

STORAGE NAME: h0485.cp
DATE: March 31, 1997

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

BILL #: HB 485

RELATING TO: Controlled Substances/Religious Services & Convenience Business

SPONSOR(S): Representative Hill

STATUTE(S) AFFECTED: ss. 893.13, 921.0012, F.S.

COMPANION BILL(S): SB 152

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

- (1) CRIME AND PUNISHMENT
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

Section 893.13(1)(c), F.S., is the current enhancement provision for the sale, manufacture, delivery, or possession with intent to sell, manufacture or deliver, a controlled substance within 1,000 feet of a school. This bill adds a nearly identical language to enhance the degree of the offense for sale, possession with intent to sell, delivery, and manufacture of most controlled substances within 1,000 feet of a physical place for worship or within 1,000 feet of a convenience business. Not affected by the bill are crimes involving only possession of a controlled substance.

For example, sale of heroin, or cocaine is normally punished as a second degree felony. This bill makes the sale of heroin within 1000 feet of a physical place for worship or within 1,000 feet of a convenience business as defined in s. 812.171, a first degree felony. For other controlled substances such as sale of cannabis (marijuana) the degree of the offense will be increased from a third to a second degree felony. The bill also ranks the new offense so that it is scored the same as the sale, manufacture, delivery, or possession with intent to sell a controlled substances within 1000 feet of a school.

The penalty for the sale of some drugs such as cocaine or heroin within 1,000 feet of a school, carries a three year minimum mandatory sentence. The enhanced penalty provided by this bill does not require a minimum mandatory sentence.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

1. Drug Offenses:

Section 893.03, F.S., classifies controlled substances into five categories, or schedules, to regulate their manufacture, distribution, and dispensation. Schedule I substances are the most strictly controlled. They have a high potential for abuse and no currently accepted uses in the United States. These substances are very difficult, if not impossible, to prescribe and include such drugs as heroin and LSD. Schedule II substances also have a high potential for abuse, have severely restricted medical use and may pose a danger of severe psychological or physical dependence. Cocaine, morphine, and PCP are examples of Schedule II substances. Substances in Schedule III have less potential for abuse than the substances in Schedules I and II, and have some accepted medical use. Schedule IV substances have a relatively low potential for abuse and have currently acceptable medical uses.

Section 893.13, F.S., creates drug offenses and provides various penalties depending on the type and quantity of the controlled substance sold, possessed or purchased. Included in section 893.13, are enhanced penalties for drug offenses when committed within 1,000 feet of a school. Section 893.13(1)(c), F.S., provides that it is "unlawful for a person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12:00 midnight." For most Schedule I drugs, the punishment for sale within 1,000 feet of a school is increased to a first degree felony. For other controlled substances, the punishment is increased to a second degree felony.

To illustrate, if an offender sells a Schedule I substance like heroin within 1,000 feet of a school, the offender will be convicted of a first degree felony and a three year mandatory minimum term is imposed. If this same sale had occurred outside 1,000 feet of a school, the offender is convicted of a second degree felony. [Note: The statutory maximum punishment for a first degree felony is 30 years imprisonment; 15 years for a second degree felony; and 5 years for a third degree felony. s. 775.082, F.S. However, the sentencing guidelines provides a recommended sentence which varies from case to case.]

B. EFFECT OF PROPOSED CHANGES:

The bill makes it unlawful to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of:

1. A physical place for worship at which a church or religious organization regularly conducts religious services.
2. A convenience business as defined in s. 812.171, F.S.

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 definition specifically excludes the following: 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; or any business in which the owner or members of his/her family work between the hours of 11 p.m. and 5 a.m.

A person who violates the provisions of this bill by selling cannabis or possessing cannabis with intent to sell faces the following enhanced penalties:

1. The classification of the offense is increased from a third degree felony to a second degree felony.
2. The ranking of the offense for the purpose of the sentencing guidelines is increased from a level 3 to a level 5 offense. A level 5 offense does not give the court discretion to impose a prison sentence for a first offense.

A person who violates the provisions of this bill by selling cocaine (or other serious drugs like morphine, heroin, opium, etc.) or possessing cocaine with intent to sell faces the following enhanced penalties:

1. The classification of the offense is increased from a second degree felony to a first degree felony.
2. The ranking of the offense is increased from a level 5 to a level 7 offense. Level 7 offenses call for the imposition of a prison sanction for a first offender.

Unlike the related statute for sale and possession for intent to sell within 1,000 feet of a school, there is not a minimum mandatory sentence required by this bill.

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?

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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?

Not Applicable.

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

Not Applicable.

4. Individual Freedom:

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

The bill increases the penalty for already illegal activity.

- 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?

Not Applicable.

- (2) Who makes the decisions?

Not Applicable.

- (3) Are private alternatives permitted?

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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?

Not Applicable.

(2) service providers?

Not Applicable.

(3) government employees/agencies?

Not Applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Increases the degree of the offense for the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance.

Section 2: Increases the level at which the enhanced offense is ranked for the purposes of the sentencing guidelines.

Section 3: Provides an effective date of October 1, 1997.

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:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

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

See Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference (CJEC) reviewed a similar Senate bill (SB 152) on March 28, 1997, and determined that it would have an insignificant impact on prison beds. However, the phrase "insignificant impact" seems questionable considering the large number of convenience stores, which are often present in areas where there is frequent drug activity. The bill increases the severity ranking of some of the more numerous offenses such as the sale of small amounts of cocaine from a level five to a level seven offense. Level seven offenses are treated in a substantially more serious manner by the sentencing guidelines.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Florida Supreme Court in State v. Brown, 629 So. 2d 841 (Fla. 1994), struck down a similar statute which enhanced penalties for the same type of offenses within 200 feet of a public housing facility. The Court held that the phrase "public housing facility" does not give adequate notice of what conduct is prohibited and, because of its imprecision, may invite arbitrary and discriminatory enforcement. In other words, the term "public housing facility" was too vague to put those who will be affected on notice as to what will render them liable to criminal sanctions.

The following phrase in this bill may also be too vague: "a physical place for worship at which a church or religious organization regularly conducts religious services." Florida law does not provide a definition for "a physical place for worship" or for "religious services." It is not clear if a house that contains a religious faction (like the now famous Heaven's Gate organization) would qualify. A park that is also the site of weekly or even monthly religious services like a wedding could also qualify as a location that triggers the enhanced penalties.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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