

# Rethinking Drug-Free School Zones

Gov. Patrick proposes changing a policy critics say is unfair and ineffective.

By Maureen Turner

**T**he only thing new about Gov. Deval Patrick's recent proposal to shrink so-called "drug-free" school zones in Massachusetts is his support.

For years, advocates of criminal justice reform have been critical of the school zone law, which carries mandatory minimum sentences for drug crimes that take place within 1,000 feet of school property. While the law was passed in the name of public safety and the protection of children, critics say it's so broadly drawn that it's ineffective, and that it unfairly penalizes certain defendants on the basis of where they live.

At least some lawmakers have been sympathetic to those arguments, including members of the Legislature's joint Judiciary Committee, which in 2008 approved a bill that would have addressed some of the criticisms. That bill did not make it out of the 2007-2008 legislative session.

Now reformers have found an ally in the Statehouse's corner office. Last month, Patrick announced a proposal to dramatically reduce the size of the school zones, from 1,000 to 100 feet, as part of a plan to address a staggering projected state budget gap of \$1.2 billion. The plan also includes proposals to close two state prisons and to ease sentencing laws for non-violent drug offenders, all moves the governor contends would save much-needed money.

Patrick's school zone proposal has been met with resistance from expected sources within law enforcement circles. Still, proponents hope that this time, lawmakers will see the proposal as a wise move both from a public safety and an economic standpoint.

Peter Wagner, an attorney and executive director of Easthampton's Prison Policy Initiative, calls the governor's plan "a very exciting, common sense response to an experiment ... that we now we know doesn't work, can't ever work, and actually does harm."

**M**assachusetts' drug-free school zone law began with another governor, Mike Dukakis. In 1989, Dukakis, fresh off an unsuccessful presidential campaign, announced a plan to impose

mandatory minimum sentences of two to 15 years for anyone convicted of selling or distributing drugs within 1,000 feet of schools. The sentencing guidelines would apply regardless of the amount or kind of drugs involved, regardless of whether the person convicted had any previous criminal record, and regardless of whether children were present or school was in session at the time of the crime. The school-zone minimums would be applied in addition to any sentences given for the underlying drug offense itself, and could not be served concurrently with them. The bill was passed by the Legislature that summer.

Proponents of the bill described it as a way to protect vulnerable school kids from exposure to illegal drugs and the violence that often attends its trade. But a 2009 report by the Prison Policy Initiative cast serious doubts on the law's effectiveness, and pointed to its likely unintentional but nonetheless significant discriminatory effect.

In the report, "The Geography of Punishment," Wagner and co-authors Aleks Kajstura and William Goldberg found that school-zone laws subject urban residents to harsher penalties than residents of rural and suburban areas. That's because urban cores are densely populated, with more residents living within 1,000 feet of an institution protected under the law. (In addition to public and private schools, the drug-free zone law also applies to day care centers and Head Start programs. In 1993, the Legislature also passed a law creating 100-foot drug-free zones around parks and playgrounds.)

In cities like Springfield and Holyoke, the report found, the large number of schools create multiple overlapping 1,000-foot zones, rendering entire downtown or urban core neighborhoods one giant "school zone." In Hampden County, the PPI researchers found, residents of urban communities were five times more likely to live in a school zone than residents of rural communities—a situation that has race-based consequences 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 report noted. "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."

That, in turn, leads to incarceration rates that are disproportionate to the state's demographics. While African-Americans and Latinos comprise 12 percent of the state's population, they make up 58 percent of its prison population.

And, the report noted, those mandatory minimum sentences come with a significant cost: the state spends more than \$31 million each year to incarcerate prisoners sentenced under the school zone law, researchers found.

**Y**et for all that cost, critics say, drug-free school zones laws just aren't effective at deterring crime, because they're written too broadly.

The law was crafted to offer children special protection from drug activity by making it clear to dealers that they will face extra penalties for plying their trade near schools. But a 1,000-foot zone is so large—it extends from all borders of the school property, be it the front sidewalk or a faraway back field—that most people don't even know what the zone covers, or that it even exists at all, the PPI report notes.

In addition, the zones can ensnare drug activities that are in no way visible or connected to school kids—say, a deal that happens inside a private home after school hours.

And because the zones are measured "as the crow flies," a person could be within 1,000 feet of a school property they can't even see; in one striking illustration from the report, a person arrested for a drug crime on Bonner Street in Chicopee could be charged under the mandatory minimum law because he or she was within 1,000 feet of Holyoke's Dean Tech-

# Justice

nical High School—despite the fact that the Connecticut River flows between the two points, with the nearest bridge a couple of miles away.

“When these laws were first put together, [legislators] made the assumption that anyone doing a drug offense within 1,000 feet of a school must be intending to include children in that offense,” Wagner said. In reality, though, it’s quite likely that the offenders might not even be aware that they’re within a school zone—and that, Wagner says, robs the law of its intended purpose, to provide special protection to children.

“When the zones are so very large, they become meaningless,” said Barbara Dougan, director of the Massachusetts chapter of Families Against Mandatory Minimums, or FAMM, a nonprofit that advocates for sentencing reforms. “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.

“The one thing it does not do is deter drug transactions based on the knowledge that you’re within a school zone,” Dougan continued. “What it does do is impose harsher penalties on people because of where they live, not what they do.”

Patrick’s proposal directly addresses the charge that the current school zones are too large by reducing the 1,000 “protected zone” to 100 feet. (The governor’s plan does not reach as far as the bill supported by the Judiciary Committee in 2008, which also removed the mandatory minimum sentence for first-time offenders.)

Gregory Massing, general counsel for the Executive Office of Public Safety and Security, recently told the *Boston Globe* that the existing school zone law “is an overbroad law that doesn’t do what it’s supposed to do. Ultimately it fails to protect children and meanwhile incarcerates a lot of people for a lot of time at the government’s expense.”

As supporters of reform make the case for Patrick’s proposal, noted FAMM’s Dougan, it’s important to emphasize what the governor’s plan wouldn’t do. It wouldn’t remove the mandatory minimum requirement; it would just limit it to crimes committed within tighter school zones. It wouldn’t change existing laws that already impose strong penalties for drug crimes that involve guns or children. By law, a conviction for selling drugs to minors carries a mandatory minimum sentence of two to five years; employing minors in drug transactions carries a five-year minimum sentence.

“We already have laws on the books that have zeroed in on the whole notion, justifiably, of protecting kids from drug offense,” Dougan said. “[Patrick] has drawn a bright line around drug offenses using violence or [involving] children. Those [penalties] do not change at all.”

The governor’s proposal, she added, would make school zones consistent with the 100-foot drug-free zones that already exist around playgrounds and parks. “Nobody has ever suggested that’s not an effective-sized zone for parks and playgrounds,” she said.

**B**ut a number of people are suggesting that shrinking the school zones would put kids at risk, and rob prosecutors of an important weapon in the war on drugs. They include some police department leaders as well as Attorney General Martha Coakley. In a statement released in response to Patrick’s plan, Coakley said, “I do not believe that we should reduce this tool that prosecutors and police have to combat drug dealers. The school zones allow us to more effectively hold defendants accountable and serve as a deterrent for those engaged in drug dealing.”

Mark Leahy, president of the Massachusetts Chiefs of Police Association and Northborough’s police chief, recently told the *Boston Globe* that a 100-foot drug-free school zone would do little to buffer kids from dealers. “The fact

with the school-based offense, PPI’s Wagner noted.

“This is where the prosecutors really like this,” he said. “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. ...

“That’s not the prosecutors’ fault, but the reality is, if you give them an overbroad law, they will enforce it,” Wagner continued. And that, in turn, “keeps the state from putting its resources into a better criminal justice process,” or drug treatment and education programs.

What do the Valley’s two newly sworn-in district attorneys think of Patrick’s proposal? Northwestern District Attorney David Sullivan voices limited support. “I am fully in favor of drug-free school zones. I favor a reduction from 1,000 feet to an appropriate distance. The drug-free zone should be greater than 100 feet, and, hopefully, the Legislature can establish a reasonable distance to safeguard children,” Sullivan said in a statement in response to an inquiry from the *Advocate*.

At deadline, the *Advocate* was unable to reach Mark Mastroianni, the new district attorney for Hampden County—where, the 2009 PPI report found, prosecutors brought school zone charges more often than prosecutors in any other district attorney’s office.

But in an interview with the *Advocate* last fall, before his election, Mastroianni spoke of the court backlog created by an overzealous prosecution of every charge that carries a mandatory minimum.

The then-candidate said he did not support abolishing school zone laws or others that carry mandatory minimum sentences. But, he said, “I think the district attorney’s office needs to exercise a lot better discretion in who they apply them to. Because, let’s be honest: some people are getting school zone charges because they’re selling drugs in an apartment building that just happens to be down the street from a school, and they’re doing it at two in the morning, and it has nothing to do with the school.

“But let me tell you, there are people who wait on a corner and do want to sell to kids on their way to school, and that’s the kind of person [about whom] I’m saying, I’m so glad I have this school-zone statute, and I’m so glad to have mandatory minimums.”

Given the powerful opposition it will face, do reform advocates think Patrick’s plan has a shot at becoming law?

“I’m not a lobbyist, so it’s a little bit outside my expertise,” Wagner said. “But I think the governor’s proposing this at the right time, when people are a little fed up with criminal justice policies that don’t work, and are also looking to save money in the government.

“We absolutely want to protect children from drugs,” Wagner added. “And we want to do so in the most effective way possible, and we don’t want to do it by expensive laws that incarcerate the wrong people.”

—mturner@valleyadvocate.com

“When the zones are so very large, they become meaningless.”

—Barbara Dougan,  
Families Against Mandatory Minimums

that [drug deals] could occur within 100 feet, within eye-shot and ear-shot of a school, bothers me a lot,” Leahy said. “The only possible benefit is that if the kids are playing kickball on the field and kick the ball over the fence, perhaps the drug dealers can return it to them.”

The strongest opposition to the governor’s proposal is likely to come from Massachusetts’ district attorneys—the ones, after all, who make decisions about which laws to use to prosecute defendants. School-zone convictions represent a relatively minor portion of the state’s total drug convictions. According to the Massachusetts Sentencing Commission, in 2009, 294 people were sentenced after being convicted under school zone laws—about one-quarter of all convictions under mandatory minimum drug laws, and 3.6 percent of total drug convictions that year.

The school zone penalties do, however, serve a powerful purpose for prosecutors, providing them with leverage to get guilty pleas from defendants. Faced with a potential mandatory minimum sentence for a school zone violation on top of the penalties for the underlying drug offense, many defendants will opt to plead guilty to that underlying offense rather than risk the two- to 15-year sentence that comes