

Model Drug-Free School Zone Act

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Model Drug-Free School Zone Act

Policy Statement

Drug traffickers entice youth into leading a drug-filled life. To these criminal entrepreneurs, recruitment of children makes good business sense. Introducing a new, young generation of people to the addictive power of drugs ensures future customers and profits for drug dealers. Moreover, to the drug trafficker, it is sensible to use juveniles as dealers, lookouts, or other active participants. The perceived risk of interference from the criminal justice system will be less because juveniles are subject to less harsh penalties than adults.

Children therefore become intense targets of campaigns to show them the “good life” associated with illegal drugs. Schools and other locations where children tend to congregate become the battlegrounds on which these campaigns are waged. Too often the campaigns persuade young people that illegal drug involvement is the only means of escape from a discouraging reality. The illegal drug trade becomes more and more a trade among children. For example, one study about the crack epidemic found that “[c]rack is sold through diffuse networks in which teenage dealers play an important role...”

To reduce children’s exposure to illegal drug activity and exploitation by drug traffickers, 45 jurisdictions have created “safe havens” for children. Labelled drug-free school zones, these protected areas are typically within 1,000 feet of a school or other specified school-related property. States attempt to deter illegal drug activity by enhancing punishment for distributing illegal substances within the zone. The intent is to develop learning environments which discourage substance use and teach young persons positive, healthy, productive skills and values. The Model Act incorporates the traditional drug-free school zone concept embodied in state laws and the Uniform Controlled Substances Act, §409.

However, to be truly safe from influences which can lead to abuse of addictive substances, “drug-free” must mean “alcohol and tobacco” free. A young person’s foray into substance use primarily occurs through alcohol and tobacco use. Though illegal, drinking alcoholic beverages and smoking or chewing tobacco products are peer group activities for minors. These activities may seem harmless to young people at the time. However, they can start an individual down a path leading to addiction and its associated health and economic costs. Additionally, use of these addictive substances sometimes motivates use of illegal drugs. Involvement with gateway drugs is encouraged by those who sell alcohol and tobacco to minors. Advertising which is intended to stimulate demand for alcohol and tobacco can also unintentionally encourage use of gateway drugs among juveniles who are exposed to the advertising.

The Model Act addresses gateway drugs in a threefold manner. First, they expand the enhanced punishment provision to include the illegal sale of alcohol and tobacco to underage persons. Second, they prohibit the advertising of alcohol and tobacco by billboard, poster, or other public display intended to stimulate demand for or announce the availability for sale of the substances. Third, they require the appropriate state agency to revoke the license of anyone convicted of illegal sale of alcohol to minors.

Highlights of the Model Drug-Free School Zone Act

- Defines drug-free school zone to include school vehicles, school vehicle stops, buildings where extracurricular school activities are regularly provided, and structures while they are in use for school-sponsored activities.
- Imposes enhanced punishment and mandatory minimum terms of imprisonment for illegal drug distribution within a drug-free school zone.
- Imposes enhanced punishment for illegal sale of alcoholic beverages or tobacco products to minors within a drug-free school zone.
- Prohibits, within specified areas of a drug-free school zone, advertising of alcoholic beverages or tobacco products by billboard, poster, or other public display which stimulates the demand for or announces the availability for sale of the substances.
- Imposes a civil assessment for violation of the advertising ban which is used to fund alcohol and other drug abuse education and treatment services.
- Requires the appropriate state agency to revoke the alcoholic beverage control license of anyone convicted of the illegal sale of alcohol to minors.

Model Drug-Free School Zone Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the “Drug-Free School Zone Act.”

Section 2. Legislative Findings.

- (a) America’s young people are consistently enticed to live a drug-involved life by the promise of luxurious lifestyles financed through illegal drug dealing.
- (b) The age of juveniles using and selling drugs, serving as lookouts, or otherwise actively involved in the illegal drug trade has declined in recent years.
- (c) To protect our youth, approximately 45 states have established drug-free school zones which enhance penalties for specified illegal drug distribution and manufacturing offenses.
- (d) Drug-free school zones use deterrence to prevent exploitation of children by drug traffickers and to reduce children’s exposure to illegal drug activity. These zones are intended to create safe havens in which young people can develop skills to resist the temptations of drug use and learn positive, productive values.
- (e) To effectively achieve the safe haven goal, drug-free school zones must also deter those who illegally introduce our children to alcohol and tobacco. These addictive substances can result in serious personal and social health and economic consequences. Additionally, alcohol and tobacco, often known as gateway drugs, can lead to illegal drug use.
- (f) Alcohol and tobacco advertising undermines schools’ attempts to discourage substance use by their students. Such advertising stimulates the demand for and encourages use of alcohol and tobacco products. Therefore, it is important to restrict alcohol and tobacco advertising within drug-free school zones.

Section 3. Purpose.

The [Act]’s purpose is to create learning environments in which juvenile substance use is discouraged and young people can be taught beneficial skills and values. This purpose is accomplished by:

- (a) Deterring substance abuse activity, including the unlawful sale of alcohol and tobacco to minors, in and around schools and other locations where students congregate; and
- (b) Removing those influences which stimulate demand for and promote use of addictive substances.

Section 4. Definition.

As used in this [Act], a “drug-free school zone” means:

- (a)(1) Any distance within [1,000 feet] of real property comprising a public playground, public or private elementary or secondary school, a public vocational school, a public or private college or university, a building where extracurricular school activities are regularly provided, or an official stop for a school bus; or
- (2) A school bus, whether privately or publicly owned, which is transporting students or any distance within [10 feet] of a parked school bus in service for or waiting for students.
- (b) The terms “school bus” and “official stop” shall have the meaning provided by [citation to laws defining “school bus” and “official stop”][state department of education or other appropriate agency].

COMMENT

Subsection (a)’s “zone” description of 1,000 feet from a playground, school, college, or university echoes the description provided in most state statutes and the Uniform Controlled Substances Act, §409. The intent is to create a geographic area which eliminates the negative, exploitive atmosphere of illegal drug activity. Children are consistently bombarded with images of fast cars, expensive clothes, and other trappings of the “good life” associated with using and dealing illegal drugs.

Illegal drug activity is perceived by many youths as a way of attaining the social status, respect, and material goods. Others simply view it as a normal part of life they must endure.

Drug-free zones provide windows of opportunity to change these perceptions. School officials have time to teach young people the truth about the personal and social devastation of substance abuse and addiction. Equally important, teachers can educate children about positive methods of developing self-esteem and respect. Hope and optimism can replace despair and pessimism when contemplating a child's future, a future without drugs.

To maximize the opportunities provided by drug-free school zones, these safe havens must include all areas where school children tend to congregate. Gone are the days when school activities occurred only within the confines of the school itself. Athletic or music events and other extra-curricular activities often take place in other locations. Therefore, the Commission has broadened the definition of a drug-free school zone in paragraph (a)(1) to include structures where school-sponsored activities take place.

Paragraph (a)(2) is drawn from Hawaii's drug-free school zone law. It protects children while they are on a school bus or are waiting to be transported to and from school.

Section 5. Prohibited Act; Penalties.

(a) A person who violates any of the following laws while in a drug-free school zone is, upon a final conviction, punishable by a term of imprisonment and fine not exceeding [twice] that otherwise authorized:

- (1) [section of state controlled substances act regarding illegal distribution, manufacture, or possession with intent to distribute or manufacture controlled substances];
- (2) [Model Underage Alcohol Consumption Reduction Act or similar state law]; or
- (3) [state laws prohibiting the sale of tobacco products to individuals under 18 years of age].

(b) Upon a second or subsequent final conviction for a violation of subsection (a), a person is punishable by a term of imprisonment not exceeding [three times] that otherwise authorized.

(c) For a violation of subsection (a)(1):

- (1) Adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld;
- (2) The person must be imprisoned for at least []; and
- (3) The person is not eligible for parole before serving the mandatory term of imprisonment prescribed by this subsection.].

[(d) Notwithstanding any other provision of this [Act], the defendant or the attorney for the state may request the sentencing court to reduce or suspend the sentence of an individual who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of a person for a violation of this [Act]. The court shall give the arresting agency an opportunity to be heard in reference to the request. Upon good cause shown, the request may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the assistance rendered was substantial.]

COMMENT

This section provides essentially the same penalty structure as the Uniform Controlled Substances Act (UCSA), §401. Fines and terms of imprisonment are doubled or tripled for convictions involving the illegal distribution or manufacture of controlled substances. Under the UCSA, these types of offenses require imposition of a mandatory minimum term of incarceration. Subsection (c) provides the UCSA language for those states that wish to impose mandatory minimum sentences. Subsection (d), also drawn from the UCSA, allows the court to impose a non-mandatory sentence if the prosecutor so requests because the defendant has provided substantial assistance to law enforcement. States which elect not to impose mandatory minimums should omit subsections (c) and (d).

The Commission has made two significant amendments to this UCSA-based structure. The list of offenses which subject a convicted defendant to enhanced penalties include the sale of alcoholic beverages and tobacco products to underage youths. As stated in the Policy Statement, the Commission intends "drug-free" to mean free of all addictive substances. America's drug control effort has primarily focused on reducing the use of illegal substances. Meanwhile, the abuse of alcohol and tobacco continue to result in significant personal and social costs. A person often initiates use of alcohol and tobacco during the teenage years or earlier. These

attempts to “fit in” or appear “cool” to one’s peers can lead to years of abusing these substances. Use of tobacco and alcohol also motivates some young people to try other potent drugs, such as cocaine or crack.

Individuals who illegally sell alcohol and tobacco to minors willingly help children begin a path of reliance on addictive substances. The Commission thus believes it is appropriate to subject these individuals to enhanced punishment.

Section 6. Ban on Alcohol and Tobacco Advertising.

(a) It shall be unlawful, in an area described in Section 4(a)(1), for a person to advertise alcoholic beverages or tobacco products by billboard, poster, or other public display designed to stimulate the demand for, or announce the availability for sale of, the beverages or products.

(b) Upon a final conviction for a violation of subsection (a), a civil assessment of not less than [] nor more than [] shall be imposed.

(c) Upon a second final conviction for a violation of subsection (a), a civil assessment of [twice] that otherwise authorized under subsection (a) shall be imposed.

(d) Upon a third or subsequent final conviction for a violation of subsection (a), a civil assessment of [three times] that otherwise authorized under subsection (a) shall be imposed.

(e) The assessment provided for in this section shall be collected as provided for the collection of [insert appropriate term, e.g., fines, restitution, etc.], and shall be forwarded to the [single state authority on alcohol and other drugs] for deposit in the Demand Reduction Assessment Fund established under the [Model Demand Reduction Assessment Act].

COMMENT

This section’s advertising restriction is designed to eliminate forms of expression within drug-free school zones which promote substance use. In framing the restriction, the Commission addressed constitutional free speech issues.

The First Amendment affords only limited protection to commercial speech. As noted by professor Steven Shiffrin, a leading constitutional law and First Amendment scholar: “...commercial speech has always been a stepchild in the first amendment family. Indeed, for most of our history, speech hawking products has been afforded no first amendment protection; it has never received generous first amendment protection...”¹

The test for determining the constitutionality of a restriction on commercial speech is well established in case law. See, e.g., *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980); *Posadas De Puerto Rico Associates v. Tourism Company of Puerto Rico*, 478 U.S. 328 (1986); *Edge Broadcasting Company v. United States*, 956 F.2d 263 (1992). A court must decide whether: (1) the First Amendment applies; (2) the asserted governmental interest is substantial; (3) the restriction directly advances the governmental interest; and (4) the restriction is no more extensive than necessary. If the court answers the questions affirmatively, the restriction passes constitutional muster.

Application of this four-pronged test to the advertising ban in subsection (a) indicates that the ban is constitutional. First, the constitution’s free speech protection applies to advertising which concerns lawful activity and is not misleading. For the sake of discussion, the Commission assumes that the advertising described in subsection (a) satisfies these requirements. The Commission necessarily assumes that the advertising is intended to address legal consumption of alcohol and tobacco by adults. Alcohol and tobacco advertising targeting minors concerns illegal activities and is outside the scope of First Amendment protection.

The Commission also assumes the advertising contains no deceptive information. Some people would argue that advertisements suggesting alcohol and tobacco use result in a happier, more rewarding life are misleading. However, to reach the remaining prongs of the constitutionality test, the Commission assumes the advertising at issue is not misleading.

Second, the state’s interest in establishing learning environments which discourage the use of alcohol and tobacco by minors is substantial. In addition to being illegal, use of alcohol and tobacco by youths can lead to abuse of these substances. As noted earlier, use of these

¹ Shiffrin, S.H., Prepared Testimony on The Sensible Advertising and Family Education, S. 674, before the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation 18 (Cornell University, School of Law, May 13, 1993).

gateway drugs can also prompt young people to try illegal drugs. Preventing early development of substance addictions which can cause a lifetime of devastating personal and social consequences is a state priority.

Third, the advertising ban directly advances the interest described above. Impressionable young people are still in the process of refining their value systems. The positive or negative influences to which youths are subject will impact their life choices. Most young people spend the majority of their waking hours in school areas involved in school-sponsored activities. Therefore, those influences found in and around schools will significantly affect a young person's decisions concerning his or her life. Additionally, school is a primary place where many youths can learn worthwhile, productive goals and values. Schools therefore need to open students' minds to the importance and benefits of a drug-free future.

The advertising prohibited in subsection (a) operates contrary to the school's objective. It encourages rather than discourages substance use. The advertising is designed to stimulate increased consumption of alcohol and tobacco among individuals exposed to its message. It is reasonable to assume that the advertising does result in some increased consumption. The majority of individuals who receive the message within drug-free school zones are minors. It is therefore reasonable to believe that the advertising described in subsection (a) encourages, and to some extent, actually increases alcohol and tobacco use by minors. Actual consumption stimulates even further demand for the substances. Removal of the advertising enables schools to more effectively implement alcohol and other drug abuse prevention programs. Teachers can more successfully instill healthy, anti-drug values without the presence of countervailing messages in alcohol and tobacco advertising.

Fourth, the ban in subsection (a) is no more extensive than necessary. It prohibits advertising which is publicly visible to students as they participate in activities on or near school-related property. Billboards, posters, and similar advertising media have the greatest impact on the most students within drug-free school zones. The more students are exposed to alcohol and tobacco advertising, the more likely the advertising will influence them. Public displays provide constant, direct, mass exposure to alcohol and tobacco advertising. By attending class or simply frequenting other areas within a drug-free school zone, students will view the public displays. Unlike commercials and other advertising

forms, students cannot turn off or easily avoid the advertising proscribed in subsection (a). With billboards, posters and other public displays, repeated delivery to many students of a message urging alcohol and tobacco use is inevitable. Therefore, restricting such advertising is reasonably tailored to serve the state's interest in developing school environments which discourage substance use. Moreover, the adults who are intended targets of alcohol and tobacco public relations campaigns can be reached through advertising outside of the zone.

Section 7. Revocation of License to Sell Alcohol.

(a) A clerk of the [appropriate trial court] shall notify the [alcohol beverage control board or other appropriate state agency] of a person's conviction for a violation of Section 5(a)(2) within [ten] days after the imposition of sentence.

(b) Upon notification under subsection (a), the [alcohol beverage control board or other appropriate state agency] shall institute proceedings to revoke the person's state license to sell alcohol or alcoholic beverages.

(c) A clerk of the [appropriate appellate court] shall notify the [ABC Board or other appropriate state agency] of the reversal of a conviction for a violation under Section 5(a)(3) within [ten] days after the conviction has been overturned.

(d) Within [ten] days after notification under subsection (c), the [alcohol beverage control board or other appropriate state agency] shall reinstate the person's license if the conviction was the sole reason for the revocation. The [board or other agency] shall promptly notify the person of such reinstatement.

COMMENT

The license revocation requirement in this section complements the enhanced penalties outlined in Section 5. License revocation is an additional means by which to deter individuals from illegally selling alcohol to minors. To ensure expeditious action by the licensing authority, subsection (a) requires prompt notice of a relevant conviction to the ABC Board or other appropriate state agency. Equally prompt notice of the reversal of a conviction is provided to allow for immediate reinstatement of a license, where appropriate.

Section 8. Invalid Defenses to Violation of the Act.

It shall not be a defense to a violation of this [Act] that the defendant did not know the distance involved.

COMMENT

Patterned after the Uniform Controlled Substances Act, §409, this section closes a loophole which would allow a defendant to easily circumvent this [Act]. Without this provision, a defendant could simply claim lack of knowledge regarding the distance involved. To defeat the defense, the state would need to prove what the defendant subjectively knew about the specified facts. A showing of what the defendant objectively should have known given the information available to him or her is insufficient. Proving the defendant's subjective state of awareness would be extraordinarily difficult, even impossible in several instances.

Section 9. Severability.

If any provisions of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 10. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

