

By Senator Burt

16-458-98

See HB 3165

1 A bill to be entitled
2 An act relating to controlled substances;
3 amending s. 893.13, F.S., relating to
4 prohibitions against selling, manufacturing, or
5 delivering, or possessing with intent to sell,
6 manufacture, or deliver, controlled substances
7 within 200 feet of the real property comprising
8 a public housing facility; defining "real
9 property comprising a public housing facility";
10 providing penalties; providing an effective
11 date.

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13 WHEREAS, the Florida Supreme Court in *Brown v. State*,
14 629 So.2d 841 (Fla. 1994), held that s. 893.13(1)(i), Florida
15 Statutes, 1990 Supplement, relating to enhanced penalties for
16 selling, manufacturing, or delivering, or possessing with
17 intent to sell, manufacture, or deliver, controlled substances
18 within 200 feet of a public housing facility, was
19 unconstitutionally vague because the phrase "public housing
20 facility" did not give adequate notice of what conduct was
21 prohibited, and

22 WHEREAS, the court noted that although the phrase was
23 not defined in the statutory section, the term "housing
24 project" had been defined for purposes of a similar statute in
25 Georgia, relating to prohibitions against drug transactions
26 within 1,000 feet of a publicly operated housing project, and

27 WHEREAS, the court also noted that analogous language
28 in s. 893.13(1)(e), providing for enhanced penalties for
29 certain drug offenses that occur within 1,000 feet of a public
30 or private elementary, middle, or secondary school, gave a
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1 clearer indication of the conduct prohibited, in comparison to
2 the language of s. 893.139(1)(i), and

3 WHEREAS, it is appropriate to deter and punish drug
4 offenses against children or other vulnerable persons in or
5 near housing projects with penalties equal in severity to
6 those imposed for drug offenses against children and other
7 victims in or near schools, NOW, THEREFORE,

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Paragraph (d) of subsection (1) of section
12 893.13, Florida Statutes, is amended, and paragraph (f) is
13 added to said subsection, to read:

14 893.13 Prohibited acts; penalties.--

15 (1)

16 (d) Except as authorized by this chapter, it is
17 unlawful for any person to sell, manufacture, or deliver, or
18 possess with intent to sell, manufacture, or deliver, a
19 controlled substance in, on, or ~~within 200 feet of the real~~
20 ~~property comprising a public housing facility,~~ within 200 feet
21 of the real property comprising a public or private college,
22 university, or other postsecondary educational institution, or
23 within 200 feet of any public park. Any person who violates
24 this paragraph with respect to:

25 1. A controlled substance named or described in s.
26 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
27 felony of the first degree, punishable as provided in s.
28 775.082, s. 775.083, or s. 775.084.

29 2. A controlled substance named or described in s.
30 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the

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1 second degree, punishable as provided in s. 775.082, s.
2 775.083, or s. 775.084.

3 3. Any other controlled substance, except as lawfully
4 sold, manufactured, or delivered, must be sentenced to pay a
5 \$500 fine and to serve 100 hours of public service in addition
6 to any other penalty prescribed by law.

7 (f) Except as authorized by this chapter, it is
8 unlawful for any person to sell, manufacture, or deliver, or
9 possess with intent to sell, manufacture, or deliver, a
10 controlled substance in, on, or within 200 feet of the real
11 property comprising a public housing facility at any time. For
12 purposes of this section, the term "real property comprising a
13 public housing facility" means real property, as defined in s.
14 421.03(12), of a public corporation created as a housing
15 authority pursuant to part I of chapter 421, and includes, but
16 is not limited to, a housing project as defined in s.
17 421.03(9) or any facility constituting single or multifamily
18 dwelling units occupied by persons of low income as defined in
19 s. 421.03(10) or handicapped or elderly persons. Any person
20 who violates this paragraph with respect to:

21 1. A controlled substance named or described in s.
22 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
23 felony of the first degree, punishable as provided in s.
24 775.082, s. 775.083, or s. 775.084. The defendant must be
25 sentenced to a minimum term of imprisonment of 3 calendar
26 years.

27 2. A controlled substance named or described in s.
28 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
29 second degree, punishable as provided in s. 775.082, s.
30 775.083, or s. 775.084.

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1 3. Any other controlled substance, except as lawfully
2 sold, manufactured, or delivered, must be sentenced to pay a
3 \$500 fine and to serve 100 hours of public service in addition
4 to any other penalty prescribed by law.

5 Section 2. This act shall take effect October 1 of the
6 year in which it is enacted and shall apply to offenses
7 committed on or after that date.

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LEGISLATIVE SUMMARY

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12 Revises provisions that prohibit selling, manufacturing,
13 or delivering, or possessing with intent to sell,
14 manufacture, or deliver, controlled substances within 200
feet of the real property comprising a public housing
facility. Defines "real property comprising a public
housing facility." Provides penalties.

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