

Criminal Justice: Drug Free School Zones

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Issue at a Glance

The elevated punishment for crimes committed in drug-free school zones (within 1000 feet of schools) results in more non-violent drug offenders serving longer sentences in state prisons; this stresses state prison capacity.¹

The differential sentences for crimes that are identical except for where they occur (inside or outside a drug-free zone) is perceived by some to be inequitable.

Whether or not drug free zones in Tennessee are effective in keeping children away from drugs has not been established empirically.

The Policy Challenges

To what extent, if at all, do drug-free school zones deter drug dealers from selling drugs to children? Might the law have any impact on deterring drug abuse among youth? Is the incarceration of nonviolent drug offenders for the long sentences prescribed by the law the best use of limited prison capacity? Has the drug-free school zone law created consequences unintended by lawmakers? These concerns populate the debate about whether or how the law might be revised.

All 50 states provide for some type of enhanced penalties for offenses that involve the manufacture, sale, distribution, or possession with intent to distribute illegal drugs. Tennessee's Drug-Free School Zones Act (DFSZA – TCA §39-17-432) was enacted in 1995 and mandates the punishment for drug crimes committed in drug-free school zones to be one classification higher than provided in the criminal drug offense statute (TCA §39-17-417(b)). These drug-free zones apply to drug crimes that are committed within a 1,000 foot radius of a school, child care center, library, recreational center, or park. Convicted offenders may face harsh fines and the prospect of no parole until completion of a minimum sentence specified by law. Under current law, a person convicted of a drug offense in a drug-free school zone, for example, could face at least 15 years in prison while a person convicted of the same drug offense outside of a drug-free school zone would be eligible for release after serving 29 months.² The idea behind creating drug-free school zones was to deter drug dealers from peddling drugs to children where they could be found most days.³

During the last two decades, prosecutions for violations of the law have increased as technology made it easier for prosecutors to determine whether an alleged crime actually occurred within a drug-free zone.⁴ Incarcerations for these offenses as well as those linked to

¹ Teresa Wiltz, "Why States Are Taking a Fresh Look at Drug-Free Zones," The Pew Charitable Trust, September 15, 2016, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/09/15/why-states-are-taking-a-fresh-look-at-drug-free-zones>.

² Lee Harris, "State's Drug Free School Zones Act Needs Comprehensive Reform," *Commercial Appeal*, July 10, 2016, Online edition, sec. Guest Column, <http://www.commercialappeal.com/opinion/local/guest-column-states-drug-free-school-zones-act-needs-comprehensive-reform-36ff6096-b90a-7270-e053-01-386095921.html>.

³ Wiltz, "Why States Are Taking a Fresh Look at Drug-Free Zones."

⁴ J. Nix, "What Drug-Free School Zones Do for Cops, Criminals," *Nashville City Paper*, November 10, 2010, <http://nashvillecitypaper.com/content/city-news/what-drug-free-school-zones-do-cops-criminals>.

the opioid epidemic have strained state prison capacity. As a result of this pressure and reports that drug-free school zones may not steer drug dealers away from schools, several states have revisited their sentencing policy connected with crimes in drug-free school zones.⁵

Some states have reduced the size of their drug-free zones in an effort to help shrink the size of their nonviolent drug offender populations. Other states have expanded their zones in response to the opioid crisis by adding playgrounds, parks and other areas where children play and by imposing heavier penalties for drug convictions.⁶ In 2017, the TN General Assembly considered bills (HB 725-SB 807) to shrink the radius of the state’s drug-free zones from 1000 feet to 500 feet. The fiscal note attached to this legislation estimated that the state could save \$3,057,381 in correctional expenses if this boundary was adopted.⁷ While this legislation did not pass in the Senate Judiciary Committee, it may be reintroduced in the 111th General Assembly.

Advocates for revising existing law argue that it has failed to create an environment where youth are protected from drug dealing; instead, it has spawned several unintended negative consequences. These consequences include: the conviction of offenders who were not selling drugs to children or during school hours, a diminished deterrent effect when drug-free school zones overlap and cover most of a city thus attaching a stiff penalty to virtually all drug crimes, and creation of a disproportionate impact on the economically disadvantaged and people of color who live in urban areas that are blanketed by drug-free zones.⁸

While no systematic evaluation of the impacts of Tennessee’s law has been conducted, studies of similar laws in other states have found that the law did have a disproportionate impact on minority communities and did little to keep drug activity away from children and schools.⁹ Nonetheless, state drug-free zone statutes have withstood challenges from defendants framed on constitutional grounds.¹⁰ Appellate courts generally have found the statutes to be rationally related to a legitimate public purpose that outweighs concerns over both alleged unequal treatment and the lack of a requirement that the state prove either criminal intent or a specific danger to children. Many courts have noted that the conduct of defendants convicted of drug-free zone offenses is still criminal absent the drug-free zone statute.¹¹

Supporters of drug-free zones point out that drug abuse is a costly and serious societal problem and that those who engage in this illegal activity should be prosecuted and punished to the full extent of the law. Law enforcement officials often number among the statute’s strongest supporters; they contend that the policy should be maintained because it sends a clear signal to drug dealers that convictions for peddling drugs in school zones will carry an enhanced penalty.¹²

⁵ Adam Gilb, “Justice Reinvestment Initiative Brings Sentencing Reforms in 23 States,” The Pew Charitable Trust, January 22, 2016, <http://pew.org/1RWBL2X>.

⁶ Gilb.

⁷ Tennessee General Assembly Fiscal Review Committee, “Fiscal Note: HB 725-SB807,” March 3, 2017, <http://www.capitol.tn.gov/Bills/110/Fiscal/HB0725.pdf>.

⁸ Judith Greene, Kevin Pranis, and Jason Ziedenberg, “Disparity by Design: How Drug-Free Zone Laws Impact Racial Disparity - and Fail to Protect Youth,” A Justice Policy Institute Report Commissioned by The Drug Policy Alliance, March 2006, http://www.justicepolicy.org/images/upload/06-03_REP_DisparitybyDesign_DP-JJ-RD.pdf.

⁹ Greene, Pranis, and Ziedenberg.

¹⁰ Greene, Pranis, and Ziedenberg.

¹¹ Greene, Pranis, and Ziedenberg.

¹² Wiltz, “Why States Are Taking a Fresh Look at Drug-Free Zones.”

One study estimates that there are about 500 persons in Tennessee prisons serving time for drug-free zone violations.¹³ For the law's supporters, the elevated penalties being served by these offenders simply means that there are 500 fewer criminals free to peddle drugs to school kids.

Proponents also note that the TN Supreme Court has ruled that the mandatory minimum service provision of the Drug-Free School Zone Act does not render offenses committed under the Act ineligible for judicial diversion.¹⁴ (*State v. Dycus*, 456 S.W.3d 918, 929, (2015)). This decision enables state prosecutors to seek punishment that fits case circumstances such as those that involve first-time offenders with no criminal histories.

Outlook

The original objective of the state's Drug Free School Zone law was to keep drugs away from children. While few dispute this laudable legislative aim, there is increasing disagreement about whether the law was ever intended to apply to drug sales between adults inside an adult's residence and that occur outside of school hours.¹⁵ Protecting children clearly is an important goal. The issue is whether the existing drug-free school zone law or some revision of it that might reduce the size of the drug-free zone and/or circumscribe the scope of the act is likely to be more effective in protecting school age children from the ravages of drug abuse

¹³ Wiltz.

¹⁴ Supreme Court of Tennessee, "State v. Dycus, 456 S.W.3d 918, 929," 2015, <https://scotblog.org/wp-content/uploads/2017/11/Calvin-Bryant-Petition-Exhibits%E2%80%9494Filed.pdf>.

¹⁵ Daniel A. Horwitz, "Eighth Amendment Challenge Filed Against Tennessee's 'Drug Free School Zone' Law," *Supreme Court of Tennessee Blog* (blog), November 20, 2017, <https://scotblog.org/2017/11/eighth-amendment-challenge-filed-against-tennessees-drug-free-school-zone-law/>.