

By the Committee on Criminal Justice and Senator Burt

307-1605-98

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; amending s. 921.022, F.S.;
11 ranking such offenses on the offense severity
12 ranking chart of the Criminal Punishment Code;
13 providing an effective date.
14
15 WHEREAS, the Florida Supreme Court in *Brown v. State*,
16 629 So.2d 841 (Fla. 1994), held that section 893.13(1)(i),
17 Florida Statutes, 1990 Supplement, relating to enhanced
18 penalties for selling, manufacturing, or delivering, or
19 possessing with intent to sell, manufacture, or deliver,
20 controlled substances within 200 feet of a public housing
21 facility, was unconstitutionally vague because the phrase
22 "public housing facility" did not give adequate notice of what
23 conduct was prohibited, and
24 WHEREAS, the court noted that although the phrase was
25 not defined in the statutory section, the term "housing
26 project" had been defined for purposes of a similar statute in
27 Georgia, relating to prohibitions against drug transactions
28 within 1,000 feet of a publicly operated housing project, and
29 WHEREAS, the court also noted that analogous language
30 in s. 893.13(1)(e), providing for enhanced penalties for
31 certain drug offenses that occur within 1,000 feet of a public

1 or private elementary, middle, or secondary school, gave a
2 clearer indication of the conduct prohibited, in comparison to
3 the language of s. 893.139(1)(i), and

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

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

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

15 893.13 Prohibited acts; penalties.--

16 (1)

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

26 1. A controlled substance named or described in s.
27 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
28 felony of the first degree, punishable as provided in s.
29 775.082, s. 775.083, or s. 775.084.

30 2. A controlled substance named or described in s.
31 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the

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 or any facility
16 constituting single or multifamily dwelling units occupied by
17 persons of low income as defined in s. 421.03(10). Any person
18 who violates this paragraph with respect to:

19 1. A controlled substance named or described in s.
20 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
21 felony of the first degree, punishable as provided in s.
22 775.082, s. 775.083, or s. 775.084. The defendant must be
23 sentenced to a minimum term of imprisonment of 3 calendar
24 years.

25 2. A controlled substance named or described in s.
26 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
27 second degree, punishable as provided in s. 775.082, s.
28 775.083, or s. 775.084.

29 3. Any other controlled substance, except as lawfully
30 sold, manufactured, or delivered, must be sentenced to pay a
31

1 \$500 fine and to serve 100 hours of public service in addition
2 to any other penalty prescribed by law.

3 Section 2. Paragraphs (c) and (e) of subsection (3) of
4 section 921.0022, Florida Statutes, are amended to read:

5 921.0022 Criminal Punishment Code; offense severity
6 ranking chart.--

7 (3) OFFENSE SEVERITY RANKING CHART

8

9 Florida	Felony	
10 Statute	Degree	Description
		(c) LEVEL 3
14 39.061	3rd	Escapes from juvenile facility 15 (secure detention or residential 16 commitment facility).
17 319.30(4)	3rd	Possession by junkyard of motor 18 vehicle with identification 19 number plate removed.
20 319.33(1)(a)	3rd	Alter or forge any certificate of 21 title to a motor vehicle or 22 mobile home.
23 319.33(1)(c)	3rd	Procure or pass title on stolen 24 vehicle.
25 319.33(4)	3rd	With intent to defraud, possess, 26 sell, etc., a blank, forged, or 27 unlawfully obtained title or 28 registration.
29		
30		
31		

1	328.05(2)	3rd	Possess, sell, or counterfeit
2			fictitious, stolen, or fraudulent
3			titles or bills of sale of
4			vessels.
5	328.07(4)	3rd	Manufacture, exchange, or possess
6			vessel with counterfeit or wrong
7			ID number.
8	376.302(5)	3rd	Fraud related to reimbursement
9			for cleanup expenses under the
10			Inland Protection Trust Fund.
11	501.001(2)(b)	2nd	Tampers with a consumer product
12			or the container using materially
13			false/misleading information.
14	697.08	3rd	Equity skimming.
15	790.15(3)	3rd	Person directs another to
16			discharge firearm from a vehicle.
17	796.05(1)	3rd	Live on earnings of a prostitute.
18	806.10(1)	3rd	Maliciously injure, destroy, or
19			interfere with vehicles or
20			equipment used in firefighting.
21	806.10(2)	3rd	Interferes with or assaults
22			firefighter in performance of
23			duty.
24	810.09(2)(c)	3rd	Trespass on property other than
25			structure or conveyance armed
26			with firearm or dangerous weapon.
27	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
28			less than \$10,000.
29	815.04(4)(b)	2nd	Computer offense devised to
30			defraud or obtain property.
31			

1	817.034(4)(a)3.	3rd	Engages in scheme to defraud
2			(Florida Communications Fraud
3			Act), property valued at less
4			than \$20,000.
5	817.233	3rd	Burning to defraud insurer.
6	828.12(2)	3rd	Tortures any animal with intent
7			to inflict intense pain, serious
8			physical injury, or death.
9	831.29	2nd	Possession of instruments for
10			counterfeiting drivers' licenses.
11	838.021(3)(b)	3rd	Threatens unlawful harm to public
12			servant.
13	843.19	3rd	Injure, disable, or kill police
14			dog or horse.
15	870.01(2)	3rd	Riot; inciting or encouraging.
16	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
17			cannabis (or other s.
18			893.03(1)(c), (2)(c), (3), or (4)
19			drugs).
20	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
21			893.03(1)(c), (2)(c), (3), or (4)
22			drugs within 200 feet of
23			university, public housing
24			facility , or public park.
25	<u>893.13(1)(f)2.</u>	<u>2nd</u>	<u>Sell, manufacture, or deliver s.</u>
26			<u>893.03(1)(c), (2)(c), (3), or (4)</u>
27			<u>drugs within 200 feet of public</u>
28			<u>housing facility.</u>
29	893.13(6)(a)	3rd	Possession of any controlled
30			substance other than felony
31			possession of cannabis.

1	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
2			controlled substance by fraud,
3			forgery, misrepresentation, etc.
4	893.13(7)(a)11.	3rd	Furnish false or fraudulent
5			material information on any
6			document or record required by
7			chapter 893.
8	918.13(1)(a)	3rd	Alter, destroy, or conceal
9			investigation evidence.
10	944.47		
11	(1)(a)1.-2.	3rd	Introduce contraband to
12			correctional facility.
13	944.47(1)(c)	2nd	Possess contraband while upon the
14			grounds of a correctional
15			institution.
16			(e) LEVEL 5
17	316.027(1)(a)	3rd	Accidents involving personal
18			injuries, failure to stop;
19			leaving scene.
20	316.1935(3)	3rd	Aggravated fleeing or eluding.
21	322.34(3)	3rd	Careless operation of motor
22			vehicle with suspended license,
23			resulting in death or serious
24			bodily injury.
25	327.30(5)	3rd	Vessel accidents involving
26			personal injury; leaving scene.
27	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
28			knowing HIV positive.
29	790.01(2)	3rd	Carrying a concealed firearm.
30	790.162	2nd	Threat to throw or discharge
31			destructive device.

1	790.163	2nd	False report of deadly explosive.
2	790.165(2)	3rd	Manufacture, sell, possess, or
3			deliver hoax bomb.
4	790.221(1)	2nd	Possession of short-barreled
5			shotgun or machine gun.
6	790.23	2nd	Felons in possession of firearms
7			or electronic weapons or devices.
8	806.111(1)	3rd	Possess, manufacture, or dispense
9			fire bomb with intent to damage
10			any structure or property.
11	812.019(1)	2nd	Stolen property; dealing in or
12			trafficking in.
13	812.16(2)	3rd	Owning, operating, or conducting
14			a chop shop.
15	817.034(4)(a)2.	2nd	Communications fraud, value
16			\$20,000 to \$50,000.
17	825.1025(4)	3rd	Lewd or lascivious exhibition in
18			the presence of an elderly person
19			or disabled adult.
20	827.071(4)	2nd	Possess with intent to promote
21			any photographic material, motion
22			picture, etc., which includes
23			sexual conduct by a child.
24	843.01	3rd	Resist officer with violence to
25			person; resist arrest with
26			violence.
27	874.05(2)	2nd	Encouraging or recruiting another
28			to join a criminal street gang;
29			second or subsequent offense.
30			
31			

1 893.13(1)(a)1. 2nd Sell, manufacture, or deliver
2 cocaine (or other s.
3 893.03(1)(a), (1)(b), (1)(d),
4 (2)(a), or (2)(b) drugs).
5 893.13(1)(c)2. 2nd Sell, manufacture, or deliver
6 cannabis (or other s.
7 893.03(1)(c), (2)(c), (3), or (4)
8 drugs) within 1,000 feet of a
9 school.
10 893.13(1)(d)1. 1st Sell, manufacture, or deliver
11 cocaine (or other s.
12 893.03(1)(a), (1)(b), (1)(d),
13 (2)(a), or (2)(b) drugs) within
14 200 feet of university,~~public~~
15 ~~housing facility,~~or public park.
16 893.13(1)(f)1. 1st Sell, manufacture, or deliver
17 cocaine (or other s.
18 893.03(1)(a), (1)(b), (1)(d), or
19 (2)(a), or (2)(b) drugs) within
20 200 feet of public housing
21 facility.
22 893.13(4)(b) 2nd Deliver to minor cannabis (or
23 other s. 893.03(1)(c), (2)(c),
24 (3), or (4) drugs).
25 Section 3. This act shall take effect October 1, 1998.
26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 358

- . Deletes a reference to "housing project" from the definition of "real property comprising the public housing facility."
- . Deletes "handicapped or elderly persons" single or multifamily dwelling units from the definition of "real property comprising the public housing facility."
- . Deletes old references to public housing facilities from the Offense Severity Ranking Chart in the Florida Punishment Code and it ranks the new enhancement provisions in the Offense Severity Ranking Chart as follows: An offense enhanced to a first degree felony is placed in level 5; an offense enhanced to a second degree felony is placed in level 3.