

**Testimony on H. B. No. 6581, An Act Concerning The
Enhanced Penalty For The Sale Or Possession Of Drugs Near
Schools, Day Care Centers And Public Housing Projects.**

Presented to the Judiciary Committee on March 24, 2009

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I am an independent criminal justice policy analyst, and director of Justice Strategies, with 38 years of experience in sentencing and correctional policy. In 1999 I received a Soros Senior Justice Fellowship from the Open Society Institute. I had previously served as a research associate for the RAND Corporation, as a senior research fellow at the University of Minnesota Law School, and as director of the State-Centered Program for the Edna McConnell Clark Foundation. From 1985 to 1993 I was the Director of Court Programs at the Vera Institute of Justice. I have presented legislative testimony on sentencing and corrections policy in California, Georgia, Maryland, Michigan, New Mexico, New York and Texas.

My research associates and I are currently working in collaboration with advocates for policy reforms in Colorado, Maryland and Mississippi, as well as with A Better Way Foundation and their campaign for racial justice, sentencing reform, and expanded access to effective treatment in communities that are plagued by the problem of drug abuse. We are greatly encouraged by the leadership the members of your committee have brought to these issues, and by the exemplary progress you are making. With historic enactment of the nation's first law to equalize penalties for crack with powdered forms of cocaine, coupled with introduction of "racial impact statements" to ensure that the potential for increasing or reducing disparity will be taken into account when legislative proposals are under consideration, Connecticut is now at the forefront of a national movement to reduce racial disparity in the criminal justice system.

I am pleased to join you today to offer information about a topic that is of particular concern to reform advocates and policymakers in many states that could benefit from your continued leadership. That topic is *prohibitive zone laws*, reflected in your state in 21a-278a(b) and 21a-279(d), commonly called "drug-free school zone laws," which provide presumptive prison sentences in certain circumstances for drug sales or possession of drugs within 1500 feet of schools, day care centers, or public housing. Your own Office of Legislative Research reported in 2001 on the geographical impact of these laws. They have provided you with maps that graphically depict how these laws

cover the urban core of every city they examined, and in the case of New Haven reached virtually every square foot of the city excepting parts of the Yale golf course and a swamp.

Drug-free school zone statutes are among a number of different types of mandatory sentencing laws enacted during the late 1980s that have contributed to both prison population growth, and racial and ethnic disparity in the use of incarceration. Experience in many states illustrates that mandatory drug-free zone laws – ranging from a scale of 300 feet in Minnesota, North Carolina and Rhode Island, to three miles in Alabama – have a negative and disparate impact on communities of color precisely because the laws tend to blanket densely populated inner-city neighborhoods, where law-enforcement efforts target outdoor drug markets, much more heavily than suburban areas where school zones are more dispersed.

Non-white drug defendants face stiffer charges than whites due to the “urban effect.”

I examined the drug-free zone law in New Jersey in 2003 for a report on sentencing reform opportunities in that state.¹ New Jersey’s statute was drafted a bit more narrowly than yours, specifying that distributing, dispensing, or possessing drugs with intent to sell on school property, within 1,000 feet of a school, or on a school bus is a third-degree offense carrying a three-year mandatory minimum prison sentence. Judge Barnett Hoffman, who chairs the state’s sentencing commission, charges that the law results in “a devastatingly disproportionate impact on New Jersey’s minority community.”

As in your state, within New Jersey’s poorest urban centers minority residents find themselves blanketed by interlocking “drug-free zones” where concentrated law enforcement campaigns send thousands of young men and women to prison each year for offenses that would be probation-eligible if committed in less densely populated suburban and rural areas of the state. Burlington County Prosecutor Robert Bernardi describes the “urban effect” this way: “You’re virtually in a school zone from the time you step into the city. That would not be the case in the suburbs.”

The collateral consequences of mandatory sentencing dragnets such as these can hit the families of defendants very hard, especially since they are typically coupled with other “get-tough” measures – drug restraining orders that may prevent arrestees from returning to their homes and families if they are released from jail, or eviction of an entire family from public housing due to the arrest of one member on drug charges.

Urban drug defendants face stiffer charges but the laws cannot protect children

In a 2001 study of school zone laws in Massachusetts, drug policy experts at the Boston University School of Public Health found that these laws do not serve their intended

¹ http://www.famm.org/pdfs/82750_NewJersey.pdf

purpose.² William N. Brownsberger, a former Assistance Attorney General for Narcotics in Massachusetts, published research findings from a sample of 443 drug dealing cases in three Massachusetts cities -- Fall River, New Bedford and Springfield. The Massachusetts statute defines enhanced penalty zones 1,000 feet around parcels enclosing schools and 100 feet around parks and playgrounds. The zones around schools create most of the impact. He found that:

- Twenty-nine percent of territory in all three cities was covered by the state's school zone law. In the high poverty areas of the city, 56 percent of the neighborhoods were enclosed in school zones.
- Eighty percent of the drug cases studied occurred in school zones, reflecting the density of schools in high-poverty/high-drug-dealing areas.
- Less than one percent of the incidents in the sample involved dealing to minors.
- Of dealing incidents occurring in school zones, 71 percent occurred when school was not in session – on weekends, at night or during the summer.

These laws were intended to protect young people from the problems associated with drug markets, yet in high-poverty areas within cities concentrated with overlapping school zone areas, they vitiate legislators' intent to deter drug crime near schools by making it impossible for either drug dealers or school children to distinguish between drug-free and other areas. Moreover, the Massachusetts research team found that factors that might be rationally related to the purpose of the laws (whether or not school was in session; nearness of the sale location in regard to a school within the zone) had little effect on prosecutors' decisions as they filed charges or offered negotiated pleas. The primary impact of these laws is to raise the penalties faced by low level drug dealers selling to maintain a habit.

Non-white drug defendants face stiffer charges than whites for similar conduct

Another seminal piece of research on the impact of the Massachusetts school zone law was undertaken by a Northwestern University research team at the request of Judge Sydney Hanlon, an ex-federal prosecutor who serves as Presiding Judge in the Dorchester District Court in Boston.³ Judge Hanlon was concerned that black and Hispanic

² Brownsberger, William N. and Susan Aromaa. "An Empirical Study of the School Zone Law in Three Cities in Massachusetts." Boston University School of Public Health. 2001. Online at www.jointogether.org/sa/files/pdf/school_zone.pdf

³ Keough, Robert. "The Color of Justice," online at http://www.massinc.org/index.php?id=349&pub_id=1029

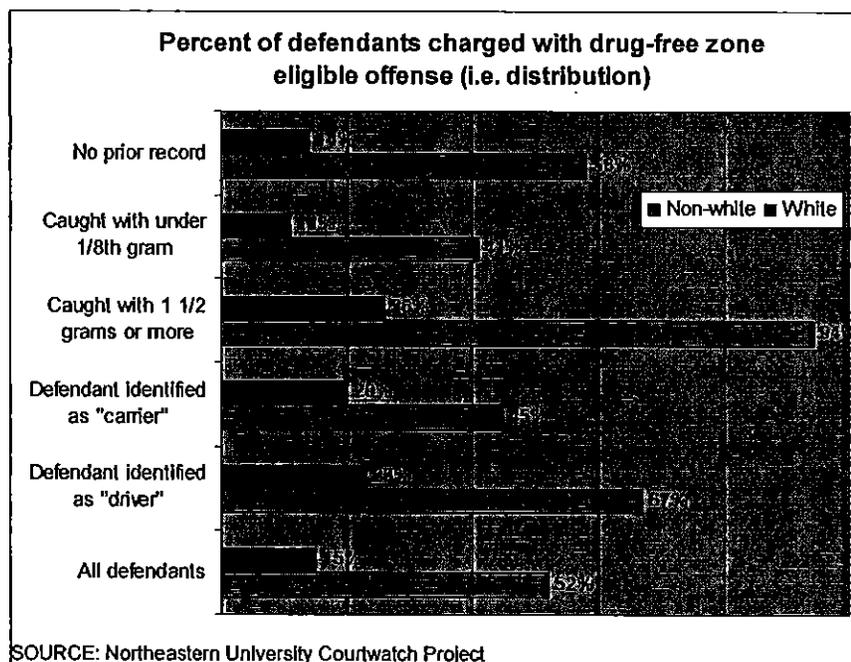
defendants in her court seemed much more likely to be charged with a drug-free zone offense and face the two-year mandatory prison sentence than whites.

Massachusetts sentencing data indicate that 80 percent of defendants that received mandatory, enhanced sentences under the drug-free zone statute are black or Hispanic, even though 45 percent of those arrested for drug violations statewide are white. The research team examined 200 Dorchester District Court cocaine cases – half involving black and Hispanic defendants, and half whites.

Eligibility for the Massachusetts school-zone enhancement is based on two factors. First, the incident must have taken place within 1,000 feet of a school or within 100 feet of a playground. Second, the defendant must be charged with delivery, or possession with intent to deliver, rather than mere drug possession. When they examined court records, the researchers found that, among those eligible for a school zone charge, black and Hispanic suspects were somewhat more likely to be charged – 75 percent versus 63 percent.

Their examination of police records, however, yielded much more disturbing results. While roughly 80 percent of all arrests took place within a school zone (meeting the first eligibility criteria), only 15 percent of whites were charged with an eligible offense (distribution or possession with intent) compared to 52 percent of non-white defendants.

In an effort to determine why non-white defendants were so much more likely to be charged with more serious offenses, the researchers examined the police records and found them rife with what appeared to be disparate treatment.



Two-thirds of nonwhites described as the “driver” of a car involved in a drug transaction were charged with distribution, while three-quarters of whites described as drivers were charged with simple possession. Nonwhites identified as “carriers” were more than twice as likely to be charged with a school-zone eligible offense.

The same pattern of disparity emerged when the researchers considered drug amount and prior record. Among those caught with more than a gram and a half of cocaine, ninety-four percent of minority defendants were charged as dealers compared to just over a quarter of whites. For those caught with less than 1/8 of a gram, the likelihood of being charged with delivery or possession with intent was nearly four times as great for nonwhites as for whites. Finally, defendants with no prior records were four times more likely to be charged with eligible offenses if they were nonwhite.

When researchers interviewed police officers about their charging practices, they were told time and again, “it has to do with whether it’s a good kid or a bad kid.”

The “urban effect” in Connecticut

Connecticut’s drug-free zone laws affect manufacture, sale, and possession of a drug or drug paraphernalia within 1,500 feet of a school, day care center, or public housing unit. The mandatory penalties were designed to operate as sentencing enhancements, and are imposed on top of whatever sentence a person receives for the underlying drug offense.

A three-year mandatory minimum sentence is provided for a non-drug-dependent person who sells drugs within 1,500 feet of an elementary or secondary school, a public housing project, or a licensed child day care center.⁴ A mandatory two-year prison term is provided for anyone, other than a student enrolled in the school, who possesses illegal drugs in, on, or within 1,500 feet of an elementary or secondary school or licensed child day care center.⁵

Rep. Michael Lawlor (D-East Haven), Chair of the House Judiciary Committee, has long been concerned that Connecticut’s drug-free zone laws produce relatively severe sentences for blacks and Hispanics in cases involving sale or possession of small amounts of drugs:

“Informal analysis of court outcomes demonstrated heavy reliance on the school zone mandatory minimums to gain advantage in plea bargaining. In many cases extraordinary high bail amounts forced defendants to bargain while in custody in the hope that a prosecutor would substitute a non-school-zone charge as part of a plea agreement. In the vast majority of these prosecutions, the defendant both belonged to a minority group and resided in one of the state’s urban areas.”⁶

⁴ CGS § 21a-278a(b)

⁵ CGS § 21a-279(d)

⁶ Lawlor, Michael. “Reforming Mandatory Minimum Sentences in Connecticut.” *Federal Sentencing Reporter*, Volume 15, Number 1. October 2002.

Sarah Bray, a post-doctoral fellow at the Yale Center for Interdisciplinary Research on AIDS, conducted research on Connecticut's drug-free zone laws for A Better Way Foundation in 2001. She tallied the number of drug-free zones in 166 cities and towns and used land-area data to calculate the density of the zones for each locality. Then she compared demographic data for each locality and found clear correlations between racial and ethnic composition and the frequency of the zones. She found that localities where more than 25 percent of residents were black or Hispanic had zone densities that averaged more than six times higher than the average for localities where less than 10 percent of residents were black or Hispanic (3.3 compared to 0.5 zones per square mile). Hartford, Bridgeport, and New Haven – where blacks and Hispanics are in the majority – had 5.3 zones per square mile, with each zone occupying at least a quarter of a square mile.

In 2005 the Legislative Program Review and Investigations Committee undertook a study of mandatory minimum sentencing. The committee staff drew a sample of 300 mandatory minimum drug sale cases to look at recent case processing and disposition patterns. Almost all of the arrests – 95 percent – took place in drug-free zones.

The staff found that mandatory minimum drug sale arrests result from routine police patrol or drug investigations, rather than victim or citizen complaints. None of the drug sale arrests directly involved a victim who reported the crime to the police, and no victims were reported by police as part of drug sale cases. In a few cases the drug arrests resulted from increased police patrols in response to general citizen complaints about illegal drug activity, but in only one case was the arrest directly initiated in response to a citizen complaint.

The committee staff made a special effort to study how mandatory minimum drug arrests are distributed across different localities. They created maps of the drug-free zones in 12 municipalities that ranged from urban, “urban-like” suburban, suburban, and rural in their demographic characteristics.

While almost 90 percent of arrests are made by municipal police, the staff found that data from these agencies were not available. They were, however, able to obtain arrest data for drug sales and possession between July 1, 2004 and July 31, 2005 from the Division of State Police, which coordinates Connecticut's statewide narcotics task force and patrols the state's highways. The mapping of these drug arrests led to several conclusions:

- The drug-free zones tend to overlap, particularly in larger municipalities, which have many more schools often in less space than suburban and rural towns.
- A significant percentage of the total geographical areas of urban areas and “urban-like” suburbs municipalities are “drug-free” zones. Bridgeport, Hartford, and New Haven are almost totally covered with drug-free zones.

- Drug-free zones in suburban municipalities tend to cluster in or near the downtown areas. These zones also tend to be located along major highways and roads, and many of the drug crime arrests made by state police occurred on a state highway.
- Rural municipalities tend not to have public housing, and the drug-free zone areas account for a low percentage of total area. The drug-free zones in rural areas cluster around schools.
- Drug sellers and users are not likely to be able to identify whether they are actually in a drug-free zone.
- Almost all drug crime arrests made by the state police in urban and “urban-like” suburban municipalities are within drug-free zones and therefore are subject to mandatory minimum penalty enhancements.
- Almost all drug crime arrests made by the state police in suburban and rural municipalities are outside drug-free zones.

Seven in eight arrests occurred outside traditional school hours, and just three cases were linked to schools

Moreover, the Legislative Program Review and Investigations Committee showed no patterns in the circumstances of these arrests that provided a nexus to the legislative intent of the of the drug-free zone laws:

- Drug arrests were not more likely to occur during the traditional school year than other months (July through August).
- Most drug crime arrests (78 percent) occurred between 4:00 p.m. and 12:00 a.m. Ten percent occurred between 12:00 a.m. and 6:00 a.m. Just 12 percent occurred during the traditional school hours of 7:00 a.m. to 4:00 p.m.
- In the majority of cases the illegal drug activity occurred in a housing project in which the arrestee lived or a private residence in a “drug-free” zone.
- Except for three cases in which students were arrested on drug charges at their schools, none of the arrests occurring in “drug-free” school zones were linked in any way by the police to the school, a school activity, or students.

H.B. 6581 would protect children while reducing racial disparity

H.B. 5296, would address the problems associated with Connecticut’s prohibited zone laws by reducing the scope of the zones from 1,500 feet to 200 feet, and by specifying that they would take effect only when children are actually present. These proposed reforms would greatly reduce the overlap of multiple zones that directly creates the “urban effect,” and reduce rural-suburban-urban sentencing disparity, along with the unintended consequence of disproportionately higher numbers of poor people and minorities in state prison. As you weigh the utility of these laws against their costs, please consider whether they would ever have been enacted in the first place had it been known to the public at large that they would *not work* to deter crime or increase public safety, but that they would *greatly increase racial disparity*.

