

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: SB 1520

INTRODUCER: Senator Pizzo

SUBJECT: Controlled Substances

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1520 amends provisions of s. 893.13, F.S., which provide for enhanced punishment for committing various controlled substance offenses within 1,000 feet of schools and other specified places or facilities (“drug-free zones”). Specifically, the bill

- Revises hours of operation applicable to a drug-free zone around a K-12 school;
- Limits a drug-free zone around a state, county, or municipal park, a community center, or publicly owned recreational facility.
- Limits a drug-free zone around a place of worship to when the church or religious organization is conducting service or other activities; and
- Removes drug-free zones around convenience businesses and public housing facilities.

The bill should reduce prison bed impact. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

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.”²

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 March 22, 2023).

² The drug-free zone 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.

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,³ third degree felony,⁴ or second degree felony,⁵ depending upon the type of controlled substance involved in the drug activity.⁶ For example, selling cocaine (a Schedule (2)(a) controlled substance)⁷ is a second degree felony⁸ but selling cannabis (a Schedule (1)(c) controlled substance)⁹ is a third degree felony.¹⁰

Generally, this described drug activity is punished under s. 893.13(1)(a), F.S.¹¹ However, when this drug activity is committed in, on, or within 1,000 feet¹² 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.¹³ In contrast, if this sale occurs outside of a K-12 school drug-free zone, the offense is a second degree felony.¹⁴

³ 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.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ Section 893.03(2)(a)4., F.S.

⁸ Section 893.13(1)(a)1., F.S.

⁹ Section 893.03(1)(c)7., F.S.

¹⁰ Section 893.13(1)(a)2., F.S.

¹¹ 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.

¹² 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.

¹³ Section 893.13(1)(c)1., F.S.

¹⁴ Section 893.13(1)(a)1., F.S.

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

- The real property comprising a child care facility¹⁵ 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.;¹⁶
- The real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight;¹⁷
- The real property comprising a state, county, or municipal park (no time restriction);¹⁸
- The real property comprising a community center (no time restriction);¹⁹
- The real property comprising a publicly owned recreational facility (no time restriction);²⁰
- The real property comprising a public or private college, university, or other postsecondary educational institution (no time restriction);²¹
- A physical place of worship at which a church or religious organization regularly conducts religious services (no time restriction);²²
- A convenience business (between the hours of 11 p.m. and 5 a.m.);²³
- The real property comprising a public housing facility (no time restriction);²⁴ 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

¹⁵ 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.*

¹⁶ Section 893.13(1)(c), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *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.*

²⁰ *Id.*

²¹ Section 893.13(1)(d), F.S.

²² Section 893.13(1)(e), F.S.

²³ *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 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.

²⁴ 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.*

- 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).²⁵

The drug-free zone provisions do not require either intent to commit a drug offense in a drug-free zone²⁶ or knowledge that the offense is being committed within a drug-free zone.²⁷ 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 felony²⁸ but selling cannabis in the same drug-free zone is a second degree felony.²⁹

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.³⁰ 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.³¹ 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 school; park; community center; and publicly owned recreational facility.³²

III. Effect of Proposed Changes:

The bill amends provisions of s. 893.13, F.S., which provide for enhanced punishment for committing various controlled substance offenses within 1,000 feet of schools and other specified places or facilities (“drug-free zone”).

The bill revises hours of operation applicable to a drug-free zone around a K-12 school. The bill deletes “between the hours of 6 a.m. and 12 midnight” and substitutes “during the school’s hours of operation,” and limits such drug-free zone to the school’s hours of operation, including when the school is providing services to students outside of normal hours of operation.

The bill limits a drug-free zone around a state, county, or municipal park, a community center, or a publicly owned recreational facility to the hours of operation. Currently, such a drug-free zone applies without any time restriction.

The bill also limits a drug-free zone around a place of worship to when the church or religious organization is conducting service or other activities. Currently the drug-free zone for a place of worship applies without any time restriction.

²⁵ Section 893.13(1)(h), F.S.

²⁶ *Spry v. State*, 912 So. 2d 384, 386 (Fla. 2d DCA 2005).

²⁷ *Dickerson v. State*, 783 So. 2d 1144, 1148 (Fla. 5th DCA 2001), *review denied*, 819 So. 2d 134 (Fla. 2002).

²⁸ Section 893.13(1)(c)1., F.S.

²⁹ Section 893.13(1)(c)2., F.S.

³⁰ 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.

³¹ 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.

³² Section 893.13(1)(c)1., F.S.

The bill deletes the drug-free zone applicable to a public housing facility and a convenience business. Therefore, while drug activity around these places may be punished, it won't be subject to drug-free zone enhanced punishment.

The bill amends s. 893.149, F.S., to make a conforming change to correct a cross-reference.

The bill amends s. 921.0022, F.S., to remove rankings for drug-free zone offenses involving a public housing facility and convenience business. These changes are also conforming since the bill is eliminating these offenses.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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, has not yet reviewed the bill. However, the bill should reduce prison bed impact because it is narrowing the application of drug-free zone offenses involving a K-12 school and place of worship and eliminating drug-free zone offenses involving a public housing facility and a convenience business.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.13, 893.149, and 921.0022.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.