

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates new criminal offenses relating to controlled substances.

B. EFFECT OF PROPOSED CHANGES:

Drug Schedules: Section 893.13, F.S., provides penalties for various drug offenses depending on the type and quantity of the controlled substance involved and whether the controlled substance is possessed, sold, manufactured, delivered or purchased as well as the location of the sale, manufacture or delivery. If the amount of controlled substance possessed, sold, manufactured, purchased or delivered is of a specified quantity, the offense is considered drug trafficking and the penalties in s. 893.135, F.S., apply. The type and quantity of controlled substance sold, purchased, manufactured or delivered - in other words, trafficked - dictates the penalties that apply.

Lease or rental of a place used in drug trafficking: Section 893.1351, F.S. provides that a person may not lease or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that such place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance or the sale of a controlled substance. The offense is a third degree felony. The bill expands this offense to include owning as well as leasing or renting any place, structure, trailer or conveyance with the knowledge that it will be used for the purpose of manufacture of a controlled substance intended for sale or distribution to another.

The bill creates a new subsection in s. 893.1351 which provides that a person may not knowingly be in actual or constructive *possession* of any place, structure, or part thereof, trailer or any conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose or trafficking in a controlled substance, the sale of a controlled substance or the manufacture of a controlled substance intended for sale or distribution to another. This offense will be a third degree felony.

The bill also provides that proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

The bill creates section 893.1352, F.S. which provides that a person who is found to be in actual or constructive possession of a place, structure, trailer or conveyance with the knowledge that the place, structure, trailer or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another and who knew or should have known that a minor is present or resides in the place, structure, trailer or conveyance commits a first degree felony.

Possession of controlled substance in presence of a minor:

Currently, the possession of a controlled substance in a quantity less than the threshold required for trafficking is a third degree felony.¹ The bill provides that a person may not possess any amount of a controlled substance in close proximity to an infant or toddler. The offense is a first degree felony. The

¹ See s. 893.13(6)(a), F.S. The possession of less than 20 grams of cannabis is a first degree misdemeanor.

term “close proximity” is defined to mean that “the item is so close to the infant or toddler as to be within his or her reach without regard to whether the infant or toddler is likely to attempt to reach for the item.”

Evidence: Section 90.91, F.S. provides that in any prosecution for a crime involving the wrongful taking of property, a photograph of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property were introduced as evidence. Such photograph shall bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer, and the photograph shall be identified by the signature of the photographer. Upon the filing of such photograph and writing with the law enforcement authority or court holding such property as evidence, the property may be returned to the owner from whom the property was taken.

The bill provides that in the prosecution of an offense involving the cultivation² or manufacture of a controlled substance, a photograph or video recording of the manufacturing or cultivation equipment used in committing the offense, including, but not limited to, grow lights, growing trays, and chemical fertilizers, may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

Currently, section 893.12, F.S. provides that controlled substances which are possessed in violation of the chapter are contraband and subject to seizure and confiscation. The court having jurisdiction must order the substances forfeited and destroyed. A record of the place where the controlled substance was seized, of the kinds and quantities of controlled substances destroyed and of the time, place and manner of destruction must be kept and a return under oath reporting the destruction must be made to the court by the officer who destroys them.

The bill provides that after a law enforcement agency documents the manufacturing and cultivation equipment by photography or video recording, the manufacturing and cultivation equipment may be destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must be recorded in the manner described in s. 893.12(1)(a), F.S. above and records must be maintained for 12 months.

C. SECTION DIRECTORY:

Section 1. Amends s. 893.02, F.S., relating to definitions.

Section 2. Amends s. 893.1351, F.S., relating to owning, leasing, renting or possessing for the purpose of trafficking or manufacturing a controlled substance.

Section 3. Creates s. 893.1352, F.S. relating to unlawful possession of a controlled substance in the presence of a minor.

Section 4. Amends s. 893.10, F.S. relating to burden of proof.

² The bill defines the term “cultivation” to mean “the preparation of any soil or hydroponic medium for the planting of cannabis plants, the tending and caring of cannabis plants, or the harvesting or mature cannabis plants.”

Section 5. Amends s. 921.0022, F.S. relating to the offense severity ranking chart of the Criminal Punishment Code.

Section 6-8: Amends s. 465.016, 465.023 and 893.135, F.S. to correct cross-references.

Section 9. Provides effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On January 17, 2008, the Criminal Justice Impact Conference determined that this bill could have a potentially significant prison bed impact on the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill defines the term “cultivation” to mean “the preparation of any soil or hydroponic medium for the planting of cannabis plants, the tending and caring of cannabis plants, or the harvesting or mature cannabis plants”. The definition does not include controlled substances other than cannabis. Although cannabis is likely the most commonly cultivated controlled substance, other plants are listed in the drug schedules and could possibly be cultivated.

Section 3 of the bill prohibits a person from possessing any amount of a controlled substance in close proximity to an infant or toddler. Apparently this is intended to only apply to a controlled substance that the person does not legally possess. However, as written, the bill does not list any exceptions to this offense. As a result, possession of a controlled substance for which the person had a legal prescription within close proximity to an infant or toddler would be a first degree felony. Under this provision as drafted, a person would not be able to give a controlled substance to an infant or toddler because the controlled substance would be within close proximity to the infant or toddler while it is being administered.

If this provision were limited to creating a first degree felony offense for *unlawful* possession of a controlled substance in close proximity to an infant or toddler, it would have the effect of significantly increasing the severity of possession of a controlled substance, depending on the controlled substance at issue. For example, possession of less than 20 grams of cannabis is a first degree misdemeanor.³ Under the bill, if a person possessed less than 20 grams of cannabis within close proximity to an infant or toddler, the severity of the offense would increase from a first degree misdemeanor, punishable by up to one year in county jail to a first degree felony, punishable by up to 30 years in prison. Further, the bill ranks the newly created offense in level 8 of the offense severity ranking chart. As a result, the lowest permissible sentence for the offense would be 36 months in prison.

Section 4 of the bill provides that in the prosecution of an offense involving the “cultivation or manufacture” of a controlled substance, photographs or video recording of the equipment used in the cultivation or manufacture may be introduced into evidence instead of the equipment itself. However, there is no separate criminal offense of “cultivation” of a controlled substance. Instead, s. 893.13, F.S. prohibits the manufacture of a controlled substance. In turn, the definition of the term manufacture

³ s. 893.13(6)(b), F.S. The offense of possession of a controlled substance other than cannabis is a third degree felony. See s. 893.13(6)(a), F.S.

includes the term cultivation. [s. 893.02(13), F.S.] It is recommended that this provision be amended to remove reference to the offense of cultivation of a controlled substance.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES