

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 17, 1998 Revised: \_\_\_\_\_

Subject: Sale of Drugs Within 200 Feet of a Public Housing Facility

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gomez</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

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 housing facility, 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.” For most Schedule I and II drugs, the punishment for sale within 200 feet of a public housing facility is reclassified from a second degree felony to a first degree felony. For most other drugs, the offense is reclassified from a third degree felony to a second degree felony. However, in *Brown v. State*, 629 So. 2d. 841 (Fla. 1994), the court held that the phrase “public housing facility” is unconstitutionally vague. This CS deletes “public housing facility” from this provision.

This CS creates a new enhancement provision which defines “real property comprising a public housing facility” by reference to definitions already contained in the public housing chapter. For most Schedule I and II drugs, like cocaine, this CS reclassifies the punishment for sale within 200 feet of a public housing facility from a second degree felony to a first degree felony. The CS also requires imposition of a three year mandatory minimum prison sentence, which is not a requirement in the current public housing facility statute. For drugs, the sale of which currently constitutes a third degree felony, the offense is reclassified to a second degree felony. For the sale of all other drugs, the offender must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law. This CS ranks the enhancement offenses on the offense severity ranking chart of the Florida Punishment Code.

This CS shall take effect on October 1 of the year in which it is enacted.

This CS substantially amends the following sections of the Florida Statutes: 893.13(1) and 921.022.

## II. Present Situation:

### A. Drug Offenses

Section 893.03, F.S., classifies controlled substances into five schedules to regulate their manufacture and distribution. 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 uses, and may pose a danger of severe psychological or physical dependence. Cocaine, GHB, and amphetamines 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 sold, possessed, or purchased. Included in section 893.13, are enhanced penalties for drug sales when committed within a certain distance of various kinds of facilities.

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 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 and II drugs, the punishment for sale within 1,000 feet of a school is reclassified from a second degree felony to a first degree felony and imposition of a three year mandatory minimum is required. For most other drugs, the offense is reclassified from a third degree felony to a second degree felony.

To illustrate, if an offender sells a Schedule I or II substance like heroin or cocaine within 1,000 feet of a school, the offender will be guilty of a first degree felony and a three year mandatory minimum term of imprisonment is imposed upon conviction. 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. § 775.082, F.S. However, the sentencing guidelines provide a recommended sentence which varies from case to case. After October 1, 1998, the Florida Punishment Code will repeal the sentencing guidelines and allow the trial court to impose the statutory maximum punishment, at its discretion.]

Section 893.13(1)(d), F.S., enhances penalties for any person who sells, manufactures, or delivers “a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, 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.” However, in *Brown v. State*, 629 So. 2d. 841 (Fla. 1994), the court held that this statute is unconstitutionally vague. The court stated that the phrase “*public housing facility*” does not give adequate notice of

what conduct is prohibited, is not defined in the statute, and because of its imprecision, may invite arbitrary and discriminatory enforcement.

Under section 893.13(1)(d), F.S., the offense is reclassified as described above for section 893.13(1)(c), except that no minimum mandatory term of imprisonment is required. An offender's sentence will vary depending on the sentencing guidelines. The Florida Punishment Code, becomes effective for offenses committed on or after October 1, 1998, and will allow the trial court to impose a sentence up to the statutory maximum for the offense. The Punishment Code contains a ranking system for offenses which is one factor determining the minimum sentence in a given case. Currently, a schedule I or II drug, like cocaine, is ranked as a Level 5 offense. All other drugs, are ranked as Level 3 offenses.

The 1997 Legislature created another enhancement provision in section 893.13(1)(e), F.S. This new provision makes it "unlawful for any person 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 a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171." Under this provision, the offense is reclassified as described above for section 893.13(1)(c), except that no minimum mandatory term of imprisonment is required. However, this provision "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." § 893.13(6)(c), F.S.

## **B. Public Housing**

Chapter 421, F.S., is entitled "Public Housing" and it contains various provisions relating to the state's role in public housing for persons of low income. Chapter 421 contains the following definitions, which are referenced in this CS:

- ▶ "Persons of low income" shall mean persons or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.
- ▶ "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

§ 421.03(9), (10), (12), F.S.

### III. Effect of Proposed Changes:

This CS deletes sale of drugs within 200 feet of a public housing facility from an enhancement provision which has been declared unconstitutional.

This CS creates a new enhancement provision which defines “real property comprising a public housing facility” by reference to definitions already contained in chapter 421, F.S., entitled “Public Housing.” The “real property comprising a public housing facility” means:

- ▶ the real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421, *or*
- ▶ any facility constituting single or multifamily dwelling units occupied by persons of low income as defined in s. 421.03(10).

For most Schedule I and II drugs, this CS reclassifies the punishment for sale within 200 feet of a public housing facility from a second degree felony to a first degree felony. The CS also requires imposition of a three year mandatory minimum prison sentence; this is not a requirement in the current public housing facility statute. For other drugs, the sale of which currently constitutes a third degree felony, the offense is reclassified to a second degree felony. For the sale of all other controlled substances, the offender must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

To illustrate, if an offender sells a Schedule I or II substance like heroin or cocaine within 200 feet of a public housing facility, the offender will be convicted of a first degree felony and a three year mandatory minimum term of imprisonment will be imposed. In this case, the trial court will have the discretion to impose a sentence up to the statutory maximum of 30 years, under the Florida Punishment Code, effective October 1, 1998. If this same sale had occurred outside 200 feet of a public housing facility, the offender is guilty of a second degree felony and no minimum mandatory term is imposed.

This CS deletes old references to public housing facilities from the Offense Severity Ranking Chart in the Florida Punishment Code. Also, 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.

**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:

According to the Department of Corrections, “[t]he frequency of sale of controlled substance[s] in the proximity to public housing is anecdotally high. Therefore, the impact of this legislation may be significant.” The Criminal Justice Estimating Conference considered the prison bed impact of SB 358 on January 30, 1998. The Conference determined that the impact was “indeterminate but potentially significant.” The Conference’s reasoning was that the minimum mandatory provision in SB 358 is similar to the 1,000 feet of a school statute. That statute currently accounts for about 300 inmates incarcerated for a minimum mandatory term of 3 years.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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