



Testimony of

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and
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**Before the
Joint Committee on the Judiciary of the Massachusetts General Court**

September 20, 2011

In SUPPORT of H2267/S908

Thank you, Madam and Mister Chairpersons, and members of the Committee for providing the opportunity to submit written testimony in support of House Bill 2267/Senate Bill 908, "An Act to Reform the 'School Zone' Law for Drug Offenses." We are Peter Wagner, attorney and Executive Director, and Aleks Kajstura, attorney and Legal Director, of the Prison Policy Initiative, a Massachusetts-based non-partisan, non-profit center that addresses the unintentional effects of criminal justice policy.

In our work at the Prison Policy Initiative, we co-authored two reports about the Massachusetts school zone statute, *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children* and *Reaching Too Far, Coming Up Short: How Large Sentencing Enhancement Zones Miss the Mark*.¹ The school zone law mandates higher sentences for certain drug offenses committed within 1,000 feet of schools. This bill proposes dropping the zone to 100 feet, consistent with the findings and recommendations we present in our reports.

Based on our research, declaring all places within 1,000 feet of a school to be protected places —subject to an enhanced penalty — blankets the penalty over the majority of areas in urban spaces. This may have sounded attractive, but it undermined the legislature's intent of creating enhanced penalty zones, and its goal of enhanced safety for our young residents.

Simply put, *when a legislature says that everywhere is special, no place is special.*

For a geographic-based deterrent to be effective, it must be narrowly tailored to apply to as small of an area as possible. If the legislature wishes to shift criminal activity away from specific places it must be possible to identify and avoid the areas in question. But 1,000 feet is not an appropriate distance for a geographic-based deterrent law. It is simply so large that it is not possible to identify by a lay person,

¹ Aleks Kajstura, Peter Wagner and William Goldberg, *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children*, Prison Policy Initiative, July 2008, available at <http://www.prisonpolicy.org/zones/> and Aleks Kajstura, Peter Wagner and Leah Sakala, *Reaching Too Far, Coming Up Short: How Large Sentencing Enhancement Zones Miss the Mark*, Prison Policy Initiative, January, 2009 available at <http://www.prisonpolicy.org/toofar/>.



and if identified, impossible to avoid because almost anywhere within urban areas will be within 1,000 feet of a protected place.

Furthermore, two other research studies conducted in Massachusetts² and New Jersey³ have found that drug arrests were higher inside the zones than outside of them; providing clear evidence that the sentencing enhancement zones did not work as intended.

The current law creates an unfair two-tiered system of justice: a harsher one for dense urban areas with numerous schools and overlapping zones, and a milder one for rural and suburban areas, where schools are relatively few and far between. In our study of the Massachusetts school zones, we found that despite roughly equivalent drug usage rates, Latinos were 30 times more likely to receive an enhanced penalty than White people.⁴ This negative impact on racial justice also comes with a very significant fiscal cost, with almost 800 years of additional prison time imposed each year as a direct result of Massachusetts' sentencing enhancement law.

The bill before you today, House Bill 2267/Senate Bill 908, would reduce the size of school zones to 100 feet, the same as is currently in place for parks and playgrounds. This change would greatly reduce the disparities we found in prosecutions between rural and urban areas, *and* would actually make the law more effective in protecting children. The bill would also exclude transactions occurring within homes from the school zone law (although defendants can still be prosecuted for the offense itself), to avoid a second penalty solely based on where a defendant lives.

We thank you for accepting this testimony.

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² William N. Brownsberger & Susan Aronson, An Empirical Study of the School Zone Law in Three Cities in Massachusetts, Join Together and Boston University School of Public Health) 2001, available at http://www.jointogether.org/resources/pdf/school_zone.pdf.

³ Report On New Jersey's Drug Free Zone Crimes & Proposal For Reform, The New Jersey Commission to Review Criminal Sentencing, 2005, available at http://sentencing.nj.gov/dfz_report_pdf.html.

⁴ Aleks Kajstura, Peter Wagner and Leah Sakala, *Reaching Too Far, Coming Up Short: How Large Sentencing Enhancement Zones Miss the Mark*, Prison Policy Initiative, January, 2009 available at <http://www.prisonpolicy.org/toofar/>.