

REPORT OF THE GEAR TASK FORCE ON SENTENCING AND CORRECTIONS TO GOVERNOR CORZINE

On October 9, 2007, Governor Corzine asked the GEAR Task Force on Sentencing and Corrections to examine the proposals concerning drug free zones developed by the Commission to Review Criminal Sentencing. In response to the Governor's request, the Task Force established an Ad Hoc Committee to review the Commission's proposals and report back to the group. Members of the Ad Hoc committee included Chief Justice Deborah Poritz (ret.), Justice James Coleman (ret.), John Degnan, Larry Lustberg, Bill Rodgers, Ed Stier, Ralph Rivera and Hazel Gluck. After consideration of the data presented by the Commission, the Task Force voted unanimously to support the Sentencing Commission's proposals.

In brief, the Commission recommended legislation that reduces to 200 feet the zone established in school and related drug zone laws and, at the same time, upgrades drug crimes within the 200 foot zone from third to second degree offenses. The Commission anticipated that those statutory changes would improve public safety, result in "a more rational allocation of criminal justice resources," and reduce racial disparity in our prison population. The Task Force members expect that higher penalties within the 200 foot zone will result in more effective deterrence of drug activities near schools, the primary purpose of the school zone statute. Moreover, the Commission's proposals are complementary to the Governor's Anti-Crime Initiative recommendations for expansion of New Jersey's successful drug court program and for legislation focused on gang and gun crimes. Together, this broad package of bills will improve the capacity of law enforcement to address the State's most pressing crime problems and achieve important public safety goals. In this vein, the prosecutors also have voted unanimously to support the drug zone proposals.

Unintended Consequences of the Current Law:

Under current law, because of the substantial number of schools and other public properties in New Jersey's urban centers, large areas in our cities are within drug free zones. The result is that the impact of the law is diffused, an unanticipated and unintended consequence of urban population densities. For this reason, the current school zone law does not effectively deter drug activities in urban centers and the legislative purpose – to create a safe haven for children around schools – is thwarted. Rural and suburban towns are not similarly affected. Moreover, because urban centers in this state have large minority populations, minorities are disproportionately affected by drug free zone laws and, as a result, are disproportionately represented in New Jersey's prisons. Indeed, 96% of those incarcerated for school zone offenses are minorities.

The New Proposal's Targeted Approach Will Deter Drug Activities Near Schools:

Data obtained from the Administrative Office of the Courts informs us that the current rate of imprisonment (persons sentenced to state prison) for third-degree school zone convictions is 67%, and that the rate of imprisonment for second-degree offenses is 80%. In other words, more than thirty percent of school zone offenders do not receive sentences to state prison. Also, as a result of negotiated plea agreements under the Attorney General's statewide Brimage guidelines, most school zone offenders serve less than the statutory three-year period. When the Commission compared mean and median lengths of prison time served for third degree school zone offenses and second degree park, public housing, library and museum offenses that do not contain mandatory minimums, it found that the mean time served for the latter offenses was 128 days longer than the former, and that the median length of stay for second degree zone offenses was 242 days longer than the length of stay for third degree school zone offenses. Even without

a mandatory minimum, therefore, the second-degree presumption of imprisonment and the five-to-ten year sentencing range increase the penalty in the 200 foot zone. As stated earlier, we expect the deterrent effect to increase as the penalty increases resulting in fewer drug crimes close to schools. We note further that the Criminal Code contains tough measures aimed at drug dealers who sell to minors, involve minors in sales, and possess guns during the commission of drug offenses. Those measures, along with repeat offender provisions that require extended sentences, serve as additional deterrents and as useful tools for the prosecution of drug crimes in and out of the zone.

Drug Court Expansion:

Both the Governor's Anti-Crime Initiative and the Commission propose modification of current eligibility requirements for entry into the drug court program in order to increase availability of the program for appropriate offenders. Drug courts have proved to be a win-win policy because recidivism rates for participants are significantly lower than recidivism rates for inmates released without treatment and because the costs of treatment and supervision under the program are lower than the costs of incarceration. Modification of the entry requirements will allow courts additional limited discretion to admit non-violent persons whose addiction has led them to commit more than one prior offense and to order treatment based on a clinical assessment of need, including outpatient treatment options when warranted. These proposed changes are supported by empirical research demonstrating that drug treatment is most effective when individualized.

The drug zone proposal and the expansion of the drug court program will together enhance public safety by improving the way we respond to and deal with criminal acts associated

with addiction. Considered in conjunction with measures that concentrate on gun and gang related offenses, the aggregate effect is a more focused and effective criminal justice system.

Summary:

The Task Force recommends a 200 foot school and public property drug zone law accompanied by higher penalties in the zone for the following reasons:

- 1. The proposed changes target offenders based on the harm posed by their conduct and will have a greater deterrent effect in the 200 foot zone.**
- 2. The proposed changes will reduce the urban effect described in the Sentencing Commission's report.**
- 3. The proposed changes allow individualized sentencing by the courts, including, when appropriate, utilization of drug court.**
- 4. The proposed changes complement tough measures specifically aimed at protecting children from drug dealers.**