, F.S., to:

- Revise the hours of operation applicable to a drug-free zone around child care facilities and public or private elementary, middle, or secondary schools which currently apply from the hours

¹⁸ *Id.*

¹⁹ S. 893.13(1)(d), F.S.

²⁰ S. 893.13(1)(e), F.S.

²¹ *Id.* S. 812.171, F.S., defines a "convenience business" as anyplace 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 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.

²² S. 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.*

²³ S. 893.13(1)(h), F.S.

²⁴ *Spry v. State*, 912 So. 2d 384, 386 (Fla. 2d DCA 2005).

²⁵ *Dickerson v. State*, 783 So. 2d 1144, 1148 (Fla. 5th DCA 2001), *review denied*, 819 So. 2d 134 (Fla. 2002).

²⁶ S. 893.13(1)(c)1, F.S.

²⁷ S. 893.13(1)(c)2, F.S.

²⁸ 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. Ss. 921.0022(3)(c) and (e), F.S.

²⁹ S. 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.

³⁰ S. 893.13(1)(c)1, F.S.

of 6 a.m. to 12 midnight to instead apply during the hours of operation of the child care facility or school, including when the child care facility or school is providing services to children or students outside of normal hours of operation;

- Limit the hours of operation applicable to a drug-free zone around a place of worship to only when the church or religious organization is conducting services or other activities.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 893.13, F.S. relating to prohibited acts; penalties.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative indeterminate jail and prison bed impact because it narrows the application of drug-free zone offenses involving child care facilities, K-12 schools, and places of worship.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the hours of operation applicable to drug-free zones around child care facilities, which were previously made to apply at all times, to apply only during the child care facility's hours of operation, including when the child care facility is providing services to children outside of normal hours of operation;
- Restored the drug-free zone status of areas around convenience businesses and public housing facilities to current law.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.