

STORAGE NAME: h0135a.cp

DATE: January 21, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 135

RELATING TO: Controlled Substances/Child Care

SPONSOR(S): Representative Levine

COMPANION BILL(S):

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

- (1) CRIME AND PUNISHMENT YEAS 5 NAYS 0
- (2) CORRECTIONS
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill moves a misplaced statutory provision relating to the illegal sale or possession with intent to sell certain controlled substances within 1,000 feet of a day care facility. The misplaced provision requires that a sign clearly identify a day care facility before an enhanced penalty may apply. The bill places this requirement for a sign to be posted in the paragraph that actually enhances the penalty instead of in its current unrelated subsection.

II. SUBSTANTIVE ANALYSIS:

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, an illegal controlled substance. The penalties are enhanced under Section 893.13(1)(c) and (e) if the offense occurs within 1,000 feet of a school or child care facility. 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 and heroin but not cannabis, within 1,000 feet of a school or a child care facility. There are also enhanced penalties for selling certain drugs or possessing the illegal drugs with intent to sell within 1,000 feet of a place of worship or a convenience business, but the three year minimum mandatory does not apply to controlled substance violations near a place of worship or a convenience store.

In 1997, Senate Bill 162 was passed to include the term child care facility in section 893.13(1)(c). Included in the bill was a provision to more clearly identify the term "child care facility" so that the term would be more likely to withstand a vagueness challenge in the courts. Unfortunately, the provision was placed in subsection (6), paragraph (c) instead of subsection (1), paragraph (c) where the term "child care facility" is used. A plain reading of this identifying language may not cause it to be applied to the correct term. The language that more clearly identifies "child care facility" reads as follows:

Paragraph (c) as it relates to a child care facility does not apply unless the owner or operator of the facility posts a sign of not less than 2 square feet in size with a word legend that identifies the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

Section 893.13(6)(c).

Previous Court Scrutiny of this Section for Vagueness

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; and
4. The Court deemed this section of the statute impermissibly vague because it may invite arbitrary conduct as to the enforcement of the statute.

B. EFFECT OF PROPOSED CHANGES:

The bill moves a misplaced provision in section 893.13(6)(c) which provides that the enhanced penalties for selling or possessing with intent to sell certain drugs within 1,000 feet of a child care facility applies only if the child care facility is clearly posted with an identifying sign. The bill places this identifying provision in the paragraph that actually enhances the penalty instead of in its current unrelated subsection.

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 ANALYSIS:

Section 1: Moves a misplaced provision in the statute and places it in the paragraph that actually enhances the penalty.

Section 2: Provides an effective date upon becoming law.

III. FISCAL ANALYSIS & 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 estimates that the bill will have no prison impact. There is no case law on whether the glitch prevented prosecutors from applying the enhanced penalty for selling or possessing with intent to sell certain drugs within 1,000 feet of a day care facility. On February 21, 1997, the Criminal Justice Estimating Conference determined that the original bill had a potentially significant impact on prison beds.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirement 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 the revenues in the aggregate.

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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:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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