

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1168
 SPONSOR: Senator Posey
 SUBJECT: Controlled Substances/Parks
 DATE: February 5, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1168 amends s. 893.13, F.S., to enhance the penalty for the sale, manufacture, delivery or possession with intent to sell, manufacture, or deliver a controlled substance within 1000 feet of a park. This offense is currently treated in the same manner for sentencing purposes as drug offenses committed within 200 feet of a college or university.

The bill will increase the penalty for the offense so that it is treated in the same manner as drug offenses committed within 1000 feet of an elementary, middle or secondary school or day care center. The bill expands the term “public park,” as currently used in s. 893.13(1)(d), F.S., to include state, county and municipal parks as well as publicly owned recreational facilities. The bill also increases the enhanced penalty area around parks from 200 feet to 1000 feet.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 893.13(1)(c), 893.13(1)(d), and 921.0022.

II. Present Situation:

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 s. 893.13, F.S., are enhanced penalties for drug offenses when committed within 1,000 feet of a child care facility or 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 child care facility as defined in s. 402.302, F.S., or 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 (such as heroin or GHB), and some Schedule II drugs (including cocaine and hydrocodone), the punishment for sale within 1,000 feet of a child care facility or a school is increased to a first degree felony and imposition of a three year mandatory minimum prison sentence is required. For all other controlled substances, the punishment is increased to a second degree felony.

Section 893.13(1)(d), F.S., makes it “unlawful for any person to sell, manufacture, or deliver, a controlled substance in, on, 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.” Depending upon the controlled substance involved, the offense is either punished as a first or second degree felony.

Section 893.13(1)(d), F.S., withstood a challenge on constitutional grounds in 1998. The defendant in that case argued that the term “public park” was unconstitutionally vague. Although the court found the defendant’s plea was not voluntary and therefore reversed and remanded the case, the constitutional challenge was rejected by the court. In specifically addressing the issue of vagueness the court stated:

“When the legislature fails to define a term within the statute, then ‘it should be given its plain and ordinary meaning.’ *State v. Delgrasso*, 653 So.2d 459, 463 (Fla. 2d DCA 1995). In this case, the statute does not define the term ‘public park’; however the term has an ordinary meaning or common understanding.” *Bryant v. State*, 712 So.2d 781 (Fla. 2d DCA 1998).

III. Effect of Proposed Changes:

Senate Bill 1168 amends s. 893.13(1)(d), F.S., to delete the reference to “public park,” and to enhance the penalty for the sale, manufacture, delivery or possession with intent to sell, manufacture, or deliver a controlled substance within 1000 feet of a state, county or municipal park or publicly owned recreation area by including that provision in s. 893.13(1)(c), F.S. The bill will increase the penalty for the offense so that it is treated in the same manner as drug offenses committed within 1000 feet of an elementary, middle or secondary school or day care center.

This bill also amends s. 922.0022, F.S., ranking such offenses on the severity ranking chart of the Criminal Punishment Code.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference met on January 18, 2002, and determined that the potential impact of the bill on the state prison population is indeterminate since the number of covered drug offenses that occur between 200-1,000 feet of a public park is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.