



**Written Statement of Kevin Ring
President, FAMM
Hearing on HB 2517
House Judiciary Committee, Tennessee General Assembly
February 26, 2020**

FAMM thanks Chair Curcio and members of the committee for considering our statement in **support of HB 2517**, a bill that would limit the reach of Tennessee’s over-broad drug-free school zone laws, which currently trigger lengthy mandatory sentences.

FAMM is a nonpartisan, nonprofit sentencing and prison reform advocacy group that represents incarcerated people and their families. FAMM’s mission is to protect public safety and promote efficiency in the criminal justice system by advocating for individualized, proportional criminal sentencing laws. We are not against punishment or prisons. We simply believe that sentences should fit the crime and the offender, and that judges are in the best position to decide the proper punishment in each and every case. We believe that individualized sentencing is not just fair, but also necessary to protect the community and ensure that finite public safety resources are used cost-effectively.

Tennessee’s drug-free school zone law is overbroad and does not deter drug activity near schools.

Tennessee’s drug-free school zone law was certainly adopted with the best intentions. An adult who actively preys on children and brings drug trafficking into the school environment very well might warrant an enhanced sentence. But by its very design, the law does not apply solely to this conduct and therefore generates sentences that are excessive, unjust, and waste public safety resources.

Under Tennessee’s current drug-free school zone law, every defendant who commits a drug felony within 1,000 feet of a school, child care agency, public library, recreational center, or park faces a sentencing enhancement that can more than double a prison sentence. When the offense occurs within 1,000 feet of a school, the enhanced period of incarceration is mandatory, and the minimum sentence permitted must be served in its entirety, with no sentence reduction credits and no parole eligibility permitted before that minimum term is met.

The current 1,000-foot zones have effectively swallowed entire neighborhoods and districts across the state, making it hard to determine whether a person is indeed in a drug-free school zone, and nullifying any deterrent effect the law might have. In 2017, a Reason Magazine investigation¹ revealed that drug-free zones cover so much of both cities and rural areas that people can unknowingly spend an entire day within a drug-free school zone just moving from their home, to work, to the grocery store, etc. If a person has no idea they are in a drug-free

¹ C.J. Ciaramella & Lauren Krisai, Reason Magazine, Jan. 2018, <https://reason.com/2017/12/18/the-myth-of-the-playground-pus/>.



school zone, much less what the enhanced sentence will be, then the enhanced drug-free zone penalty bears no impact on their decision making and does not deter crime.

HB 2517 partially fixes this problem by shrinking the size of the zones from 1,000 feet to 500 feet. Other states have gone further, with Utah being the gold standard. In Utah, drug offenses occurring within 100 feet of a protected area trigger an enhanced sentence.

Tennessee’s drug-free zone law over-punishes people whose conduct does not occur near schools or children.

Current zones are so large that they often ensnare people whose drug activity has nothing to do with children or the places “in which they can learn, play and enjoy themselves without the distractions and dangers that are incident to the occurrence of illegal drug activities” (Tenn. Code § 39-17-432). Under current law, an individual found guilty of a Class C drug felony 999 feet from a school would face an 8-year mandatory minimum sentence. While FARM does not condone drug dealing regardless of its distance from a school, if that individual was in their own home and interacting with adults that far from a school, they are certainly not any more of a threat to our students than the drug dealer 2,000 feet from a school. This hypothetical individual has still committed a Class C felony, and the standard three-year sentence under current Tennessee law should be satisfactory for her rehabilitation and for the protection of the public. Instead, current law mandates that the Tennessee Department of Corrections keep them incarcerated for an additional five years – regardless of whether this extra prison time is just, necessary for public safety, or necessary to preserve healthy school environments.

Calvin Bryant, Sara Moore, and Terrance Davis all committed their drug offenses in their homes, without children present, yet inside school zones – and all were required to serve exponentially longer prison sentences under the current law. Their lengthy incarceration did not make children or school grounds safer or fulfill the legislature’s intent.

HB 2517 would fix this problem by giving courts flexibility to apply the sentencing enhancement when it furthers legislative intent, but not apply it in cases where it fails to do so. The legislature intended to target enhanced penalties to people committing drug offenses near schools and children in a way that made those places unsafe. Merely changing the size of the 1,000-foot zones is not enough to prevent misapplication of the law to people the legislature did not intend to target. Only giving courts flexibility to disregard the enhancement when it will be misapplied can save the Tennessee drug-free school zone law from resulting in arbitrary, unjust, and unnecessary over-incarceration. That over-incarceration is also expensive and dangerous.

HB 2517 saves money and makes Tennessee safer.

Removing the mandatory sentencing requirement and shrinking the size of the zones will reduce the use of expensive and excessive prison sentences on people who do not pose a serious risk to the safety of our children and school communities. **HB 2517’s sentencing law changes are projected to save the state nearly \$18.5 million annually in incarceration costs.**²

² Tennessee General Assembly, Fiscal Review Committee, Fiscal Note: HB 2517-SB 2734, Feb. 14, 2020, <http://www.capitol.tn.gov/Bills/111/Fiscal/HB2517.pdf>.

Public safety resources are valuable and finite and should be reserved for the most serious threats. Every time Tennessee sentences a drug offender to a mandatory eight-year prison term when a three-year term would suffice, just because the offense occurred within 1,000 feet of a school, the state has less resources at its disposal for prisoner rehabilitation and reentry, victim services, crime prevention, or more mental health and drug treatment in the community. HB 2517 reduces the size of zones and makes the enhancement optional to ensure that Tennessee is saving money and using its public safety resources as effectively as possible.

The state currently spends over \$10 million dollars per year incarcerating over 400 drug-free school zone offenders. That is \$10 million dollars the state cannot spend on overtime hours for law enforcement agents working to keep dangerous opioids off the streets. Or money the state cannot spend on drug treatment programs for heavy users. In the midst of a serious opioid epidemic, Tennessee needs to focus as much of its resources on effective drug treatment and proactive law enforcement strategies, not ineffective and outdated lengthy drug sentences.

States around the country are reconsidering their drug-free school zone laws, and Tennessee should join them. In 2016, Utah reduced the size of its drug-free school zone law to 100 feet and limited its application to the hours of 6:00 AM and 12:00 AM. In 2017, North Dakota followed a similar model and reduced its drug-free zones to 300 feet and limited its application to the hours of 6:00 AM and 10:00 PM. Other states that have reduced their drug-free zones include Massachusetts, Kentucky, and Indiana – where Vice President Pence signed a reform bill into law as Governor of Indiana. Additionally, in 2018, the American Legislative Exchange Council adopted a resolution urging states to reevaluate and reform their drug-free zone laws.³

FAMM supports HB 2517. It does not remove the drug-free school zone law from the toolkit of the prosecutors and law enforcement, but rather ensures that the law is not misapplied in a way that costs taxpayers money without making them safer. HB 2517 makes Tennessee safer and more just, and we urge the legislature to pass this important bill this year.

We would also note that the reforms of HB 2517 should be applied retroactively. People in prison serving unjust school zone law sentences today are the reason we know that this reform is needed. Those people should not be left to serve excessive prison sentences solely because of the date they went to court. This law should be made retroactive so that those already sentenced under this overbroad law have a chance to be resentenced and released. At a minimum, if HB 2517 passes, Governor Bill Lee should consider granting clemency to those already sentenced under the current drug-free zone law.

Thank you for considering our views. Please contact me at kring@famm.org or Molly Gill at mgill@famm.org if we can be of further assistance to you.

³ American Legislative Exchange Council, Resolution on “Drug-Free Zones,” (finalized Jan. 20, 2018), <https://www.alec.org/model-policy/resolution-on-drug-free-zones/>.