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Lawmakers Push Effort To Narrow Drug-Free Zones

By Mary P. Gallagher

New Jersey may be about to recast its drug-free-zone laws in the face of evidence that they don't work and that they send disproportionately high numbers of minorities to jail.

Last Monday, the Assembly Committee on Law and Public Safety approved a measure to narrow the buffer zones around schools and other public property but also to stiffen the enhanced penalties for drug sales or possession with intent to sell within the narrowed zones.

The measure, *A-4465*, reflects the first policy recommendation of the New Jersey Commission to Review Criminal Sentencing, which made out a data-driven case for changing the law.

The commission, in a report released Wednesday, concluded that the current law is ineffective and has had “a devastatingly disproportionate impact on New Jersey’s minority community.” Nearly every offender convicted and incarcerated for a drug-free-zone offense is black or Hispanic, the report said.

Commission chairman Barnett Hoffman, a former Middlesex County presiding criminal judge and prosecutor, told the Assembly committee before its vote that the current zones don’t work and the disparate racial impact is “just plain wrong and unacceptable.”

“Giant unbroken drug-free zones ... actually dilute the special protection the laws are supposed to offer” by “creating a net so large that we pull in every fish whether that’s the type of fish we’re looking for or not,” Hoffman added.

A-4465 would amend the school zone laws, enacted as part of the Comprehensive Drug Reform Act of 1987, and the so-called park-zone law, which was added in 1998.

It would shrink from 1,000 to 200 feet the drug-free school zones and from 500 to 200 feet those around parks, public housing, libraries and museums.

Fewer people would be caught in the smaller school zones but those who were would face more severe punishment.

The bill would upgrade a school-zone charge from a third-degree to a second-degree crime, increasing the range of imprisonment to five to 10 years and a fine up to $150,000, or both, depending on the circumstances of the offense and character of the defendant. Park-zone offenses are already second-degree crimes.

Currently, a third-degree offense requires the imposition of a mandatory term of at least three years for school-zone crimes involving one or more ounces of

marijuana, plus a fine of up to $15,000. The mandatory minimum is a year for less than an ounce.

By eliminating the mandatory periods of parole ineligibility, the bill would restore sentencing discretion to judges.

'Embarrassing Distinction'

The commission analyzed data on arrest, convictions and incarcerations under existing law and mapped school and park zones in the state's three major cities, Newark, Jersey City and Camden.

Though many states with similar laws are making or considering similar reforms, the situation in New Jersey is unique because of its high population density and its concentration of minorities in urban areas, known as the urban effect.

In Newark, excluding the airport, 76 percent of the city falls within a drug-free zone. In Jersey City, it is 54 percent and in Camden, 52 percent. In contrast, 6 percent of Mansfield Township, a rural area in Burlington County, lies within such a zone, the report said.

The prevalence of drug zones in cities combined with their higher proportions of minority residents — 65.7 percent versus 9.1 percent in rural areas — means that most of those arrested, convicted and incarcerated for drug-zone offenses are minorities. The commission calculated that 96 percent of state inmates whose most serious offense is a drug-zone offense are black or Hispanic, compared with 75 percent for all other offenses.

The report noted New Jersey's "regrettable and embarrassing distinction" of being the state with the highest percentage of prisoners locked up on drug crimes — 36 percent compared with a national average of 20 percent.

The commission also found that drug-free zones failed to keep the drug trade at bay except within the first 100 feet of schools, largely because it is impossible to clearly demarcate the broad, overlapping zones. Drug arrests tended to be fairly evenly distributed across the rest of the zone without any significant increase in arrests immediately outside the zone.

Reducing the zones would make them clearly recognizable to drug dealers, reduce the urban effect, mitigate the urban-rural disparity and more closely achieve the purposes of the law, in the commission's view. Given that it costs $31,636 per year to incarcerate an inmate and only $19,800 to send him or her to drug court, it would also save a lot of money, added the report.

A comparable assessment of the impact of the Massachusetts school zone law, published in 2001, reached conclusions similar to those of the sentencing commission, recommending 100- to 250-foot school zones.

A 'Refocusing,' Not a 'Softening'

Commission Chairman Hoffman led the testimony in support of the bill at the Assembly committee hearing on Dec. 6.

He began by telling the committee "I have never been considered soft on crime," citing his credentials as a one-time prosecutor and presiding criminal judge. He emphasized that the commission "wholeheartedly shares the Legislature's correct belief that schools and other designated areas are entitled to protection under the law from the effects of the drug trade."

He described the proposed changes as "not a softening of the drug laws, but a refocusing." The attorney general, county prosecutors and police chiefs all support the changes, he told the legislators.

Committee member Brian Rumpf, R-Ocean, was unconvinced. Noting that he represents a suburban area, he asked whether local governments could have discretion to keep the 1,000-foot zones.

That would create a “haphazard crazy quilt” and raise equal protection problems, answered Hoffman.

Deputy Attorney General Bennett Barlyn, the commission’s executive director, reassured legislators that the measure could not be interpreted as easing up on sentencing, telling them extraordinary circumstances are needed to overcome the presumption of incarceration for a person convicted of a second-degree crime.

Among those testifying in support of the bill were representatives of the New Jersey Council of Churches, the National Council on Drug & Alcohol Dependency, Families Against Mandatory Minimums, the New Jersey Institute for Social Justice and Integrity House, the state’s largest drug treatment facility.

No one testified in opposition, though the New Jersey Society of Professional Land Surveyors had a technical suggestion on how to map the zones.

After asking questions about the likelihood of incarceration and available defenses, Assemblyman Jon Bramnick, R-Union, told the committee he had figured out that the bill might appear more harsh on the surface but it was really about removing mandatory minimums and would result in fewer people being incarcerated.

The committee voted 4-1-1 in favor of the bill, with Rumpf voting no and Bramnick abstaining.

The committee voted unanimously to approve a companion bill, *A-4467*, that would make the commission a permanent body.

The legislation that created the commission in 2004 to review the fairness and proportionality of the state’s criminal sentencing statutes requires it to submit annual reports and to disband once it files its final report.

The commission’s report last week pointed out that 23 states and the federal government have permanent sentencing commissions.

Assemblywoman Mary Previte, D-Camden, a primary sponsor of both bills, as well as the law that created the commission, says she does not expect passage before the current legislative session ends later this month but plans to prefile the measures for the new session that starts in January.

The Senate sponsor will be Sen. Bernard Kenny Jr., D-Hudson, also a commission member, but he will not try to push the legislation through the lame-duck session because he wants time to build bipartisan support, according to Previte. Kenny could not be reached for comment.

The commission’s 15 members bring a range of perspectives. They are Attorney General Peter Harvey, Public Defender Yvonne Smith Segars, Parole Board Chairman John D’Amico, Corrections Commissioner Devon Brown, Appellate Division Judge Edwin Stern as the designee for Chief Justice Deborah Poritz, Burlington County Prosecutor Robert Bernardi for the County Prosecutors Association, Richard Lehrich for the State Bar Association, legislators from both houses and parties, and four public members.