



The Florida Senate

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Committee on Criminal Justice

REVIEW PENALTIES FOR DRUG-FREE ZONE VIOLATIONS

Issue Description

Florida law increases the gravity of certain drug offenses and the severity of the penalty when these offenses are committed within 1,000 feet of certain places and facilities, such as within 1,000 feet of the real property of a K-12 school.¹ These protected areas are sometimes referred to as “drug-free zones” or “DFZs.”² DFZ laws have been advocated to protect the users of these places and facilities and as valuable drug enforcement and prosecution tools, but also have been criticized as being unfair, indiscriminately punitive, and not accomplishing purposes for which they are typically intended.

This report provides information relevant to Florida’s DFZ provisions so that legislators can assess whether these provisions should be retained in their current form, modified, or repealed. Some options are provided for legislators to consider.

Background

Information for this report comes from staff’s review of Florida’s DFZ provisions and relevant case law, studies of DFZs in other states, sentencing and new commitment data prepared by the Legislature’s Office of Economic and Demographic Research (EDR), case data provided by the Office of the State Courts Administrator, and survey responses from the offices of some state attorneys,³ public defenders,⁴ sheriffs,⁵ and police agencies.⁶ Those responding to the survey did not always respond to every survey question. Consequently, unless otherwise

¹ *Thomas v. State*, 61 So. 3d 1157, 1159 (Fla. 1st DCA 2011).

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

³ Surveys were forward to all state attorneys through the Florida Prosecuting Attorneys Association. Fifteen state attorneys from the following judicial circuits responded to the survey: 2nd (Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla counties); 3rd (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor counties); 6th (Pasco and Pinellas counties); 7th (Flagler, Putnam, St. Johns, and Volusia counties); 8th (Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties); 9th (Orange and Osceola counties); 11th (Dade County); 12th (DeSoto, Manatee, and Sarasota counties); 13th (Hillsborough County); 15th (Palm Beach County); 16th (Monroe County); 17th (Broward County); 18th (Brevard and Seminole counties); 19th (Indian River, Martin, Okeechobee, and St. Lucie counties); and 20th (Charlotte, Collier, Glades, Hendry, and Lee counties).

⁴ Surveys were forwarded to all public defenders through the Florida Public Defenders Association. Eight public defenders from the following judicial circuits responded to the survey: 5th (Citrus, Hernando, Lake, Marion, and Sumter counties); 7th (Flagler, Putnam, St. Johns, and Volusia counties); 8th (Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties); 14th (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington counties); 15th (Palm Beach County); 16th (Monroe County); 17th (Broward County); and 20th (Charlotte, Collier, Glades, Hendry, and Lee counties).

⁵ Surveys were forwarded to all sheriffs through the Florida Sheriffs Association. Twelve sheriffs from the following counties responded to the survey: Broward; Charlotte; Clay; Franklin; Hardee; Hillsborough; Manatee; Orange; Pasco; Pinellas; Sarasota; and Suwannee.

⁶ Twenty police agencies were chosen as a sampling of police agencies. Agencies were selected from different geographical regions and included agencies in large, mid-size, and small cities. Surveys were forwarded through the Florida Police Chiefs Association. Only four police agencies responded to the survey: the Ft. Myers Police Department; the St. Petersburg Police Department; the Tampa Police Department; and the Tallahassee Police Department.

indicated, information reported from this survey is represented as the majority response of those who responded to a survey question that provided relevant information for background information and findings of this report.

Florida's Drug Free Zone Laws

Florida's DFZ provisions are found in s. 893.13(1)(c), (1)(d), (1)(e), (1)(f), and (1)(h), F.S. While not articulated in these provisions or in the chapter laws creating them, purposes that typically have 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 1987⁷ 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.⁸

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, third degree felony, or second degree felony, depending upon the scheduling of the controlled substance relevant to the drug activity.⁹ Generally, this described drug activity (non-trafficking amounts) is punished under s. 893.13(1)(a), F.S.¹⁰ However, when this drug activity is committed in, on, or within 1,000 feet¹¹ 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 (punishable by up to 30 years in state prison) to sell cocaine within 1,000 feet of the real property of a K-12 school. In contrast, if this sale occurs outside of the K-12 school DFZ or another DFZ, the offense is a second degree felony (punishable by up to 15 years in state prison).

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

- The real property comprising a child care facility, as defined in s. 402.302, F.S., between the hours of 6 a.m. and 12 midnight and where the owner or operator of the facility posts a sign according to the specifications set forth in the statute. [s. 893.13(1)(c), F.S.]
- The real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight. [s. 893.13(1)(c), F.S.]
- The real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility, at any time. [s. 893.13(1)(c), F.S.]
- The real property comprising a public housing facility at any time. [s. 893.13(1)(d), F.S.]
- A physical place of worship, church or religious organization, which regularly conducts religious services, at any time. [s. 893.13(1)(e), F.S.]
- A convenience business, as defined in s. 812.171, F.S., at any time. [s. 893.13(1)(e), F.S.]
- The real property comprising a public or private college at any time. [s. 893.13(1)(f), F.S.]
- The real property comprising an assisted living facility, as that term is used in ch. 429, F.S., at any time. [s. 893.13(1)(h), F.S.]

⁷ Section 4., ch. 87-243, L.O.F.

⁸ 130 Cong.Rec. S559 (daily ed. January 31, 1984).

⁹ 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.

¹⁰ 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.

¹¹ 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 DFZ, distance is measured in a straight line from the boundary of the school's real property.

The DFZ provisions do not require either intent to commit a drug offense in a DFZ¹² or knowledge that the offense is being committed within a DFZ.¹³ Like the penalties for violations of s. 893.13(1)(a), F.S., the penalties for DFZ violations depend on the scheduling of the controlled substance relevant to the drug activity, e.g., selling a Schedule (2)(a) controlled substance (e.g., cocaine) in a K-12 school DFZ is a first degree felony but selling a Schedule (1)(c) controlled substance (e.g., cannabis) in the same DFZ is a second degree felony.

Controlled substance acts committed in a DFZ are sometimes ranked higher in the offense severity ranking chart of the Criminal Punishment Code (Code)¹⁴ than these same acts when committed outside a DFZ. This impacts the scoring of the lowest permissible sentence under the Code.¹⁵ Further, with the exception of violations involving child care facilities, a first degree felony violation of s. 893.13(1)(c), F.S., requires the imposition of a three-year mandatory minimum term of imprisonment. Additionally, the increase in felony degree means that the maximum penalty under the law is greater.¹⁶ Repeat offender sanctions under other laws (e.g., habitual felony offender sanctions under s. 775.082, F.S.) are also escalated due to the higher felony degree of the drug offense which may qualify the offender for repeat offender sanctions if there are also qualifying prior offenses.

Drug-free Zone Laws and Studies of Drug-free Zones

There is no current and complete listing of states' DFZ laws. Uniform DFZ distance standards (i.e. a distance standard applied to all DFZs in a state's law) appear to range from 300 feet (e.g., Minnesota) to a 3-mile radius (Alabama).¹⁷ Because studies (*see supra*) indicate that the impact of DFZs is greatest in densely populated areas, staff reviewed the DFZ laws of the five states with the highest population density (2010 Census).¹⁸ Provided are the DFZs created by the laws of these states:

- New Jersey (within 1,000 feet of the property of a specified school, 1,000 feet of a school bus, and 500 feet of a public housing facility, public park, and public building).
- Rhode Island (within 300 yards of the property of a specified school and 300 yards of a public park and playground).
- Massachusetts (within 1,500 feet of the property of a specified school and 100 feet of a public park and playground).
- Connecticut (within 1,500 feet of the property of a specified school, public housing project, and licensed child day care center).
- Maryland (in a school vehicle and within 1,000 feet of the property of a specified school).¹⁹

¹² *Spry v. State*, 912 So. 2d 384, 386 (Fla. 2d DCA 2005).

¹³ *Dickerson v. State*, 783 So. 2d 1144, 1148 (Fla. 5th DCA 2001), *review denied*, 819 So. 2d 134 (Fla. 2002).

¹⁴ Sections 921.002-921.0027, F.S. With the exception of capital felonies, felony sentencing is determined by the felony degree of the applicable felony and the provisions of the Code, which, in combination with the maximum penalties established in s. 775.082, F.S., determines the permissible sentencing range.

¹⁵ The Legislature ranks many non-capital felony offenses in the Code offense severity ranking chart (s. 921.0022, F.S.). When not specifically ranked in the chart, felony offenses are ranked under s. 921.0023, F.S., based on their felony degree. Level 10 offenses are deemed the most serious offenses. Sentence points accrue based on ranking level; the higher the ranking level, the greater the number of points. These points, along with points for other factors, such as additional and prior offenses, are entered into a specified mathematical calculation to determine the lowest permissible sentence, which generally must be imposed absent a permissible ground for mitigation. However, for some lower scoring sentences for particular offenses, a non-prison sanction may be appropriate. *See* ss. 775.082(10) and 921.00241, F.S.

¹⁶ The maximum penalty for some DFZ violations (which may involve a small amount of a controlled substance) is the same as the maximum penalty for some drug trafficking offenses (which may involve a considerable amount of a controlled substance). For example, the maximum penalty for selling one gram of cocaine in a K-12 school DFZ or trafficking in 28 grams or more of cocaine is 30 years in state prison. However, mandatory minimum terms and sentence points accrued for drug trafficking may be greater. Courts have the discretion to apply a drug trafficking sentence point multiplier. *See* ss. 893.135 and 921.0024, F.S.

¹⁷ Minn. Stat. §§ 152.01, 152.021, 152.022, 152.023, and 152.024; and Ala. Code §§ 13A-12-250 and 13-12-270.

¹⁸ *Resident Population Data*, 2010 U.S. Census, U.S. Census Bureau, <http://2010.census.gov/2010census/data/apportionment-dens-text.php>. Florida is the eighth most densely populated state.

¹⁹ N.J. Rev. Stat. §§ 2C:35-7 and 2C:35-7.1; R.I. Gen. Laws § 21-28-4.07.1; Mass. Gen. Laws ch. 94C § 32J; Conn. Gen. Stat. §§ 21a-278a. and 21a-279; and Md. Criminal Law Code Ann. § 5-627.

Staff did not find any studies that mapped the number of DFZs in a Florida city or county. Few surveyed law enforcement agencies identified the number of DFZs (and the number of overlapping DFZs) in the largest city or the county in their area of primary jurisdiction,²⁰ and no reporting agency indicated how much of the city or county was covered by DFZs. It is possible that in some areas identifying the number of DFZs would be a nearly impossible task. For example, in Miami-Dade-County, which has the fourth largest school district in the nation,²¹ there are 392 K-12 public schools reported.²² There are also 263 parks (more than 12,848 acres of land) in the Miami-Dade Parks system, the third largest county park system in the nation.²³ These are only two of the many types of DFZs. Other factors make identification of DFZs difficult. For example, to accurately identify the number of convenience business DFZs, an agency would have to contact every local business to ascertain if the business meets the statutory definition and continuously track information (if available) on new and closing businesses.

Studies of municipalities in other states suggest significant proliferation of DFZs in densely populated (primarily urban) areas. 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.²⁴ 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).²⁵ The New Jersey Commission to Review Criminal Sentencing found that DFZs covered 51 percent of Newark (76 percent if the airport area was excluded), 54 percent of Jersey City, and 52 percent of Camden.²⁶ The New Jersey commission concluded from its findings that the density of school DFZs and, to a lesser extent, the density of other DFZs increased as population density increased. The percentage of urban areas falling in a DFZ was greater than in rural or suburban areas. The Pennsylvania Commission on Sentencing found that 29.5 percent of the major municipality in Philadelphia County and 22.8 percent of the major municipality in Allegheny County (Pennsylvania’s two most populous counties) were within 1,000 feet of a school. This estimate did not include actual property owned by schools, recreation centers, playgrounds, or school buses, which were also covered by the DFZ law.²⁷

Findings and/or Conclusions

Purpose of DFZs: Courts have found that DFZ laws appear to advance a rational purpose.²⁸ It is presumed that, if nothing else, Florida’s DFZs were intended to reduce drug activity in areas within the DFZs.²⁹ Whether Florida’s

²⁰ Agencies reporting DFZ information: Broward Sheriff (425 DFZs in Pompano Beach); Franklin Sheriff (number of DFZs for Apalachicola not provided but most DFZs would probably overlap due to the city’s small size); Orange Sheriff (estimated minimum of 200 DFZs in Orlando); Pinellas Sheriff (112 DFZs in Dunedin of which 110 overlap); Suwannee (approximately 56 DFZs in Live Oak of which approximately 18 overlap); and Ft. Myers Police Department (95 DFZs in Ft. Myers).

²¹ *Schools Assessment Area*, http://www.miamidade.gov/greenprint/planning/library/milestone_one/schools.pdf.

²² See <http://www.dadeschools.net/>.

²³ *About Parks*, Miami-Dade County Parks & Recreation Department, <http://www.miamidade.gov/parks/about-parks.asp>.

²⁴ *Mandatory Minimum Sentences*, December 2005, Legislative Program Review & Investigations Committee, Connecticut General Assembly. “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.*

²⁵ *Annual Report*, 2006, Utah Sentencing Commission (further cited as “Utah Comm. Report, 2006”).

²⁶ *Report on New Jersey’s Drug Free Zone Crimes & Proposal for Reform*, December 2005, New Jersey Commission to Review Criminal Sentencing (further cited as “N.J. Comm. Report, 2005”).

²⁷ Cynthia A. Kempinen, *A Multi-Method Study of Mandatory Minimum Sentences in Pennsylvania*, Research Bulletin, Volume 9, Issue 1, April 2010, Pennsylvania Commission on Sentencing (further cited as “Penn. Comm. Report, 2010”). Pennsylvania’s school DFZ is “within 1,000 feet of the real property on which is located a public, private or parochial school, or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus.” 18 Pa. C.S. § 6317.

²⁸ See e.g., *State v. Burch*, 558 So. 2d 279, 284-85 (Fla. 4th DCA 1979) (finding that Florida’s K-12 school DFZ provision was not an unreasonable exercise of the state’s “police power” and adopting the reasoning of a New York federal district court that found the federal school DFZ statute to be a rational exercise of Congress’ authority), *approved*, 558 So. 2d 1 (Fla. 1990).

²⁹ In *Rice v. State*, 754 So. 2d 881, 883 (Fla. 5th DCA), *review denied*, 779 So. 2d 272 (Fla. 2000), the court reviewed the DFZ provision relevant to convenience businesses and places of worship and found that the “primary purpose and effect” of

DFZs achieve that purpose cannot be confirmed based on available data. Offenders incarcerated as a result of the DFZ enhanced penalties will obviously not be committing DFZ violations during their period of incarceration, but it is unknown if the enhanced penalties deter these offenders from recidivating after release or if they deter others from drug activity in DFZ-covered areas. The Pennsylvania Commission on Sentencing did not find that “length of sentence or imposition of a mandatory minimum term *per se* were predictors of recidivism.”³⁰

Size and proliferation of DFZs: It is unclear why 1,000 feet became the distance standard for Florida’s DFZs. In considering the federal school DFZ statute, the New Jersey Commission to Review Criminal Sentencing was unable to ascertain why 1,000 feet was selected as “the appropriate demarcation of the protective zone.”³¹ The commission noted that Congress did not cite to any empirical data and the commission did not find any “related evidence or research relied upon by Congress to inform its legislative determination.”³² Similarly, staff has not found anything that indicates an empirical basis for Florida’s 1,000-foot distance standard. This has not always been the distance standard for all of Florida’s DFZs; until 2003, the distance standard for DFZs pertaining to colleges, universities, postsecondary educational institutions, public parks, and public housing facilities was 200 feet.³³

The term “1,000-foot drug-free zone” fails to capture how large this zone really is. In testimony before the Sentencing Policy Study Committee, a committee created by the Indiana Legislature, one DePauw University DFZ researcher noted that the distance is “the equivalent of three football fields end-to-end, or three city blocks. You can barely see someone that far away. A circle with a radius of 1,000 feet around a single point encompasses 3,140,000 square feet –so large that you could fit the equivalent of 68 football fields inside of it.”³⁴ The researcher noted that even this description underestimated the size of most DFZs because of the considerable area covered by schools and parks. Citing the example of one high school, the researcher estimated that the zone would cover 14 million square feet³⁵ when the high school and playing fields were included.

Staff did not find any DFZ mapping studies of Florida’s densely populated areas that indicate the impact of DFZs on these areas but findings of the New Jersey Commission to Review Criminal Sentencing are noteworthy on the impact of DFZs on densely populated areas of New Jersey. The commission found that, due to the size of New Jersey’s school/park DFZs, DFZ overlapping, and DFZ proliferation in densely populated urban areas, these areas had “been literally transformed into massive, unsegmented ‘drug free’ zones.”³⁶ “Consequently, the protected areas demarcated by the statutes no longer exist, having merged with contiguous zones.”³⁷ While New Jersey’s population density was unequalled by other states, the Utah Sentencing Commission found it difficult to identify an urban area in Utah that was not covered by a 1,000-foot DFZ.³⁸ Utah is far less densely populated than New Jersey.

Florida’s 1,000-foot distance standard is not exceptional when compared with the DFZ distance standards of the five most densely populated states, though two of these states have different standards for different types of DFZs. Where Florida is exceptional is that it has significantly more types of DFZs than these states.

this provision was “deterrence of drug sales and drug use in proximity to places where people gather.”

³⁰ Penn. Comm. Report, 2010.

³¹ N.J. Comm. Report, 2005.

³² *Id.*

³³ Section 1, ch. 2003-94, L.O.F.

³⁴ Testimony of Ryan Keeley before Indiana’s Sentencing Policy Study Committee, October 8, 2008, available at [http://dpuadweb.depauw.edu/\\$1~kkauffman/newdrugzoneprovisions/index.html](http://dpuadweb.depauw.edu/$1~kkauffman/newdrugzoneprovisions/index.html). This website details findings of *The Impact of Indiana’s Drug-Free Zones*, a DePauw University class project (based on 2007 mapping data).

³⁵ One square mile equals 27,878,400 square feet. Therefore, 14 million square feet is approximately 0.5 square miles.

³⁶ *Supplemental Report on New Jersey’s Drug Free Zone Crimes & Proposal for Reform*, April 2007, New Jersey Commission to Review Criminal Sentencing.

³⁷ *Id.*

³⁸ Utah Comm. Report, 2006. The DFZ statute reviewed by Utah’s sentencing commission was arguably more expansive than Florida’s DFZ provisions insofar as what was designated as a DFZ, but Florida’s DFZ provisions create a significant number of types of DFZs.

It is probable that DFZs proliferate in densely populated (primarily urban) areas of Florida due to the likelihood of there being more places and facilities covered by DFZs in these areas, the 1,000-foot distance standard, the number of types of DFZs, and DFZ overlapping. It is possible that in creating Florida's DFZs legislators envisioned protected areas of limited size, not "superzones" created by DFZ proliferation and overlapping. Superzones may dilute the special protection afforded places and facilities that are the subject of DFZs. The New Jersey Commission on Criminal Sentencing reached that conclusion regarding New Jersey's DFZs.³⁹

DFZ arrests: A full picture of the number of DFZ arrests cannot be obtained. Just short of half of law enforcement agencies⁴⁰ making drug arrests reported drug arrest information to the Florida Department of Law Enforcement that was detailed enough to indicate DFZ arrests. The number of DFZ arrests reported, though an incomplete accounting of DFZ arrests, was significant (e.g., 5,410 arrests in FY 2009-10). However, for FY 2007-08 through FY 2009-10, DFZ arrests declined.⁴¹

Sheriffs and police agencies provided the following responses or data (for FY 2007-08 through FY 2009-10 or calendar years 2007-10, unless otherwise noted):

- Most drug activity did not occur in a DFZ.
- The largest number of DFZ arrests were for violations of s. 893.13(1)(c), F.S. (K-12 schools, etc.) and s. 893.13(1)(e), F.S. (places of worship/convenience businesses).
- Most K-12 school DFZ violations did not occur on school property.
- Relative to arrests for other DFZ violations, arrests for DFZ violations involving an assisted living facility were negligible (two arrests).
- The majority of DFZ arrestees were black.⁴²
- Drug arrests were made in areas in which drug activity was most prevalent or best information was obtained, regardless of whether these areas were within a DFZ.
- For FY 2009-10 (or calendar years 2009 and 2010), DFZ arrests were five percent or less of arrests made for a violation of s. 893.13, F.S.

DFZ prosecutions: State attorneys provided the following responses or data (for FY 2007-08 through FY 2009-10, unless otherwise noted):

- A significant number of felony cases involved a plea of guilty or nolo contendere to a DFZ violation or, to a lesser extent, a plea to a non-DFZ violation in exchange for dropping the DFZ charge. There were few trials.⁴³
- Black defendants were the majority of defendants in felony cases in which a DFZ violation was charged.
- State attorneys looked at several factors in addition to meeting the burden of proof on the elements in determining whether to file a DFZ charge.

³⁹ N.J. Comm. Report, 2005.

⁴⁰ Forty-six to forty-eight percent or 212-222 agencies provided detailed DFZ arrest information. Florida Statistical Analysis Center, Florida Department of Law Enforcement (FDLE). "Florida Statute" is an optional field in the Florida Computerized Criminal History (CCH). Twenty percent of the arrest charges with a Drug Offense Code between FY 2007-08 and FY 2009-10 are missing. The CCH is fingerprint-based and, unless prints were taken at a later stage in the criminal process, does not include records involving a notice to appear, direct files, or sworn complaints where no physical arrest was made. The CCH data are current as of June 1, 2010, but the FDLE does not warrant that records provided are comprehensive or accurate as of the date provided.

⁴¹ *Id.* DFZ arrests: FY 2007-08: 6,167; FY 2008-09: 5,483; and FY 2009-10: 5,410.

⁴² Staff's survey questions pertinent to race include an "Other" category, not a "Hispanic" category (which reflects ethnicity, not race). Staff notes that racial data pertinent to arrests, cases, sentencing events, and new commitments likely will include some persons of Hispanic descent (as well as other descents, such as West Indian and Caribbean) under the "White" and "Black" racial categories.

⁴³ Data provided by the Office of the State Courts Administrator indicated that felony DFZ counts of cases disposed with a plea of guilty/nolo contendere overwhelming outnumbered felony DFZ counts of cases disposed of at trial. Data were not reported for the following counties: Duval; Nassau; Flagler; Putnam; Osceola; Desoto; Seminole; and St. Lucie.

- State attorneys sometimes dropped a DFZ charge to a violation of s. 893.13(1)(c), F.S. (which may carry a mandatory minimum penalty), if the defendant agreed to a plea to another offense.

DFZ sentencing events and new commitments: EDR reported information relevant to DFZ sentencing events and DFZ new commitments. The following data are pertinent to FY 2007-08 through FY 2009-10, unless otherwise noted:

- The number of DFZ sentencing events was significant (4,381 for the three fiscal years). Approximately 69 percent of these events (3,017) involved a prison sentence.⁴⁴ There was also a significant number of DFZ new commitments (3,003 for the three fiscal years).⁴⁵ However, DFZ prison sentencing events were a small percentage of all drug prison sentencing events (this includes possession, sale, and drug trafficking),⁴⁶ and DFZ new commitments were a small percentage of all drug new commitments.⁴⁷ Further, there was a declining number of DFZ sentencing events (prison or supervision) and DFZ new commitments.⁴⁸
- Most DFZ sentencing events and DFZ new commitments were for a violation of s. 893.13(1)(c), F.S., or s. 893.13(1)(e), F.S.,⁴⁹ and involved cocaine, heroin, and some other drugs (excluding GHB, methamphetamines, MDMA, and cannabis). In comparison to sentencing events and new commitments for other DFZ violations, sentencing events and new commitments for DFZ violations involving an assisted living facility were negligible.⁵⁰
- For offenders with a drug sentencing event or drug sales/manufacturing/delivery sentencing event (a subset of drug sentencing events), more offenders received supervision than a prison sentence and the percentage receiving supervision increased.⁵¹ In contrast, for offenders with a DFZ sentencing event, more received a prison sentence than supervision, though the percentage receiving supervision slightly increased.⁵²

⁴⁴ FY 2007-08: 1,647 (prison: 1,159); FY 2008-09: 1,418 (prison: 971); and FY 2009-10: 1,316 (prison: 887). Sentencing event data were compiled by EDR. Criminal Code database was obtained from the Florida Department of Corrections on June 1, 2011. This database contains information on sentencing events. However, scoresheet compliance varies by circuit and by sanction. On a statewide basis, scoresheet compliance (state sanctions) has ranged between 69.4 % and 71.0 % in the last 3 fiscal years. Numbers obtained from the data file were adjusted by the statewide completion rates (separately for prison and state supervision) to obtain the numbers reported by EDR. DFZ sentencing event information reports data on sentencing events in which a DFZ violation is the primary offense.

⁴⁵ FY 2007-08: 1,130; FY 2008-09: 961; and FY 2009-10: 912. The three judicial circuits with the highest number of DFZ new commitments were: the 13th (Hillsborough County); the 15th (Palm Beach County); and the 5th (Citrus, Hernando, Lake, Marion, and Sumter counties). FY 2007-08 through FY 2009-10: 13th Circuit: 544; 15th Circuit: 265; and 5th Circuit: 230. New commitments include probation/community control technical violators and also include conditional and control release violators who have a new sentence. DFZ new commitment information reports data on new commitments whose primary offense was a DFZ violation. New commitment data were compiled by EDR from the monthly status file of prison population prepared by the Bureau of Research and Data Analysis, Florida Department of Corrections. This file contains between 97% and 98% of new commitments. Numbers obtained were adjusted to match new commitment totals for EDR's analysis.

⁴⁶ FY 2007-08: 8.7%; FY 2008-09: 8%; and FY 2009-10: 8%.

⁴⁷ FY 2007-08: 9.9 %; FY 2008-09: 9.3 %; and FY 2009-10: 9.6 %.

⁴⁸ Sentencing events (prison): FY 2007-08: 1,159; FY 2008-09: 971; and FY 2009-10: 887. Sentencing events (supervision): FY 2007-08: 488; FY 2008-09: 447; and FY 2009-10: 429. DFZ new commitment data is reported in footnote 45.

⁴⁹ For FY 2009-10, there were 887 DFZ prison sentencing events of which 318 involved a violation of s. 893.13(1)(c), F.S., and 513 involved a violation of s. 893.13(1)(e), F.S. There were 429 DFZ supervision sentencing events of which 158 involved a violation of s. 893.13(1)(c), F.S., and 219 involved a violation of s. 893.13(1)(e), F.S. There were 912 DFZ new commitments of which 354 involved a violation of s. 893.13(1)(c), F.S., and 486 involved a violation of s. 893.13(1)(e), F.S. Staff found a similar pattern for FYs 2007-08 and 2008-09.

⁵⁰ Four DFZ prison sentencing events and one DFZ new commitment for FY 2007-08 through FY 2009-10.

⁵¹ Drug Prison: FY 2007-08: 31.4%; FY 2008-09: 31.4%; and FY 2009-10: 30.1%. Drug Supervision: FY 2007-08: 68.6%; FY 2008-09: 68.6%; and FY 2009-10: 69.9%. Drug M/S/D Prison: FY 2007-08: 44.1%; FY 2008-09: 44.0%; and FY 2009-10: 41.4%. Drug M/S/D Supervision: FY 2007-08: 55.9%; FY 2008-09: 56.0%; and FY 2009-10: 58.6%.

⁵² DFZ Prison: FY 2007-08: 70.4%; FY 2008-09: 68.5%; and FY 2009-10: 67.4%. DFZ Supervision: FY 2007-08: 29.6%; FY 2008-09: 31.5%; and FY 2009-10: 32.6%.

- For FY 2009-10, 54.6 percent of all drug prison sentencing events involved black offenders, and black offenders were 55.9 percent of all drug new commitments. In contrast, 86.9 percent of DFZ prison sentencing events involved black offenders, and black offenders were 88.5 percent of all DFZ new commitments.⁵³ However, the percentage of black DFZ new commitments slightly decreased.⁵⁴
- The number of white offenders with a DFZ sentencing event who received a prison sentence was slightly less than the number who received supervision.⁵⁵ In contrast, the number of black offenders with a DFZ sentencing event who received a prison sentence was significantly greater than the number who received supervision.⁵⁶ Further, the average prison sentence for a DFZ violation (sentencing event and DFZ new commitment) was longer for black offenders than for white offenders.⁵⁷ However, for FY 2009-10, black offenders with a DFZ prison sentencing event had a higher average number of prior felonies and prior offense sentence points than white offenders.⁵⁸ White offenders had a higher average number of misdemeanors.⁵⁹
- For FY 2009-10, 147 DFZ new commitments with a violation of s. 893.13(1)(c), F.S. (three-year mandatory minimum term for some violations)⁶⁰ as their primary offense were matched with the Criminal Code database. Of the 147 new commitments, 52.4 percent had a sentence that exceeded 36 months (92 percent of this group scored a lowest permissible sentence greater than 36 months under the Code), 25.2 percent had a sentence shorter than to 36 months; and 22.4 percent had a sentence equal to 36 months.

Disproportionate impact of DFZs on black offenders: No conclusions are made as to why black offenders are so significantly impacted by Florida's DFZ provisions. The New Jersey Commission to Review Criminal Sentencing found that 96 percent of those convicted and incarcerated for a DFZ offense in New Jersey were either black or Hispanic, which it concluded was the "end result of the 'urban effect'" of DFZs.⁶¹ The commission found that

⁵³ Overrepresentation of black DFZ new commitments can also be expressed as a ratio reflecting the percentage of DFZ new commitments of a particular race relative to the percentage of that race in the state population (2010 census count). If the ratio is above 1, the racial group (new commitments) is overrepresented; if the ratio is 1, the group is in proportion; and if the ratio is below 1, the group is underrepresented. According to EDR, for FY 2009-10, there were 95 white DFZ new commitments (10% of all DFZ new commitments). There were 14,109,162 persons identified as "White" in the 2010 census count (75% of the state population). For FY 2009-10, there were 807 black DFZ new commitments (88.5% of all DFZ new commitments). There were 2,999,862 persons identified as "Black" in the 2010 census count (16% of the state population). The ratio was 0.14 for white DFZ new commitments and 5.55 for black DFZ new commitments.

⁵⁴ FY 2007-08: 91.1%; FY 2008-09: 89.8%; and FY 2009-10: 88.5%.

⁵⁵ In FY 2009-10, 108 white offenders with a DFZ sentencing event received prison (12.1% of all DFZ prison sentencing events) and 126 received supervision (29.5% of all DFZ supervision sentencing events). Staff found a similar pattern for FYs 2007-08 and 2008-09.

⁵⁶ In FY 2009-10, 771 black offenders with a DFZ sentencing event received prison (86.9% of all DFZ prison sentencing events) and 294 received supervision (68.5% of all DFZ supervision sentencing events). Staff found a similar pattern for FYs 2007-08 and 2008-09.

⁵⁷ Average sentence length/DFZ sentencing events (FY 2009-10): Black: 4.3 years; White: 3.1 years; Other: 2.5 years. Average sentence length/DFZ new commitments (FY 2009-10): Black: 4.2 years; White: 3.4 years; Other: 2.2 years. Staff found a similar pattern for FYs 2007-08 and FY 2008-09. For new commitment data, some demographic details are missing. According to the Department of Corrections, offenders entering prison near the end of the month may not have this information available by the time the status file is run at the end of the month. It was assumed that missing data would not bias the race distribution. Therefore, the race distribution was adjusted by EDR to match the new commitment total.

⁵⁸ Prior felonies: Black: 2.50; White: 1.41. Prior offense points: Black: 20.46; White: 13.03.

⁵⁹ Prior misdemeanors: White: 1.92; Black: 1.66.

⁶⁰ As previously indicated, not all violations of s. 893.13(1)(c), F.S., are subject to the three-year mandatory minimum term; the term is only required for a first degree felony violation of this provision that does not involve a child care facility violation. Where the mandatory minimum term applies, courts are required to impose this term. *See e.g., State v. Mackey*, 964 So. 2d 772 (Fla. 2d DCA 2007) (error to impose three concurrent terms of three years probation for K-12 school DFZ violation). To staff's knowledge, in FY 2009-10, the only means provided by law to avoid the mandatory minimum term upon conviction was youthful offender sanctions. In 2010, the Legislature created s. 921.186, F.S., which authorizes the state attorney to move the sentencing court to reduce or suspend the sentence of any person who is convicted of violating any felony offense and who provides substantial assistance. *See* ch. 2010-218, L.O.F.

⁶¹ N.J. Comm. Report, 2005.

DFZs proliferated in densely populated urban areas which were predominantly populated by minorities. In contrast, suburban and rural areas, predominantly populated by whites, had less densely concentrated DFZs.

The Disproportionate Justice Impact Study Commission of the Illinois General Assembly noted that “[n]ational surveys consistently show that African Americans, whites, and Latinos are equally likely to use drugs relative to their representation in the general population, but the criminal justice consequences for drug involvement disproportionately affect minorities – particularly young, African-American men in poor, urban communities (The Sentencing Project, 1999).”⁶² The commission found that “race-based differences [in ‘legal processing of drug crimes’] are grounded partly in the way drugs are sold in urban neighborhoods, where drugs are more likely to be sold on the street and in other public places with high visibility, facilitating law enforcement’s ability to make arrests.”⁶³ Further, the commission found “the concentration of ... [DFZs] in [Illinois’] urban areas and particularly communities of color suggests that delivery crimes committed in urban areas are significantly more likely to be violations of ... [Illinois’ DFZ] provisions and subject to enhanced penalties[.]”⁶⁴

Opinions of law enforcement agencies, prosecutors, and public defenders regarding DFZs: Surveyed law enforcement agencies disfavored repeal of the DFZ provisions and the creation of new DFZs.⁶⁵ They supported the 1,000-foot distance standard. The most frequently cited reasons for retaining the DFZs were their use in obtaining information on drug activity and the increased likelihood of prison sentences. The Tallahassee Police Department had some concern that overlapping of DFZs was too prevalent due to the 1,000-foot distance standard but noted that not all cities are like Tallahassee.

Surveyed state attorneys’ offices similarly disfavored repeal of the DFZ provisions and creation of new DFZs.⁶⁶ They also supported the 1,000-foot distance standard, though one state attorney’s office indicated that perhaps the standard should be reviewed and another stated that there seldom appears to be a nexus between the drug activity and the users of the places and facilities that are the subject of the DFZs.⁶⁷ The most frequently cited reasons for retaining the DFZs were higher bonds and significant leverage in plea negotiations, which, in combination with enhanced penalties, help them obtain harsher sentences when they believe they are warranted. Several state attorneys’ offices cited their ability to provide stronger sanctions for repeat drug offenders, though one state attorney’s office stated that, even absent the DFZ laws, there are strong sanctions for repeat offenders.

Surveyed public defenders’ offices favored repeal of the DFZs and did not support the creation of new DFZs or the 1,000-foot distance standard.⁶⁸ In their opinion, the increased prosecutorial leverage often results in inequitable plea negotiations. When this leverage is combined with enhanced penalties, consideration of alternative sentencing, including drug treatment, is often foreclosed. They asserted that many of the drug offenders subject to the DFZ provisions are drug addicts who are dealing drugs to support their addictions. They also asserted that these drug offenders are generally not targeting the population using places and facilities that are the subject of the DFZ but rather are dealing in the neighborhoods in which they live, which happen to be covered by the long reach of the DFZs.

⁶² *Final Report*, December 2010, Disproportionate Justice Impact Study Commission, Illinois General Assembly.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ One sheriff’s office suggested repealing the DFZs but enhancing penalties under s. 893.13(1)(a), F.S. Another sheriff’s office suggested creating a DFZ for fast food establishments and another suggested expanding the convenience business DFZ to include all retail establishments.

⁶⁶ One state attorney’s office suggested the Legislature may want to cover the real property of places of worship and convenience businesses (facilities covered by a DFZ), reasoning that other DFZs include real property and making this change would resolve any ambiguity as to measurement of these DFZs. This suggested change appears to be consistent with other DFZ provisions and presumably would resolve ambiguity (if any) regarding measurement, but the change would mean that more areas would be covered by a DFZ.

⁶⁷ In reviewing New Jersey’s school DFZ, the New Jersey Commission to Review Criminal Sentencing found that “a defendant’s fortuitous or happenstance presence within a school zone” was a typical fact pattern. N.J. Comm. Report, 2005.

⁶⁸ Alternatives to repeal were suggested: one public defender’s office suggested retaining the 1,000-foot standard for K-12 schools but reducing the standard for other DFZs; another suggested retaining the DFZs but reducing the 1,000-foot standard for all DFZs.

Insufficient indicators for creating new DFZs or increasing the 1,000-foot distance standard: There are insufficient indicators supporting the creation of new DFZs or an increase in the 1,000-foot distance standard. However, significant concerns that have been raised in some other states about the size and proliferation of DFZs may indicate the need to reassess whether the 1,000-foot distance standard remains appropriate for some or all of Florida's DFZs.

Assisted living facility DFZ: The miniscule number of arrests, sentencing events, and new commitments involving a violation of s. 893.13(1)(h), F.S. (assisted living facilities) may indicate the need to reassess whether this DFZ remains appropriate.

Probable impact of partial repeal of DFZs and/or reduction of the 1,000-foot distance standard: Assuming there is not a total repeal of DFZs, it is probable that the result of repealing some DFZs and/or reducing the 1,000-foot distance standard would be fewer DFZ arrests and prosecutions, less DFZ proliferation and overlapping, some reduction in the disproportionate impact of the DFZ provisions on black drug offenders, fewer drug offenders sentenced to prison, more alternative sentencing, and reduction in sentence length for some drug offenders. If partial repeal of DFZs and/or reduction in the 1,000-foot distance standard were to occur, there would be a cost savings (reduction of prison beds). It is unknown whether these changes would result in increases in drug activity in areas currently covered by a DFZ or would impact the number of trials.

Options and/or Recommendations

Provided is a non-exhaustive list of options for consideration (some options could be combined):

- Retain the current DFZ provisions (no changes).
- Provide that DFZs for places of worship and convenience businesses include their “real property.”
- Repeal all or some of the DFZ provisions (see findings regarding the assisted living facility DFZ).
- Modify the 1,000-foot distance standard for some or all of the DFZs (i.e., reduce the size of DFZs).
- Exclude possession with intent to sell, etc., or include this offense only if committed in a park or in a relevant DFZ facility and its real property (could require adding real property to the DFZs involving places of worship and convenience businesses to be more consistent).
- Repeal the mandatory minimum term in s. 893.13(1)(c), F.S., or consider alternatives that limit its scope, e.g., provide that the penalty only applies to second or subsequent violations and any violation that involves sale or delivery to a minor; provide that the penalty only applies to sale or delivery to a minor; or exclude possession with intent to sell, etc., from the penalty.
- Retain the enhanced felony degrees in the DFZ provisions but eliminate any enhanced ranking for a DFZ violation.
- Retain the enhanced felony degrees in the DFZ provisions but reduce the ranking of violations of s. 893.13(1)(c)1. and (e)1., F.S. (the only DFZ violations currently ranked in Level 7), to Level 6. Alternatively, only reduce the ranking of s. 893.13(1)(e)1., F.S., to Level 6.