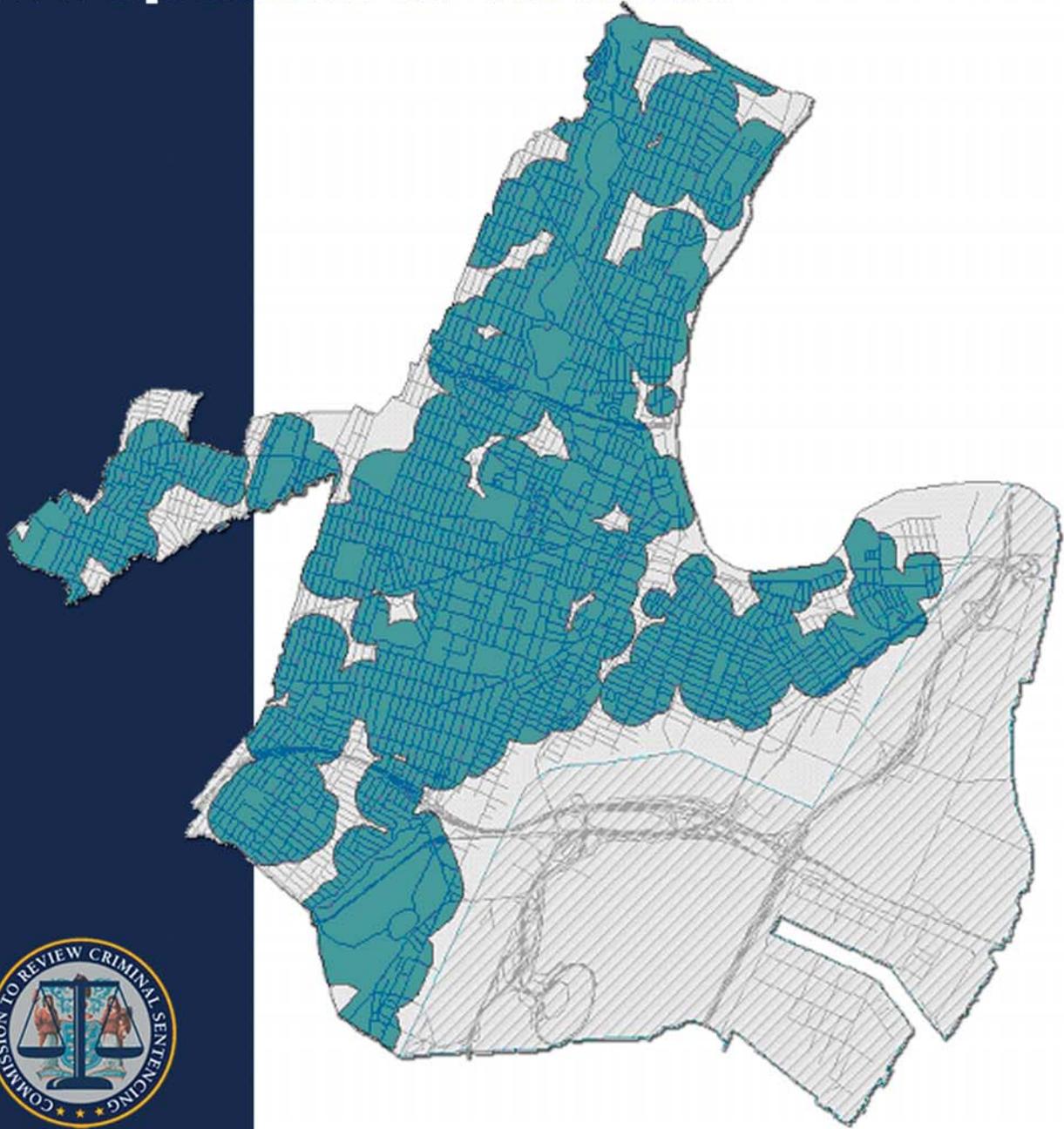


Supplemental Report on New Jersey's Drug Free Zone Crimes & Proposal For Reform



The New Jersey
Commission to
Review Criminal
Sentencing

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Laws Intended to Keep Kids Safe Should Deliver On This Promise.

We Now Know – Thanks To The Research By The New Jersey Commission To Review Criminal Sentencing - That New Jersey’s School And Other Drug Free Zone Laws Simply Don’t Work.

*Hon. Gwendolyn Faison
Mayor, City of Camden*

I. INTRODUCTION

Little more than a year ago, on December 7, 2005, the New Jersey Commission to Review Criminal Sentencing (hereinafter Commission) issued a report entitled, “Report on New Jersey’s Drug Free Zone Crimes and Proposal for Reform.” Months before the report was published, Commission staff painstakingly compiled and analyzed relevant data from various sources. Their consideration of this information led the Commission’s members - 15 individuals whose positions within the criminal justice system make it uniquely diverse and broadly representative - to agree after lengthy deliberations that legislative action was urgently required to amend and improve New Jersey’s drug free zone laws.

Specifically, the Commission proposed that New Jersey’s drug free school zone statute, N.J.S.A. 2C:35-7, be upgraded from a third-degree crime to a second-degree crime. Under New Jersey’s Code of Criminal Justice, second-degree crimes carry the presumption of imprisonment. Practically speaking, this presumption requires judges to sentence offenders to a term of imprisonment anywhere from five to ten years depending on the circumstances of the offense and character of the offender. This increase in punishment for a violation of the school zone offense was accompanied by a proposal to reduce the size of the zones around schools and public buildings from, respectively, 1,000 feet and 500 feet, to a uniform distance of 200 feet. The Commission’s recommendations were premised on three concerns: 1) improvement in public safety; 2) a more rational allocation of criminal justice resources; and 3) racial disparity because of the “urban effect.”



A. THE COMMISSION'S PROPOSED REFORMS WILL ENHANCE PUBLIC SAFETY

Specifically, the data amassed by the Commission revealed two major infirmities with respect to these laws, both of which are directly attributable to the size of the protected areas. First and foremost, the laws are ineffective in furthering their intended purpose of protecting children. Simply stated, New Jersey's densely populated urban areas have been literally transformed into massive, unsegmented "drug free" zones. Consequently, the protected areas demarcated by the statutes no longer exist, having merged with contiguous zones. Relying on advanced mapping technology and a photographic survey, the Commission concluded that a uniform distance of 200 feet would more effectively facilitate the goal of protecting those areas identified by the Legislature as deserving of enhanced security. Importantly, the County Prosecutors Association of New Jersey and then-Attorney General Peter C. Harvey were consulted throughout the preparation of the initial report and neither registered any objections to those reforms ultimately recommended by the Commission.

The purpose of drug-free school zones was to protect children and schools by insulating them from drug activity. Our intention was to create a safe harbor for children by pushing the pushers away. Unfortunately, the current 1,000-foot zones have failed to achieve that objective.

NJ Assistant Attorney General Ron Susswein

B. THE COMMISSION'S PROPOSED REFORMS WILL PROMOTE A MORE SENSIBLE ALLOCATION OF RESOURCES IF ENACTED

Based on the foregoing, the citizens of New Jersey are being grievously ill-served at great human and fiscal cost. Particularly as New Jersey grapples with a



deepening budgetary crisis, the latter consideration cannot be overstated. New Jersey's drug free school zone law was enacted as part of the Comprehensive Drug Reform Act (CDRA). The cumulative fiscal impact of the CDRA has been extraordinary. In 1987, the year the CDRA was enacted, 11 percent of the state prison population was incarcerated for a drug offense. Today, 7,848 state prison inmates, nearly three out of every ten (29%), is incarcerated for a drug crime.

The budget of the Department of Corrections has grown commensurately. In 1979, the year the new Criminal Code was adopted, the prison budget was \$77.77 million. In 1987, the year the CDRA was enacted the prison budget was \$289 million. By the end of 2004, there were more than 26,000 inmates in state prisons. In Fiscal Year 2006, the annual budget of the Department of Corrections totaled \$1.033 billion. In fact, growth of Corrections spending has outpaced all other segments of New Jersey's budget. As an example, the Department's budget grew by a factor of 13 from Fiscal Year 1979 to Fiscal Year 2006, while the state budget grew as a whole by a factor of 6 (from \$4.4 billion to \$27.4 billion), less than half the rate of growth in the Corrections budget.

Based on the foregoing, far more effective and far less expensive approaches can be implemented to deal with a large segment of New Jersey's drug offender population. For example, drug courts have been proven to reduce recidivism by approximately 24 percent and are generally far cheaper than imprisonment. Another recent national report concludes with this finding: "a number of randomized and controlled experimental studies published in peer-reviewed journals have found that drug court graduates have significantly lower rearrest rates – lasting more than 2 years beyond graduation – than those who do not participate in the program."

C. THE COMMISSION'S PROPOSED REFORMS WILL MINIMIZE SIGNIFICANTLY THE NEGATIVE IMPACT OF THE URBAN EFFECT

The second finding made by the Commission was that enforcement of the drug-free-zone laws have had a devastating impact on minority defendants because New Jersey's densely populated urban areas have been transformed into massive "drug-free" zones. Nearly every offender (96%) convicted and incarcerated for a drug-free zone offense in New Jersey is either Black or Hispanic.



Commission staff analyzed information extracted from the State Police’s Computerized Criminal History (CCH) database. Any 2005 arrest or conviction incident involving a school zone or drug free park zone charge was examined. The location of the crime was then obtained and collapsed into categories which describe the degree of urbanization as defined by the State Police in their annual Crime in New Jersey publication. The racial breakdown of 2005 arrest data displayed in Table 1 is virtually a mirror image of the numbers presented in the Commission’s report. Once again, the proportion of minority defendants increases with the degree of urbanization. In rural areas, less than one-third (31.1%) of those arrested for a drug free zone offense were Black. Conversely, in urban centers over three-quarters (77.1%) of those arrested were Black.

Table 1
Racial Composition of Drug Free Zone Arrests
by Municipality Type
2005

Municipality Type	Race						Total
	White		Black		Other		
	Number	Percent	Number	Percent	Number	Percent	
Rural	29	64.4	14	31.1	2	4.4	45
Rural Center	40	29.6	88	65.2	7	5.2	135
Suburban	433	47.0	448	48.6	41	4.4	922
Urban Suburb	407	34.0	720	60.2	69	5.8	1,196
Urban Center	1,587	16.6	7,357	77.1	593	6.2	9,537
Unknown	96	23.1	303	73.0	16	3.9	415
Total	2,592	21.2	8,930	72.9	728	5.9	12,250

The racial composition of those convicted of a drug free zone offense in 2005 is displayed in Table 2. Once again, the data highlight a relationship between urbanization and race. In urban centers almost three-quarters (73.9%) of those convicted for a drug free zone offense were Black whereas only one-third of those convicted in a rural center were Black. However, it should be noted that less than one-half of one percent of all drug free zone convictions occurred in a rural area while 83% occurred in an urban center.



Table 2
 Racial Composition of Drug Free Zone Convictions
 By Municipality Type
 2005

Municipality Type	Race						Total
	White		Black		Other		
	Number	Percent	Number	Percent	Number	Percent	
Rural	7	58.3	4	33.3	1	8.3	12
Rural Center	9	31.0	18	62.1	2	6.9	29
Suburban	81	35.8	133	58.8	12	5.3	226
Urban Suburb	113	41.9	142	52.6	15	5.6	270
Urban Center	547	17.5	2,308	73.9	269	8.6	3,124
Unknown	26	26.0	65	65.0	9	9.0	100
Total	783	20.8	2,670	71.0	308	8.2	3,761

The most dramatic manifestation of the “urban effect” of the drug free zone laws is illustrated through incarceration statistics. Table 3 displays numbers obtained from the Department of Corrections which provide the racial breakdown of state prison inmates grouped by the most serious offense for which they were incarcerated. These numbers remain virtually unchanged from those reported in the Commission’s report. Nearly all inmates (96%) who are imprisoned for a drug free zone crime as their most serious offense are minorities. In comparison, slightly over three-quarters (76%) of inmates incarcerated for all other offenses are minorities.

Table 3
 State Prison Residents with Drug Offenses versus Other Offenses
 December, 2006

Race/Ethnicity	Most Serious Offense			
	Drug Free Zone	Distribution	All Drugs	All Other Offenses
Black	78%	67%	72%	56%
Hispanic	18%	21%	18%	18%
White	3%	11%	10%	25%



The laws have also discriminated against members of minority groups, who are disproportionately singled out for harsher mandatory sentences, often because of where they live.

That issue has come into sharp focus in New Jersey, where a panel of criminal justice officials has recommended that the state revise a law that mandates more severe sentences for people convicted of certain drug crimes committed within 1,000 feet of school property.

The law appears to have had no impact at all on the actual pattern of drug dealing. But it has created a profoundly discriminatory sentencing pattern, which treats minority defendants unfairly while undermining confidence in the criminal justice system.

Editorial, New York Times, January 12, 2006.

D. RE-EXAMINING DRUG-FREE ZONE LAWS: A NATIONAL TREND

Following closely on the heels of the Commission's report, the Justice Policy Institute published a national report on drug free zone laws entitled "Disparity by Design: How Drug Free Zone Laws Impact Racial Disparity – And Fail to Protect Youth." This study echoed many of the findings made by the Commission regarding the impact of New Jersey's drug free zone laws, and further demonstrated that the negative consequences of these provisions are by no means exclusive to one particular jurisdiction. For example, the report revealed the following:





A Justice Policy Institute Report
Commissioned by
The Drug Policy Alliance
Judith Greene, Kevin Pranis, Jason Ziedenberg
March, 2006

Disparity by Design:

How drug-free zone laws impact racial disparity – and fail to protect youth

- ❖ In Massachusetts, less than 1 percent of the drug free cases examined involved sales to youth, and 71 percent occurred when school was not in session.
- ❖ In Connecticut, legislative research staff concluded there was no appreciable decline in drug use or drug trafficking since the introduction of mandatory drug laws, including the state's drug free zone law.



- In Washington, prosecutors and defense attorneys alike acknowledge that, rather than sanction those who sell drugs in the presence of children, the state's drug free zone laws are used as leverage to encourage guilty pleas. Faced with prison time, many defendants choose to plead guilty rather than challenge the case at trial. Among those cases that actually made it to trial, only 22 percent resulted in a drug free zone penalty enhancement.
- In Illinois, 99 percent of youths transferred to the adult court in Cook County for drug free zone enhancement were Black or Latino.

Both reports garnered coverage in several national outlets, including *The New York Times*, *The National Law Journal*, *The Washington Post*, and *USA Today*. Moreover, the editorial boards of several major New Jersey newspapers, including *The Star Ledger*, *The Times of Trenton*, *The Press of Atlantic City*, *The Courier Post*, and *The Home News Tribune*, expressly called upon the New Jersey Legislature to heed the findings of the Commission and swiftly enact its proposed reforms or, at the very minimum, continue to vigorously study the issue.

Elsewhere, lawmakers in Utah and Connecticut are now considering legislation to shrink the size of their states' respective drug free zones consistent with the Commission's proposals. Citing repeatedly to the Commission's report, the Illinois Legislature passed a House Joint Resolution creating a Legislative Task Force on Drug Free Zones. The resolution authorizes the Task Force to "conduct hearings and complete a comprehensive examination of the State's laws which were intended to create drug free zones to determine, in part, 1) the effectiveness of the laws; 2) whether these laws have a disparate impact on African American Communities, and 3) whether these should be amended to (a) more effectively deter drug activity that occurs within sight of schools and other protected locations; and (b) lessen the impact of mandatory sentencing on urban communities, thereby reducing racial disparities." The Illinois Task Force must submit its findings and recommendations to the Governor and General Assembly on or before November 1, 2007.

When recently solicited by the Utah Legislature to suggest amendments to that state's drug laws, then-Chairman of the Board of Pardons and Paroles, Michael R. Sibbett, replied that "in the unanimous opinion of the board, the area most deserving of legislative attention involves the so-called 'drug-free enhancements'." In his letter, Chairman Sibbett identified as the primary problem



with these provisions the fact that they render “much, if not most, of Utah’s cities ‘drug free zones.’ While this may sound good at first blush, it has the perverse effect of transforming large chunks of our populated areas into enhancement zones in a way that bears no relationship to the harms the legislature has sought to prevent.” The letter concludes with an acknowledgement that there has been “no showing” that Utah’s zone crimes “have served their stated purpose – deterring drug activity around children.”

What is especially striking, given the concerns expressed by Chairman Sibbett, is how markedly different New Jersey is, demographically, from Utah. For example, according the United States Census Bureau, in 2000, the total population in Utah was 2,233,109, whereas New Jersey’s was 8,414,350. Yet Utah’s land mass in square miles (82,143) is approximately 11 times larger than New Jersey’s (7,417). And, as noted in the previous report, New Jersey is by far the most densely populated state in the nation, with 1,134 people per square mile. Conversely, Utah is one of the least densely populated, with 27 people per square mile.

II. CONCLUSION

Although legislation was introduced in both the Assembly and Senate to effectuate the changes recommended by the Commission, no further legislative action has occurred. In the absence of legislative change, no one need be astonished by the fact that recent data collected and reviewed by the Commission demonstrates that the disparate impact on minority defendants persists.

Every member of this Commission genuinely and passionately shares the Legislature’s concern for the well-being of New Jersey’s children. In addition, all Commission members recognize the acute vulnerability of children to illicit drugs and related harms associated with the drug trade. Where the Commission differs in critical respect with those opposed to amending New Jersey’s drug free zone laws is the trust and reliance it places on empirical evidence - evidence which indisputably demonstrates that the laws in question are at once ineffective in protecting children and devastatingly effective in fomenting racial disparity. To be certain, the phrase “drug free school zone” connotes security and protection: in reality, however, it is impossible not to conclude based on hard evidence that these concepts are illusory precisely because of the defects identified by the Commission.



New Jersey's drug free zone laws must therefore be improved to: 1) genuinely safeguard our school children; 2) conserve the State's fiscal resources; and 3) minimize the racial disparity resulting from the enforcement of these provisions. The responsibility for doing so now rests exclusively with the Legislature and Governor Corzine. Consistent with its legislative mandate, the Commission has identified a pressing problem and articulated what its members are convinced to be sound, rational solutions based on solid evidence. As to this particular issue, the Commission is constrained by a lack of resources and its enabling legislation to do more. The Commission therefore respectfully urges the Legislature to swiftly enact its recommendations in the interests of public safety, elementary justice and in recognition of the fact that New Jersey's criminal justice resources can be more prudently invested.



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