

HOUSE OF REPRESENTATIVES ANALYSIS

BILL #: HB 51
SPONSOR(S): Garcia
TIED BILLS:

RELATING TO: Controlled Substances
IDEN./SIM. BILLS: HB 57

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
(1) <u>Criminal Justice (Sub)</u>	_____	<u>Kramer</u>	<u>De La Paz</u>
(2) <u>Public Safety & Crime Prevention</u>	_____	_____	_____
(3) <u>Public Safety Appropriations (Sub)</u>	_____	_____	_____
(4) <u>Appropriations</u>	_____	_____	_____
(5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 51 amends § 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 1,000 feet of a park. These offenses are currently treated in the same manner for sentencing purposes as drug offenses committed within 200 feet of a college or university. The bill treats drug offenses committed in the vicinity of a park in the same manner as drug offenses committed within 1,000 feet of an elementary, middle or secondary school or day care center and increases the enhanced penalty area around parks from 200 feet to 1,000 feet. The bill clarifies the definition of park as including state, county and municipal parks and adds drug offenses committed within 1,000 feet of a publicly owned recreational facility to this category of offenses. The bill also increases the enhanced penalty area around parks, colleges, universities and public housing facilities from 200 feet to 1,000 feet.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: February 6, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain: The bill will result in increased criminal penalties for drug offenses committed within 1,000 feet of a park, community center or recreational facility.

B. EFFECT OF PROPOSED CHANGES:

Currently, section 893.13, F.S., provides penalties for various drug offenses depending on the type and quantity of the controlled substance sold, possessed or purchased. Included in § 893.13, F.S., are enhanced penalties for drug offenses that are committed within 1,000 feet of a child care facility or a school. Specifically, 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 § 402.302, or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12:00 a.m.” For most Schedule I¹ drugs, and some Schedule II drugs, the penalty for this offense is increased to a first degree felony and imposition of a three year mandatory minimum sentence is required.² For other Schedule II drugs as well as Schedule III and Schedule IV drugs, the penalty is increased to a second degree felony.

Section 893.13(1)(d), F.S., contains a less severe penalty enhancement for drug offenses that occur within 200 feet of a public park or the real property comprising a public or private college, university or other postsecondary educational institution. Section 893.13(1)(f) also provides for enhanced penalties for drug offenses committed within 200 feet of the real property comprising a public housing facility.

HB 51 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 1,000 feet of a park. These offenses are currently treated in the same manner for sentencing purposes as drug offenses committed within 200 feet of a college or university. The bill increases the penalty for these offenses so that they will be treated in the same manner as drug offenses committed within 1,000 feet of an elementary, middle or secondary school or day care center. The bill clarifies that the term “park” includes state, county and municipal parks and removes the restriction on the time of day in which the enhanced penalty would apply. The bill adds drug offenses committed near publicly owned recreational facilities to this category. The bill

¹ Florida and federal drug statutes lists controlled substances in “schedules” ranging from Schedule I to Schedule V. A schedule II substance has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. s. 893.03(2), F.S. A schedule III substance has a potential for abuse less than the substances contained in schedule I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. s. 893.03(3), F.S. A schedule IV substance has a low potential for abuse relative to the substances in Schedule II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III.

² The minimum mandatory sentence does not apply to drug offenses committed within 1,000 feet of a child care facility. s. 893.13(1)(c)1, F.S.

also increases the enhanced penalty area around parks, colleges, universities and public housing facilities from 200 feet to 1,000 feet. The bill amends § 921.0022, F.S., to reflect the amendments to section 893.13 within the severity ranking chart of the Criminal Punishment Code.

C. SECTION DIRECTORY:

Section 1: Amends s. 893.13; amending provisions relating to sale of controlled substances near park, university and public housing facility; providing for enhanced penalties for sale of controlled substances within 1,000 feet of recreational facility.

Section 2: Amends s. 921.0022; relating to offense severity ranking chart of Criminal Punishment Code.

Section 3: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
2. Expenditures: During the 2002 session, the Criminal Justice Impact Conference decided that HB 213, which was substantially similar to HB 51, would have an indeterminate impact on the prison bed population of the Department of Corrections. There is no information available on how many drug transactions occur between 200 feet and 1,000 feet of a park, a college or a public housing facility and would therefore be subject to the enhanced penalties contained in the bill. Further, it is not clear how many drug transactions occur within 1,000 feet of a publicly owned recreational facility and would be subject to the enhanced sentencing provisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision
2. Other

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 51 amends section 921.0022, the offense severity ranking chart of the Criminal Punishment Code, to reflect the amendments to section 893.13 contained in the bill. However, the bill fails to amend section 921.0022(3)(g) to reflect the fact that section 893.13(1)(c)1 is amended to include parks and recreational facilities. A technical amendment will be necessary to fix this problem.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES