

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

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March 11, 2012

The Honorable Eric D. Coleman
The Honorable Gerald M. Fox.
Chairmen
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Senate Bill No. 244

**AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR
POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC
HOUSING PROJECTS**

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of over 300 licensed lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice. By way of this testimony, CCDLA supports passage of Senate Bill No. 244 to reasonably reduce the size of the school/day care centers/public housing enhanced penalty zone from 1,500 feet to 200 feet, restrict the application of the penalty provisions to school and school sponsored activity hours, and restore discretion to the court in imposing the enhanced penalty provisions for the possession and sale of drugs within those zones.

- I. Senate Bill No. 244 Promotes the Fair and Equal Administration of Justice Curing the Discriminatory Effects of Current Law.

Senate Bill No. 244 seeks to repeal C.G.S. Sections 21a-267, 21a-278a and 21a-279 and substitutes their proposed language relative to the enhanced penalty provisions for possession or sale of drug paraphernalia or drugs in lieu thereof effective October 1, 2012. The essence of the proposed legislation is to decrease the size of a school/daycare/public housing zone from 1500 ft. to 200 ft. to effectively and rationally protect school aged children through appropriately tailored legislation. The bill further

seeks to eliminate the mandatory nature of the enhanced penalty which runs consecutive to the penalty for the underlying possession or sale offense in order to restore discretion to the sentencing judge to impose the enhanced penalty. By eliminating the mandatory minimum sentence provisions, the legislature furthers the statewide goal to reduce prison populations to house the truly dangerous among us.

The unintended effect of the current 1500 ft. zone is to discriminate against urban citizens by punishing them more severely than suburban or rural individuals who commit the same offense resulting in the disparate treatment of similarly situated individuals. The disproportionate charging and convicting of urban individuals of a separate crime calling for a mandatory sentence running consecutive to the penalty for the underlying offense results from the 1500 ft. proximity of prohibited schools/residences from nearly any location in a city even when the schools are closed and the sale or possession of drugs does not directly or collaterally endanger any child. As proposed, Senate Bill No. 244 will sufficiently protect the intended children without causing prejudice to urban defendants allowing for the fair and equal administration of justice in Connecticut.

Racial bias has been an unintended consequence of the enhanced penalty provisions for school/day care/public housing zones under our drug laws rendering them unconstitutional in violation of the Equal Protection clauses of the United States and Connecticut Constitutions. Senate Bill 244 will remedy the unconstitutional application of the enhanced penalty provisions of our drug laws and will equally punish the true offenders of the law.

II. The Proposed Revisions to Connecticut's Enhanced Penalty Statutes Have a More Logical Deterrent Effect.

The purpose of enhanced penalties for selling or possessing drugs near schools and daycare centers was to penalize defendants who distribute to, or use drugs in front of, kids and near schools. If a defendant is charged with the enhanced penalty nearly anywhere he/she commits the offense in the city of New Haven, for instance, then what deterrence is there from doing it in the very locations we seek to protect? By restricting the enhanced penalty zone to the immediate areas sought to be protected, defendants are theoretically deterred from entering those identified zones with drugs recognizing that if caught in these areas an enhanced sentence can be imposed to run consecutive to any sentence they receive for the actual offense.

Moreover, the citizens of the State will have more confidence in the system when controlled buys set up by law enforcement are not always in a school zone in urban settings deemed by this legislature to be unsafe for children. The large scope of the current drug free zone mandates law enforcement to set up drug deals in the very areas the legislature seeks to protect. Under the current law, we must necessarily permit law enforcement to deliberately place drug dealers and drugs in these restricted areas in urban communities. In so doing, the credibility of law enforcement is compromised and the actual risk to children questioned. By restricting the zone to the actual areas sought to be protected, undercover law enforcement endeavors will not be perceived as

cynically by the public, and defendants will not be inclined to believe law enforcement "set them up" in a school zone to exact a harsher penalty.

III. Children Will Be Better Protected With Tailored Geographical Restrictions.

C.G.S. Sections 21a-267, 21a-278a and 21a-279 currently enhance the penalties for possession or sale of drugs within 1500 ft. of a school zone, day care center or public housing zone at any time of the day or night. The proposed restriction of 200 ft. during school hours does not run counter to Connecticut's aim to stop the insidious and predatory practice of selling drugs to minors or recruiting minors to sell, but rather targets the enhanced penalties to the real offenders of the law. It defines the zones for easier identification and encourages potential drug dealers to move away from protected zones during high risk hours--during school and school activity hours--rather than blanketing entire urban communities at any hour of the day or night. It is tailored to protect children during hours when they are actually in the protected zones. Drug sales and use in the middle of the night, where clearly not aimed at selling to minors, should not be subject to the enhanced penalties.

As a Connecticut practitioner of over 22 years I have represented several defendants charged under the enhanced penalty provisions of these statutes. Yet not in one instance was my client ever accused of or believed to have been selling drugs to a child or possessing drugs within sight of a school during daytime hours.

In each instance the defendant was arrested in an urban community; in several instances the defendants were arrested by undercover officers in a controlled buy setting. The effect was to give the State inordinate power in the plea bargaining phase due to the mandatory sentence called for under the enhanced penalty statute resulting in less favorable sentences to these defendants than others I have represented over the years from rural and suburban communities. The disparity is not lost on the public resulting in a perception of the unfairness of Connecticut's criminal justice system.

IV. The Proposed Bill Does Not Soften Penalties for Drug Dealers.

While Senate Bill 244 seeks to eliminate the mandatory nature of the enhanced penalties, it will not, in effect, soften the penalties for drug user or dealers violating the school zone prohibition. The consecutive terms of imprisonment can still be imposed by the Court when called for. One aim of the bill, in keeping with trends nationwide, is to eliminate the mandatory sentence and restore discretion to the court to impose the penalty in appropriate circumstances. Criminal defendants selling drugs in Connecticut outside a protected zone are already subject to strict penalties under current law. Defendants are subject to 15 years imprisonment and fined \$50,000 for a first offense for the sale of any narcotics or hallucinogens other than marijuana. (C.G.S. Section 21a-277(a)). For a second offense, defendants can be imprisoned up to 30 years and fined up to \$100,000. For the sale of less than 1 kg of marijuana, defendants may be imprisoned for up to 7 years and fined up to \$25,000. For more than 1kg of marijuana the penalty ranges from 5-20 years. The sale of drugs to a minor who is at least 2 years

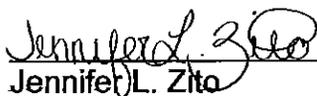
younger by a non-drug dependent adult carries a mandatory 2 year jail term running consecutive to jail term imposed for the underlying offense as described above. (C.G.S. Section 21a-278a(a)). Hiring a minor to sell drugs carries a mandatory 3 year jail term running consecutively to the underlying drug sale crime. (C.G.S. Section 21a-278a(c)). By restricting the 1500 ft. zone to 200 ft., the legislature only tailors the applicability of the enhanced penalties for sale or possession in a school/day care center/public housing zone to the true offenders of the law on a non-discriminatory basis statewide. While it is true the enhanced penalties will no longer be mandatory under this Bill, the Court will exercise its discretion based on the facts of each case and can, where appropriate, impose the enhanced penalty to run consecutive to the applicable drug sentence.

V. CONCLUSION

Senate Bill No. 244, if passed, does not make Connecticut soft on crime involving drug sales in school, day care or public housing zones. It makes current law constitutional and more effective in deterring the crime the school zone enhanced penalty provisions seek to protect. Connecticut has strict drug laws in place; reducing the 1500 ft. zone to 200 ft. during school hours alerts the public of the identified protected areas and punishes those evenly throughout the state who offend in the protected areas. Connecticut's current statute is unconstitutional in its application and has no deterrent effect in urban communities where drug sales are the highest. Children are unprotected by the blanketing of urban communities with enhanced penalties. Revising the law as proposed protects children with a constitutional law applied to all those who target or expose them to drug use or sale. For these reasons, CCDLA SUPPORTS THE PASSAGE OF Senate Bill 244.

Respectfully submitted,
CCDLA

By,


Jennifer L. Zito

Past President CCDLA