

URBAN PENALTY

Do drug-free school zones unfairly target cities and people of color?

By Maureen Turner

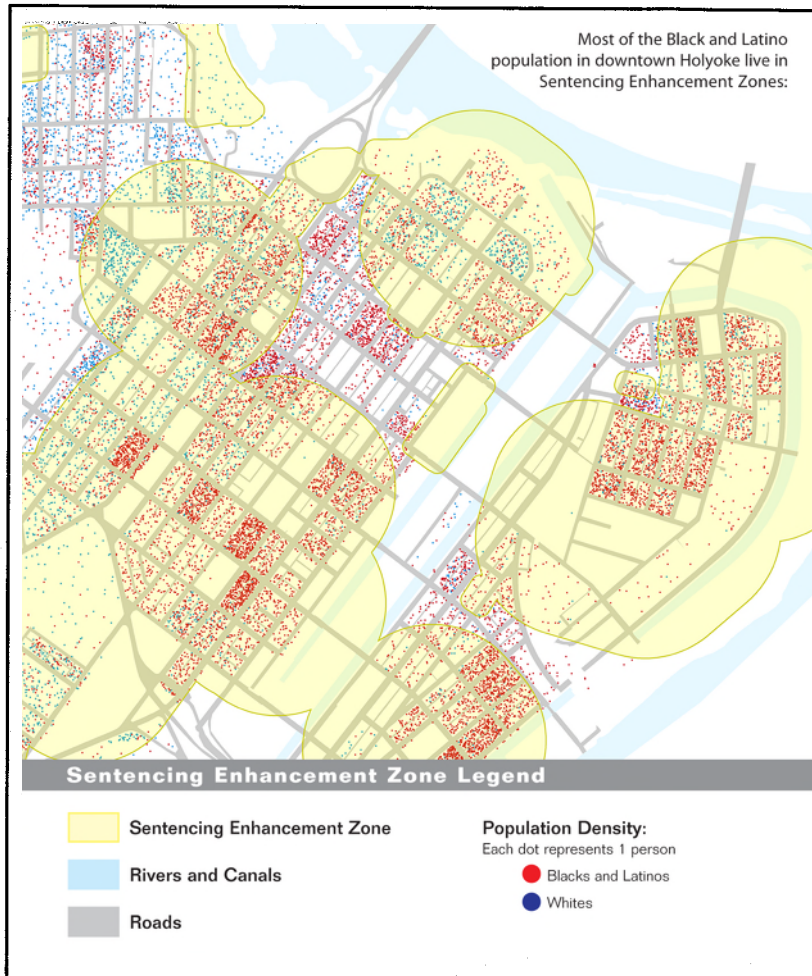
In January of 1989, Gov. Mike Dukakis was fresh off a failed presidential bid, but he wasn't ready to give up on all his campaign pledges. That year, in his State of the Commonwealth address, Dukakis reiterated an ambitious vow made on the campaign trail: to rid Massachusetts' schools of drugs.

At the center of Dukakis' campaign was a proposed law that would create mandatory minimum sentences of two to 15 years for anyone caught selling or distributing drugs within 1,000 feet of school property. The mandatory minimum sentence 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 even in session. These "sentencing enhancements" would come on top of any sentence for the underlying drug offense, and could not be served concurrently.

In a speech at a Brockton school that previously had a reputation for gang-related drug activity, Dukakis announced the proposed legislation in vivid language: "Too many of our schoolchildren are carrying Uzis and AK-47s instead of pencils and notebooks," the governor said.

In July, the Legislature passed the legislation, creating so-called "drug-free zones" around public and private schools. By summer's end, the first arrests were made under the new law: five men who were charged with selling cocaine in a private home located across the

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street from a New Bedford elementary school.

Backers applauded the law as an important tool to protect kids from having to "run a gauntlet of drug dealers" on their way home from school, as a spokesperson for the state Department of Public Safety put it. But others warned that the law, however good its intentions, had worrisome implications. Some questioned the wisdom of tying judges' hands in meting out sentences, or of sending to already overcrowded prisons people who might not have even faced jail time for the underlying drug charge. Others questioned the fairness or effectiveness of the law, given that a suspect didn't even have to know he or she was within the 1,000-foot zone to be charged under it.

Twenty years and countless drug-zone arrests later, those concerns have not abated. Indeed, a new report by the Easthampton-based Prison Policy Initiative contends that the law has largely failed at its goal of keeping drug activity away from schools, in part because the zones are drawn so widely as to be rendered ineffective. Meanwhile, the mandatory sentences have come at an enormous cost for the cash-strapped state: more than \$31 million a year spent to incarcerate those sentenced under the law, according to the report, titled "The Geography of Punishment."

In addition, the report finds, the law has had a presumably unintended but nonetheless serious consequence: after analyzing

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Top: Because of the configuration of roads, and the large pond and cemetery in between, a person on Darling Street in Springfield would need to travel 3,200 feet to get to the closest part of the JFK Middle School property. A person on Page Boulevard would have to travel 3,800 feet to reach it. Yet the law requires that the sentencing enhancement zone distance be measured in a straight line from the edge of the property, regardless of the obstacles in between.

Bottom: 1,000-foot zones are so large that the zone around Holyoke's Dean Technical High School crosses the Connecticut River and reaches Chicopee. The driving distance from Bonner Street in Chicopee to the Technical High School in Holyoke is 4.4 miles and would take about 11 minutes.

years of data, the researchers concluded that the law unfairly subjects urban residents—who are much more likely to be poor, black or Latino—to harsher sentences than whites and rural residents, creating a “two-tiered system of drug sentencing in Massachusetts.”

That disparity, the researchers found, is nowhere more evident than in Hampden County.

The Prison Policy Initiative report lays out some striking data about how school-zone mandatory minimums are applied, and to whom. To a large degree, the researchers found, it all comes down to where you live.

The report's authors—attorneys Peter Wagner and Aleks Kajstura and research associate William Goldberg—focused on Hampden County, which has a mix of both urban and rural communities. Using computer mapping techniques, they drew 1,000-foot circles around schools, Headstart facilities,

daycare centers and other protected areas. (A 1993 law also added parks and playgrounds to the list, although with a 100-foot zone.)

The researchers found that urban residents in Hampden County are five times more likely to live in a sentencing enhancement zone than residents of rural towns. This effect was most dramatic in Springfield and Holyoke, where the large number of schools and daycare centers created overlapping zones that blanketed large swaths of the downtown or urban core.

According to the report, in the nine Hampden County communities defined by the U.S. Census Bureau as most “urban” (including Springfield, Holyoke, Westfield, West Springfield and Chicopee), 40 percent of the population lives in a school zone. In the nine most rural communities (towns including Blandford, Brimfield, Russell and Granville), only eight percent of the population does.

And because urban communities have higher minority populations than rural areas ones, the law has an inherent racial bias: Hampden's nine most rural towns are 97 percent white, while its nine most urban communities are 71 percent white. As a result, only 29 percent of the county's white residents live within school zones, while 52 percent of its black and Latino residents do. These racial disparities exist within urban communities, too. In Holyoke, for example, only 45 percent of white residents live in school zones, while 76 percent of Latinos do, the report noted.

“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,” wrote the PPI researchers.

“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,” the report continued. Indeed, the researchers wrote, the school zone laws contribute to the disproportionate rate at which different races are incarcerated in Massachusetts. While African-Americans and Latinos comprise 12 percent of the state's population, they make up 58 percent of its prison population.

Wagner, the report's co-author and executive director of the Prison Policy Initiative, believes legislators didn't intend to cause such inequities when they created the school zone laws. “I don't think they realized it would be the majority of urban areas that would be covered,” he said in a recent interview. “It's a really dangerous example of something that sounds good but is counterproductive.”

But after 20 years in effect, say critics, the law's shortcomings are hard to ignore—including the fact that it's so far-reaching as to be ineffective.

The school zones were created to be a deterrent to drug dealers, who, in theory, would stay away from schools to avoid the higher sentences they'd face if arrested there. But for that kind of deterrent to work, Wagner noted, a person has to know that the law exists, and know where the zone is.

“The whole purpose of this law is to change behavior. You want people to know about it,” Wagner said.

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But at 1,000 feet, school zones are, in many cases, so wide as to be indistinguishable, according to the PPI report. "A distance of 1,000 feet is extremely difficult to estimate reliably, making it difficult to infer where the zones are, but it is also often impossible to determine whether a particular location—particularly an urban one—is near a school at all," the researchers wrote.

Exacerbating the problem is the fact that school zones are not marked by any kind of signage. While there had been talk under the Dukakis administration of posting signs indicating school zones, that idea was dropped. Although some schools post "drug-free zone" signs on their property, the PPI report notes, those signs don't indicate the boundaries of the zone and, more important, don't mention that drug activity in that area carries an enhanced sentence.

Aerial photos included in the report show just how meaningless a 1,000-foot "school zone" can be. For instance, Chicopee's Bonner Street falls within 1,000 feet of the outer property line of Holyoke's Dean Technical High School, so a person arrested on drug charges on Bonner would face the mandatory minimum sentence—despite the fact that he or she would have to swim across the Connecticut River, or drive more than four miles and cross a bridge, in order to get to the school.

Similarly, a person arrested on Springfield's Darling Street would fall within the 1,000-foot zone that "protects" JFK Middle School. But it's hard to imagine that person would be targeting JFK students—in fact, there's a good chance he might not even be aware that he's anywhere near the middle school. The 1,000 feet between the school property and Darling Street includes obstacles like Long Pond and a cemetery; to actually get to the school from Darling, a person would have to travel 3,800 feet, the researchers found.

And while the law's stated purpose was to keep drug dealing away from kids on the school yard or nearby streets, often people charged under school-zone laws are, in fact, arrested in private homes, out of sight and contact with schoolchildren.

Certain urban areas—downtown Holyoke, Springfield's State Street corridor—are almost entirely covered by overlapping school zones, leaving the zones' "protective" status meaningless, Wagner noted.

"The Legislature wants to say certain people need to be protected, and certain places need to be protected," he said. But "if everywhere is special, then nowhere is special."

While protected school zones might appeal to parents nervous about their kids' safety—and to politicians eager to win those parents' votes—these laws are redundant, contend critics, who point to laws previously on the books that can carry strict penalties for selling drugs to minors or using children in the drug trade.

Indeed, the PPI report suggests, some judges find the mandatory minimums unnecessary. According to data from the state Sentencing Commission, in more than half of the 349 school-zone convictions in 2004, the judge sentenced the defendant to just one day of prison time for the underlying drug offense (see sidebar).

"Only two possible conclusions can be drawn from

this fact: either the facts of the case reflect an insignificant offense and the judge gave the shortest sentence possible under the law, or the judge recognized that the two-year mandatory minimum was excessive and reduced the penalty for the underlying offense in an attempt to compensate for the injustice," the authors wrote.

"That's an indication that this [law] isn't responsive to what the judges see," Kajstura, the report's lead author, said in an interview.

Such data raises the question of whether school zones are even necessary. "I'd personally be in favor of using the laws that we have," said Wagner. "But the Legislature likes [sentencing enhancement zones]."

A pending bill could serve as a happy-enough medium. The bill, sponsored by Springfield state Rep. Ben Swan, would reduce school zones from 1,000 to 100 feet. It would also repeal the mandatory minimum for school-zone offenses, leaving sentencing to the judge's discretion, and would allow a school-zone sentence to be served at the same time as any other sentences handed out. In addition, drug sales that happen in private homes within a school zone would not be subject to the enhanced sentence, although the defendant could still be prosecuted for the underlying drug offense.

"The 100-foot zones still cover a lot of area," said Wagner. "But they don't cover a lot of extraneous area." In addition, he noted, smaller zones would be easier to mark with signs, so people could actually know when they're within a protected area.

The bill was written by the Massachusetts chapter of Families Against Mandatory Minimums, a national nonprofit sentencing reform group. To Barbara Dougan, an attorney and FAMM's Massachusetts project director, the evidence showing the ineffectiveness and inequity of the school-zone law is indisputable.

"The data is there. It's in black and white. And it's been provided by the state [sentencing commission] itself," Dougan said. "It has this obscenely racial disparity that cannot be explained away by who's using drugs. It's penalizing people based on where they live."

Amending the school-zone law would not mean ignoring other drug laws, Dougan added. "It's important to address the misconception that this cuts anyone slack—it doesn't," she said. "What people don't realize is we already have statutes with stiff penalties for selling drugs to minors, and for using kids in drug transactions. We've already got those bases covered. ... We're just talking about not heaping on another two to 15 years, depending on where your home is located."

Swan's bill is not the first attempt to amend the school-zone laws. Similar changes were included in an omnibus crime bill that died during the last legislative session. While reformers see mounting support for their efforts—in part inspired by the savings the new law would create for the financially struggling state—there are still influential political forces that support the existing law, including police chiefs and prosecutors around the state.

That's because the law can be a powerful tool for the district attorneys, Wagner said. "What this is really about is prosecutorial leverage," he said. Prosecutors can use the mandatory minimums to expedite guilty pleas from drug defendants, especially those arrested for relatively minor offenses, by agreeing to drop the zone charge in exchange for a guilty plea for the other charge, the PPI report contends.

"As a result of this practice, only a small percentage of zone charges lead to zone convictions," the authors wrote. "This, however, leads to longer sentences than would otherwise be served for the lowest level nonviolent drug offenders."

"This sentencing structure is the double whammy for so many people," said Dougan of FAMM. "Basically, its use is to induce defendants to plead to a lesser charge rather than taking your case to trial, [since] know you're going to get hammered with this sentence regardless of the facts of the case."

"It's very worrisome to see the outcome," Dougan added. "It's not doing anything to stop the drug trade; it's just inducing people to plead rather than contest."

School-zone laws have been popular with the Hampden County District Attorney's office, at least according to older data. A study cited in the PPI report, using statistics from 1998, showed that Hampden prosecutors used them more than prosecutors in any other county in the state, and more than two and a half times the state average.

Hampden DA Bill Bennett did not respond to an interview request from the *Advocate*. Last year, he told the *Springfield Republican* that he supported limited changes to the school-zone law, such as allowing some sentencing flexibility for first-time offenders. "In practice, there have been incidents [when] you would not want to impose the two years because of a variety of reasons," he said.

Still, Bennett told the *Republican* he considered the law to be effective: "We don't have drug dealers hanging out in school yards, which was the whole idea to protect children."

Others within law enforcement support amending the law—including, notably, the Hampden County Sheriff's Department, which has built a national reputation for its programs to effectively reintegrate offenders into the larger community. Those efforts include education and work programs, substance abuse treatment and counseling.

"They come from the community, and they're going back," explained Jay Ashe, superintendent of the Hampden County House of Corrections. Each year, he noted, 6,500 people are released from the jail. "We move them into the community as quickly as possible. If they botch it up, then they come back. And then we send them out again. Because that's where they're going anyway."

But like judges whose hands are tied by mandatory minimum laws, the sheriff's department's hands are tied when it comes to working with offenders sentenced under school-zone laws. Under the law, these offenders are not eligible to earn credit for time spent in programs and cannot participate in "step-down" opportunities, like work-release and

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day reporting programs—valuable tools in helping people prepare for returning to their community, and for avoiding in the future the criminal activities that landed them in jail in the first place, Ashe noted.

"To walk out of jail with the same profile—they'll come back," Ashe said. "We certainly advocate for a step-down period, because that's where we think the public safety is."

Swan's bill would allow school-zone offenders to participate in work-release programs and earn credit for taking part in education, job training and other jail programs. Those changes would both reduce their odds of recidivism and reduce the public costs of keeping them locked up, Ashe said: "This is a better public safety program."

On a typical day, the jail has about 800 people awaiting trial, 15 percent of them facing school-zone charges, Ashe said. Another 1,200 people are already serving sentences in the jail, about 10 percent of them on school-zone mandatory minimums.

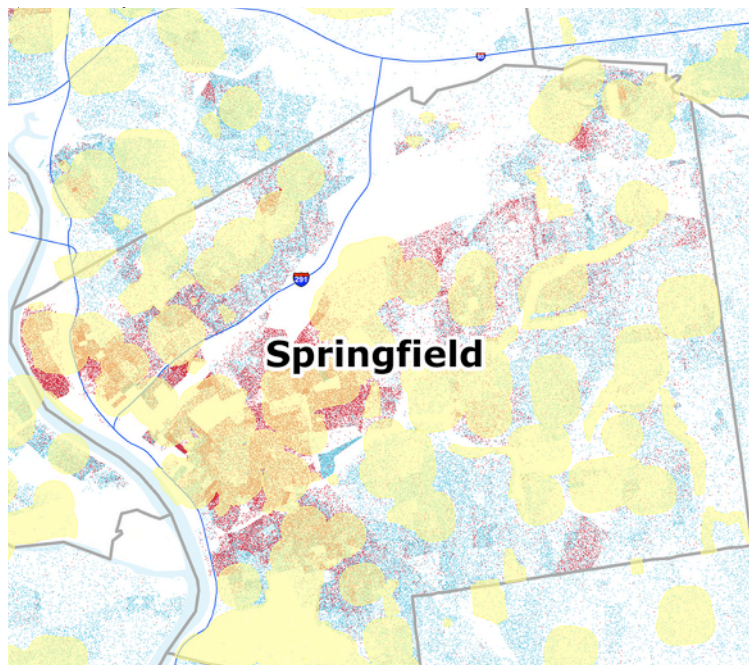
That's a significant portion of the total population, and they'd be served more effectively, and cheaply, if they could take part in lower-security reintegration programs. "I don't need to be holding these guys in hard beds," Ashe said. "Save the hard-cell beds for those who need it."

While the last effort to amend the school-zone law died in the State House, Wagner sees the fact that it went as far as it did through the legislative process as a promising sign. Indeed, as support for reforming the law expands, reformers are hopeful this legislative session will finally yield results.

Certainly, the changes proposed in the new bill would address many of the concerns about the existing law—it would save taxpayer money, end the geographic and racial disparities in how it's used, and make the law more effective at protecting kids from drug-related crime, said PPI's Kajstura. "There's just nothing to lose," she said. •

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A diagram showing how disproportionately sentencing enhancement zones (yellow) affect urban, Black and Latino populations (red dots) over White population (blue).

March 12 - 18, 2009

What do you think?

School Zone Laws Don't Work

One out of every three Massachusetts school zone convictions is in Hampden County [see "Urban Penalty," Feb. 26, 2009]. The law requires judges to give a mandatory two-year sentence to anyone convicted of certain drug offenses within 1,000 feet of a school. The one-size-fits-all law prohibits judges from giving more appropriate sentences to minor offenders who pose no risk to children. The state can ill afford a law that disproportionately incarcerates Black and Latino minor drug offenders for long sentences without affording children any extra protection.

The state legislature is considering reforming the school zone law, but Hampden County District Attorney Bill Bennett can take action today. The law gives prosecutors the discretion to look at the facts and decide whether or not an enhanced penalty is appropriate. Hampden County seeks the school zone sentencing enhancement in all cases where it could apply. Justice would be better served if District Attorney Bennett brought his prosecutions in line with the rest of the state. Hampden County is only a small part of the state and should not be taking up such a large portion of the state's prison and jail cells.

Peter Wagner

Executive Director, Prison Policy Initiative