

STORAGE NAME: h3165.cp

DATE: March 9, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3165

RELATING TO: Controlled Substances

SPONSOR(S): Rep. Lynn

COMPANION BILL(S): CS/SB 358 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill provides for enhanced penalties for any person to sell, manufacture, deliver, or possess with intent to sell a controlled substance within 200 feet of the "real property comprising a public housing facility."

Current law provides for similar enhanced penalties, but was ruled unconstitutional because the term "public housing" was considered too vague. The bill addresses the constitutional defect by redefining the term "real property comprising a public housing facility".

The bill provides a mandatory minimum sentence of three years for the sale or possession with intent to sell certain illegal drugs such as cocaine.

The bill provides an effective date of October 1, 1998.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida's Definition of Controlled Substances

Section 893.03, F.S., contains the definition and list of controlled substances recognized by Florida Law.

Prohibited Acts with Controlled Substances

Section 893.13(1)(a), provides that it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. The penalties are enhanced under Section 893.13(1)(c) and (e) if the offense occurs within 1,000 feet of a child care facility, school, place of worship, or convenience business. Section 893.13(1)(c) also imposes a three year minimum mandatory sentence for the sale or possession with intent to sell certain drugs such as cocaine within 1,000 feet of a school or a child care facility.

Enhancement of Penalties Under s. 893.13(1)(d)

Section 893.13(1)(d), F.S., provides additional enhanced penalties as follows:

It is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on or within 200 feet of the real property comprising a public housing facility, or within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park.

The penalties are the same as the penalties for selling or possession of a controlled substance within 1000 feet of a school, except the current law does not provide for a three year minimum mandatory for offenses enhanced pursuant to 893.13(1)(d).

1. In the case of a controlled substance named in **s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b)**, (such as heroin, morphine, and cocaine) from a felony of the second degree to a felony of the first degree.
2. In the case of a controlled substance named in **s. 893.03(1)(c), (2)(c), (3), or (4)**, (such as cannabis, and mescaline) from a felony of the third degree to a felony of the second degree.
3. In the case of any other controlled substances, there is a mandatory \$500 fine, and 100 hours of public service.

These enhanced penalties, like the enhanced penalties for possession within 1,000 feet of a school, do not apply for simple possession of a controlled substance without intent to sell.

Unconstitutionality of 893.13(1)(d)

In Brown v. State, 629 So.2d 841 (Fla. 1994), the Florida Supreme Court ruled that the portion of **s. 893.13(1)(d), F.S.**, calling for increased penalties for drug crimes committed within 200 feet of the “real property comprising a public housing facility” was unconstitutional due to vagueness. The Court cited several reasons behind the decision:

1. The term was deemed so imprecise that it was impossible to determine the legislative intent of the definition.
2. The term does not give adequate notice as to the proscribed conduct.
3. There are no definitions in case law, nor related statutes to determine the intended definition.
4. The Court deemed this section of the statute impermissibly vague because it may invite arbitrary conduct as to the enforcement of the statute.

Florida’s Test for Vagueness

This statute became reviewable for vagueness because the Supreme Court of Florida has held that when there is a doubt about a statute in a vagueness challenge, the doubt is resolved in favor of the citizen and against the state. State v. Wershow, 343 So.2d at 608 (Fla. 1977).

The Florida test for vagueness is:

Whether the statute gives a person of ordinary intelligence fair notice of what constitutes the forbidden conduct. Papachaisiou v. City of Jacksonville, 405 U.S. at 162 (1972).

A statute need not be so specific that it puts a person on reasonable notice of how to measure the distance between the location of the drug transaction and the public housing facility or requires the State to prove that a defendant knew he or she was within 200 feet of a public housing facility. State v. Burch, 545 So.2d 279 (Fla. 4th DCA 1989).

A challenge for vagueness will be upheld only if impermissibly vague in all applications.

A statute is not void for vagueness if:

The statute conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. Hitchcock v. State, 413 So.2d at 747.

B. EFFECT OF PROPOSED CHANGES:

The bill addresses constitutional defect of s. 893.13(1)(d) by defining the term "real property comprising a public housing facility."

The bill defines "real property comprising a public housing facility" to mean "real property... of a public corporation created as a housing authority pursuant to part I of chapter 421, including a housing project as defined in s.421.03(9) or any facility constituting single or multifamily dwelling units occupied by persons of low income as defined in s. 421.03(10) (defining persons of low income) or handicapped or elderly persons."

Section 421.03(9), F.S., provides that "housing project" shall mean any work or undertaking:

- (a) To demolish, clear, or remove buildings from any slum area...
- (b) To provide decent, safe and sanitary urban or rural dwellings....

The bill provides a mandatory minimum sentence of three years jail time for anyone convicted of violating this section of the statute.

Thus, under the bill, anyone convicted of unlawful possession of morphine with intent to sell within 200 feet of a public housing facility would be guilty of a felony of the first degree and sentenced to a minimum of three years in jail.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 893.13, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 893.13(1)(d) and creates a new paragraph (f) to clarify the constitutionally vague term "public housing facility."

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments

2. Recurring Effects:

See, Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments

4. Total Revenues and Expenditures:

See, Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments

2. Recurring Effects:

See, Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has met on this bill and found the fiscal impact to be indeterminate, yet potentially significant. It is likely that the impact will be determined to be indeterminate if the final bill does not include the three year minimum mandatory sentence.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is not subject to the mandates provision because it affects a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The bill clarifies the term "public housing facility."

The bill defines "real property comprising a public housing facility" to mean "real property... of a public corporation created as a housing authority pursuant to part I of chapter 421, including a housing project as defined in s. 421.03(9) or any facility constituting single or multifamily dwelling units occupied by persons of low income as defined in s. 421.03(10) (defining persons of low income) or handicapped or elderly persons.

The underlined portion does not add to the meaning of public housing:

Section 421.03(9) F.S., provides that "housing project" shall mean any work or undertaking:

- (a) To demolish, clear, or remove buildings from any slum area...
- (b) To provide decent, safe and sanitary urban or rural dwellings....

It is unclear if the bill means to define public housing as "any work or undertaking."

The bill also defines public housing as any facility constituting single or multifamily dwelling units occupied by persons of low income or handicapped or elderly persons. This sentence appears to expand the meaning of public housing to privately owned housing as well.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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