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DRUG
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ZONES: Effective Deterrent?

Hampden County's
new DA considers
drug-free school
zone laws

By Maureen Turner

NRC Okays Nuke Relicensing

New DA Talks About Drug-Free School Zones

Are they an effective deterrent, or just a lever to force lesser pleas from drug offenders?

By Maureen Turner

Earlier this year, Gov. Deval Patrick proposed a number of changes to the criminal justice system, with an eye to reducing costs.

The list includes amending so-called "drug-free school zone" laws, which were created under the Dukakis administration as a way to prevent drug activity near children. Under the 22-year-old law, people convicted of drug crimes within 1,000 feet of a school or daycare center face mandatory minimum sentences of two to 15 years, in addition to any sentences for the underlying charge itself.

Patrick's proposal would not eliminate school zones or the mandatory minimum sentences, but would dramatically shrink the zones from 1,000 to 100 feet—matching the size of "drug-free" zones that already exist around parks and playgrounds. Gregory Massing, general counsel for the Executive Office of Public Safety and Security, recently told the *Boston Globe* that the law, as it now stands, is "overbroad" and "ultimately ... fails to protect children and meanwhile incarcerates a lot of people for a lot of time at the government's expense."

Patrick's proposal has been sharply criticized by a number of law enforcement officials, from Attorney General Martha Coakley to the Mass. police chiefs' and district attorneys' associations. But critics of the existing law applauded the idea, arguing that the zones are too large to effectively serve their stated purpose and that they have the unintended effect of penalizing urban residents more than residents of less dense areas for the same crimes.

Indeed, if Patrick's proposal is successful, its effects would be felt nowhere more keenly than in communities like Springfield and Holyoke, where geographic realities mean drug-crime defendants are much more likely to face the added penalties than their counterparts in neighboring communities.

Mark Mastroianni, the newly elected district attorney for Hampden County, sees statutes like the school zone laws as having both benefits and potential pitfalls. As a prosecutor, he said, he likes having mandatory minimum laws as one of the tools at his disposal: "I think they're appropriate to use. They're effective deterrents, they're effective as sentencing options for me to apply to individuals who deserve that type of harsh punishment."

"But they're also subject to overuse," Mastroianni added. "And that creates some inequities and problems within the system."

A 2009 report by Easthampton's Prison Policy Initiative illustrates how school zone laws disproportionately affect urban residents.

The report, titled *The Geography of Punishment*, points out that the relatively large number of schools and daycare facilities in densely populated urban areas create numerous overlapping "drug-free" zones, rendering entire

areas—including large swatches of Springfield's core and much of the city of Holyoke—one giant school zone. In Hampden County, the report notes, residents of urban communities are five times more likely to live in a school zone than residents of rural communities.

The law's effect has racial implications as well. "Because Blacks and Latinos are more likely to live in urban areas, a law that enhances the sentences of urban residents does more harm to Black and Latino populations than to whites," the PPI authors write. "This racial disparity in the populations covered by sentencing enhancement zones is a large part of why almost 8 out of 10 people convicted of zone offenses in Massachusetts are Black or Latino."

The report also notes the heavy price tag that comes with enforcement of school-zone laws: the state spends more than \$31 million a year to incarcerate prisoners sentenced under the law.

Critics also contend that, because they are so widely drawn, school zones fail to address their initial intended purpose: discouraging drug crimes near schools by subjecting offenders to extra penalties. The zones stretch 1,000 feet in all directions from the edges of school properties; that, the PPI report points out, means that the law can apply in areas that are actually quite inaccessible from the schools themselves. Aerial photos included in the report make this particularly clear: one image, for example, shows that Bonner Street, in Chicopee, falls within the zone attached to Holyoke's Dean Technical High School despite the fact that the Connecticut River runs between the two sites, and,

short of swimming, the fastest way to get from one point to the other would entail driving more than four miles and crossing a bridge. In another example, Darling Street in Springfield is technically within 1,000 feet of JFK Middle School although, in reality, obstacles including Long Pond and a cemetery mean the most accessible route between the two places involves traveling 3,800 feet.

It seems hard to imagine that a drug dealer on Bonner Street would be targeting students at Dean Tech—in-deed, he or she might not even be aware of the school's proximity across the river. By extension, then, would the existence of the added school zone penalties deter him or her from committing the crime in that area, as the law was intended to do? The law also doesn't distinguish crimes that happen in full view of school children from crimes that occur when school's not in session, or in concealed indoor spaces, like a private residence around the block from the school.

Barbara Dougan, director of the Massachusetts chapter of Families Against Mandatory Minimums, recently told the *Advocate* that the school zones, as currently drawn, are so large that they're meaningless. "Nobody really understands whether they really are or are not within a zone, so [the laws] lose their deterrent value, they lose the very reason they were enacted," she said. "What [the law] does do is impose harsher penalties on people because of where they live, not what they do." And, Dougan added, there are already laws on the books that impose mandatory minimum sentences for selling drugs to children or



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Law and Order

involving minors in drug crimes.

The school zone law also gives prosecutors powerful leverage in negotiating pleas, critics contend. Rather than risk the mandatory minimum sentences that come with school zone convictions, defendants might be willing to enter guilty pleas for the underlying charges in exchange for the school zone charge being dropped. "This is where the prosecutors really like this," Peter Wagner, executive director of the Prison Policy Initiative and a co-author of The Geography of Punishment, told the *Advocate* shortly after Patrick announced his proposal. "You can give [defendants] an incentive to plead guilty, so they plead guilty to get a lower sentence, and they waive their right to a trial."

Mark Mastroianni is well aware of the criticisms of the school zone laws.

In January, Mastroianni was sworn in as district attorney for Hampden County, where, historically, prosecutors have charged defendants with school zone laws more than in other parts of the state, the PPI report finds. Before taking office, Mastroianni had a long career as a defense attorney.

Mastroianni told the *Advocate* that he doesn't support Patrick's proposal to shrink school zones, nor would he support eliminating the mandatory minimum sentences that are part of the law (the latter are not part of the governor's proposal).

But Mastroianni does see the serious problems that result when the law—or any law with a mandatory mini-

imum sentence—is overused by prosecutors, from an overburdened court system to first-time defendants facing harsher penalties than warranted by their records.

In the case of the school zone law, Mastroianni said, he sometimes sees instances where the law is being applied even though the circumstances of the case don't really fit the law's original intent—for instance, a drug deal that takes place in the middle of the night, with no children present, in an apartment on the eighth floor of a building that just happens to be within 1,000 of a school's property line. "Clearly, as bad as the drug dealing is, or the drug sale is, you couldn't prove an intent to affect a child or affect a school in any way," Mastroianni said. Those, he said, are the kinds of situations that he believes Patrick's proposal intends to address.

But make no mistake, the DA added: there are, indeed, drug dealers who deliberately target kids and schools. Those people, he said, do deserve harsher penalties, and that's why prosecutors should have a school zone law in their arsenal, to be used at their discretion—emphasis on "discretion."

"As a prosecutor, I want to keep the tool of school zones as a potential charge, because I think it's useful to have mandatory minimum charges like that available as a choice," Mastroianni said. "But I do think that the statute lends itself to being overused, and used in instances that it wasn't originally written to cover. But that can be addressed without wiping out the statute. That can be simply addressed on the level of the district attorney making better choices" about when to use the law.

If the law is going to be amended, Mastroianni suggested, rather than reduce the protected school zone, lawmakers should more tightly define the statute to address its original intent. And if that original intent was to dissuade drug dealers from deliberately targeting school children, he said, then the law should more accurately reflect that—for instance, by specifying that it applies to crimes that directly affect children.

"As a district attorney, I want to enforce the law as the Legislature intended the law to be. I can't substitute my decision on what the law ought to be," Mastroianni said.

"The prosecutors and the district attorney didn't create this tool for ourselves. The Legislature gave us this tool and said, 'This is what we want you to do.' ... What I'm saying is: please, legislators, if this isn't how you want this [law] to be used, tell us so we can apply it the way you want it to be applied."

Of course, even arriving at a definition of drug crimes that "affect" children would be sticky business. As Mastroianni notes, residents of neighborhoods plagued by drug abuse and drug-related crimes can make a strong case that their kids are affected by the activity, even if they don't actually witness them outside their school yard fence. "They've essentially degraded the whole atmosphere and the environment in which this child is being raised and goes to school," he said. As district attorney, he has to consider that side of the situation as well. •

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