

Testimony of

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Before the  
Judiciary Committee  
of the Rhode Island Senate

on

Senate 2644

**OPPOSE**

April 6, 2010

Thank you, Mr. Chairperson and members of the Committee for providing the opportunity to submit written testimony in opposition to Senate Bill 2644, “an act related to criminal procedure – sentence and education.” 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.

Before the Committee today is S2644, which would impose longer sentences for felonies committed within 1,000 feet of an educational institution. By imposing longer sentences for offenses committed in certain locations, the legislature is intending to offer greater protection to those places. The hope is that the stronger sentences will either deter crime, or, more likely, encourage it to move further from the protected places.

But good intentions alone do not make good law, and the expansive 1,000 foot distance proposed by S2644 ensures that the law will not have the desired effect, while creating significant negative effects.

In our work at the Prison Policy Initiative, we co-authored two reports about a Massachusetts school zone statute which mandates higher sentences for certain drug

offenses committed within 1,000 feet of schools.<sup>1</sup> Peter Wagner has also presented maps of similar zones around schools in testimony in the United States District Court for the Northern District of Georgia and in affidavits prepared for court cases in cities of Revere and Barnstable, Massachusetts.

In our experience, declaring all places within 1,000 feet of a school as protected places — subject to an enhanced penalty — will blanket the penalty over the majority of the space in urban areas. This may sound attractive, but it undermines your intent of creating enhanced penalty zones, and your goal of enhanced safety for your 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, and if identified, impossible to avoid because almost anywhere within all urban areas will be within 1,000 feet of a protected place.

Two independent research studies conducted in Massachusetts<sup>2</sup> and New Jersey<sup>3</sup> 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.

We commend the legislature for wanting to protect children, but we encourage the legislature to explore options that meet that goal directly. For example, we expect that Rhode Island, like Massachusetts, will have existing — but infrequently enforced — laws that have special penalties for involving children in criminal activities. If children in Rhode Island are in need of additional protections from criminal activity, this would be a more appropriate approach than enhancing the penalties for all offenses committed in urban areas regardless of whether children were present.

However, should the legislature believe that sentencing enhancements should be based on geography, we urge the legislature to study the distance provision and included list of

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<sup>1</sup> 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/>.

<sup>2</sup> William N. Brownsberger & Susan Aromaa, *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](http://www.jointogether.org/resources/pdf/school_zone.pdf).

<sup>3</sup> 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](http://sentencing.nj.gov/dfz_report_pdf.html).

felonies carefully. In our research in Massachusetts, we found that the 1,000-foot distance was in itself a fundamental flaw in the statute that prevented it from working effectively. As discussed above, the law has not worked in Massachusetts and the extreme distance means that the law will never work as designed. While we remain skeptical that geography is an appropriate way to protect children in or near schools, we understand that the legislature may wish to explore the issue further.

We urge the legislature to study the distance that would be most appropriate for Rhode Island. We urge you to recreate our experiments asking people to identify what 1,000 feet looks like, measure out 1,000 feet to feel the scope of the changes you propose, and recreate our experiments trying to communicate at various distances.<sup>4</sup>

While we remain skeptical that geography based sentencing enhancements are ever appropriate, in our Massachusetts study, we found that a distance of 100 feet *might* work in a sentencing enhancement law, because that distance was easier to identify and would not encompass the entirety of urban areas.<sup>5</sup>

Finally, while we have expressed deep concern that the sentencing enhancements you propose will not work as intended, we think it extremely likely that this law as currently designed will have negative effects. The effect of the proposed law will be to create 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 Massachusetts study, we found that despite roughly equivalent drug usage rates, Latinos were 30 times more likely to receive an enhanced penalty than White people.<sup>6</sup> And this negative impact on racial justice 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.

We urge the legislature to reject S2644 outright and to instead study the effect of the current laws and whether adding a geography-based enhancement is appropriate. Should the legislature conclude that it is, we recommend study of the appropriate distance for such a law and the precise list of felonies that should be eligible for the enhanced penalty.

Protecting children is a laudable goal. And the legislature has a duty to pass only the laws that are necessary to achieve the greatest good with the smallest negative effects. As currently designed, S2644 will increase racial disparities in incarceration and increase the

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<sup>4</sup> Aleks Kajstura, Peter Wagner and William Goldberg, *1,000 Feet is Further Than You Think*, Prison Policy Initiative, July 2008, available at [http://www.prisonpolicy.org/zones/thousand\\_feet.html](http://www.prisonpolicy.org/zones/thousand_feet.html).

<sup>5</sup> See the recommendation section of *The Geography of Punishment* at <http://www.prisonpolicy.org/zones/recommendations.html>.

<sup>6</sup> 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/>.

prison population, all without improving public safety.

We thank you for accepting this testimony.

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