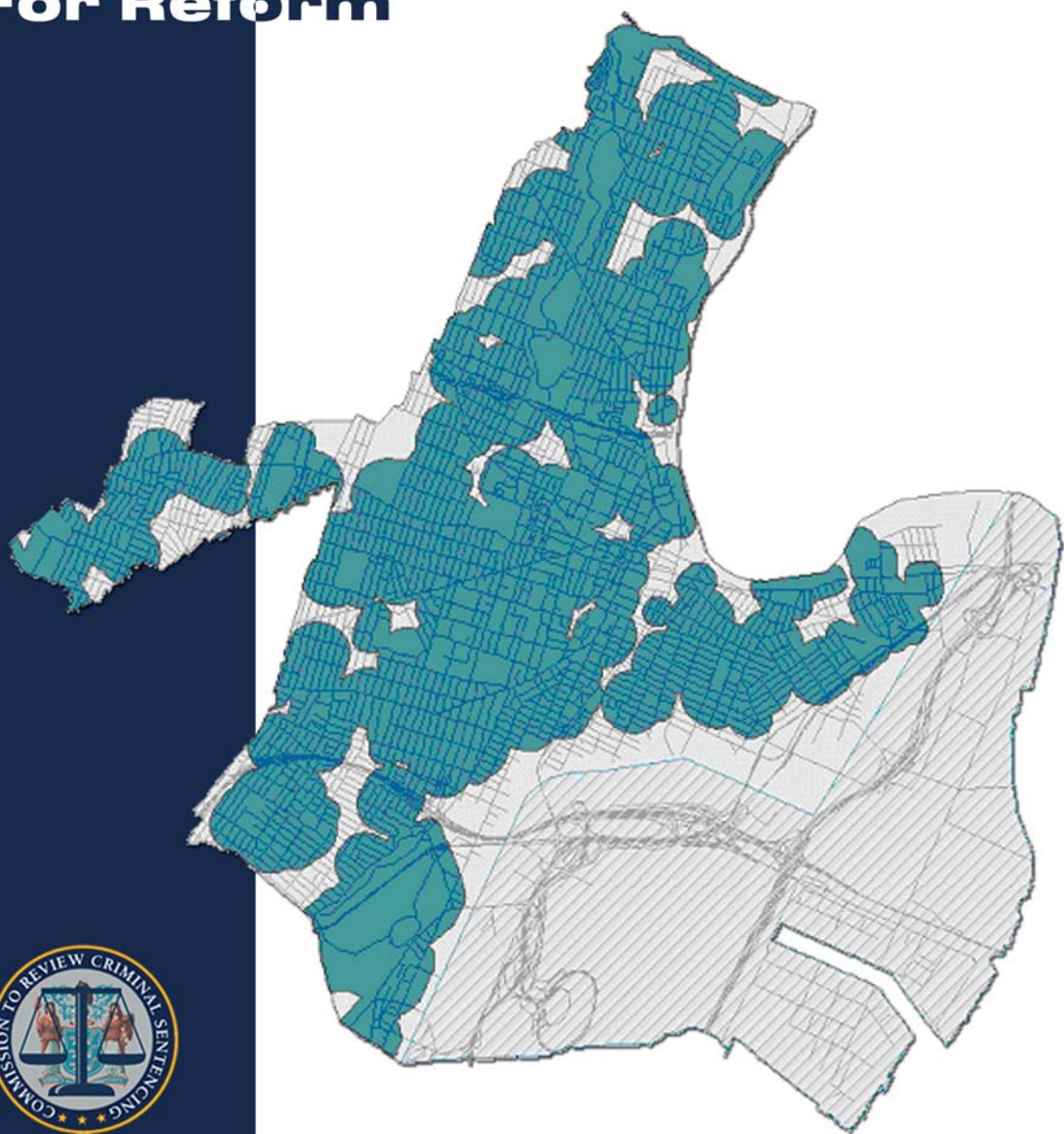


Report on New Jersey's Drug Free Zone Crimes & Proposal For Reform



The New Jersey
Commission to
Review Criminal
Sentencing

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Table of Contents

MESSAGE FROM THE HONORABLE BARNETT E. HOFFMAN, J.S.C. (RET.), CHAIRMAN.....	3
EXECUTIVE SUMMARY	5
I. INTRODUCTION.....	8
A. <i>THE NEW JERSEY COMMISSION TO REVIEW CRIMINAL SENTENCING.....</i>	<i>8</i>
B. <i>NEW JERSEY'S SCHOOL ZONE LAW.....</i>	<i>8</i>
C. <i>LEGAL CHALLENGES</i>	<i>11</i>
II. THE FINDINGS OF THE COMMISSION	12
A. <i>THE URBAN EFFECT OF NEW JERSEY'S DRUG FREE ZONE LAWS.....</i>	<i>12</i>
B. <i>COMMISSION DATA AND ANALYSIS.....</i>	<i>13</i>
C. <i>THE CURRENT DRUG FREE ZONE LAWS DO NOT PROTECT SCHOOLS AND OTHER DESIGNATED PROPERTY.....</i>	<i>24</i>
III. RECOMMENDATIONS OF THE COMMISSION	28
A. <i>CONTRACTING THE SCOPE OF THE ZONES</i>	<i>28</i>
B. <i>UPGRADING THE DEGREE OF PUNISHMENT WHILE ELIMINATING THE MANDATORY PERIOD OF PAROLE INELIGIBILITY</i>	<i>32</i>
C. <i>ISSUES OF COST.....</i>	<i>34</i>
D. <i>CONCLUSION.....</i>	<i>34</i>
LIST OF COMMISSIONERS	36
ACKNOWLEDGMENTS	37
ENDNOTES.....	38
 APPENDIX A - The Commission's Proposed Legislation Creating Crime of N.J.S.A. 2C:35-7.2, Controlled Dangerous Substances Near or On School or Certain Public Property.....	 1
 APPENDIX B - Maps of Newark, Jersey City and Camden Depicting Drug Free Zones with Perimeters of 100' to 500'	 5
 APPENDIX C - Photographs Taken at the Grant School, Trenton, New Jersey At Various Distances from the School Perimeter.....	 21



MESSAGE FROM THE HONORABLE BARNETT E. HOFFMAN, J.S.C. (RET.), CHAIRMAN

As chairman of the New Jersey Commission to Review Criminal Sentencing (hereafter referred to as the Commission) it is my duty to present the first report of the Commission, together with specific recommendations to the Legislature outlining proposed changes to New Jersey's drug-free zone laws.

In January 2004, the New Jersey State Legislature created the 15-member Commission through P.L. 2003, c 265, with the clear mandate to review criminal sentencing provisions set forth in the New Jersey Code of Criminal Justice to insure that they advance principles of fairness, public safety, and proportionality. From its inception, the Commission recognized that this would necessarily involve the acquisition and analysis of data derived from a multitude of sources. By seeking to inform its policy recommendations with empirical evidence, New Jersey would therefore follow in the footsteps of 23 states and the federal government with permanent sentencing commissions.

The Commission focused on New Jersey's drug free school zone law as one of its first priorities because of the intuition, shared by many individuals involved in the administration of the criminal justice system, that the law was neither fair nor effective in application. Specifically, the law authorizes a mandatory period of incarceration of up to three years for those caught selling, or possessing with intent to sell, drugs within 1,000 feet of school property. Ten years following enactment of the drug free school zone law, the Legislature enacted a statute that imposes enhanced punishment for individuals selling drugs within 500 feet of public parks, public housing, and other public buildings. Both statutes are the subject of this report. Neither statute has previously been studied or reviewed.

Over the past several months, the Commission has been ceaselessly engaged in collecting and reviewing information about the laws and their effects. I suspect that few who read this report and study its findings will be unmoved. The statistics bear out beyond doubt that the drug-free zone laws, as presently applied, have had a devastatingly disproportionate impact on New Jersey's minority community. Of no less importance, the available evidence strongly suggests that the laws as presently written do not further what the Legislature clearly intended to be their specific purpose: to protect certain premises from the primary and secondary effects of the illicit drug trade.

Ultimately, this initiative confirms my belief that the key to improving the criminal justice system depends on a steadfast dedication to collecting and analyzing data, then accepting the truth thus revealed, no matter how difficult or unpalatable, and recommending appropriate changes. In this instance, data both illustrates the nature and scope of the problem and provides



rational and compelling solutions. The facts contained in this report led all 15 members of this Commission – individuals with very diverse perspectives, positions, and experiences within the criminal justice system – to reach a critical and unanimous consensus that the Legislature must act immediately to correct this unacceptable status quo.

It is important to convey that this Commission is only getting started. This report will be followed in the coming years with many others addressing equally critical issues relating to criminal sentencing law and policy in New Jersey.

As Commission chairman, I am genuinely grateful for the hard work and dedication on the part of all who worked tirelessly on this important project, especially the report's co-authors, Deputy Attorney General Ben Barlyn, the Commission's Executive Director, and Public Member Dr. Bruce Stout. Lastly, I also wish to thank those legislators in the Assembly and Senate who created the supportive climate that created the Commission and have ensured that its work will not be ignored.







Respectfully submitted,

Hon. Barnett E. Hoffman, J.S.C. (Ret.)
Chairman











Executive Summary


What follows is a concise summary of the key findings and recommendations of the New Jersey Commission to Review Criminal Sentencing primarily concerning N.J.S.A. 2C:35-7, commonly known as the drug free school zone law and N.J.S.A. 2C:35-7.1, commonly referred to as the park zone law.

-  New Jersey's school zone law mandates enhanced punishment for those that distribute, or possess with intent to distribute, illicit narcotics within 1,000 feet of school property.
-  Ten years after the enactment of the school zone law, the Legislature enacted N.J.S.A. 2C:35-7.1 which mandates enhanced punishment for those that distribute, or possess with intent to distribute, illicit narcotics within 500 feet of public parks, public housing and other public buildings.
-  New Jersey's cities are among the most densely populated in the nation. Given the large concentration of schools in these areas, the protective zones which surround them have overlapped and coalesced to such an extent that the three cities studied by the Commission – Jersey City, Camden, and Newark – have themselves become all-encompassing drug free zones.
-  The foregoing “urban effect” of the drug free zone laws significantly increases the likelihood that a drug distribution offense will occur within a drug free school zone in urban areas; minorities, who currently comprise a greater proportion of urban populations than rural and suburban populations, are therefore far more likely to be charged with a drug free zone offense and subjected to harsher punishment upon conviction.
-  The unintended, but profoundly discriminatory, impact of the laws is the direct result of the size of the zones defined by the school zone and park zone laws, and is, moreover, significantly amplified by New Jersey's unique demographic characteristics.
-  The end result of this cumulative “urban effect” of the drug free zone laws is that nearly every offender (96%) convicted and incarcerated for a drug free zone offense in New Jersey is either Black or Hispanic.



-  The “urban effect” greatly undermines the school zone law’s effectiveness in protecting school children: the enormous, unbroken swaths created by the overlapping zones have in fact diluted the special protection of schools that the law was specifically intended to facilitate.
-  A review of geocoded arrest data for illicit drug activity in Newark yields no evidence that drug dealers are aware of school zones, much less that they deliberately undertake their criminal activity to evade exposure to the school zone law.
-  Based on its review of the pertinent data, the Commission concludes that a substantial reduction of the zones will at once significantly enhance the effectiveness of the law while considerably diminishing the disproportionate number of minority drug dealers subject to enhanced punishment avoided by their white suburban and rural counterparts.
-  The Commission’s proposal to amend the school zone and drug free park laws by substantially reducing the zone size to 200 feet remedies both aforementioned deficiencies.
-  The Commission’s proposal would eliminate the mandatory minimum sentence for the school zone offense but would upgrade the crime within the reduced zone to second degree which carries a presumption of imprisonment. Discretionary extended terms of imprisonment for repeat offenders and parole ineligibility terms could still be imposed by judges with respect to drug offenses both inside and outside the zones. This change will ensure that those who sell drugs within close proximity to schools and other protected property will be subject to significant punishment, including the presumption of imprisonment, while also conferring a greater degree of discretion on courts in fashioning fair and appropriate sentences.
-  The Commission recognizes that the financial cost of incarcerating large numbers of drug offenders places a tremendous burden on the State budget and might not constitute the most efficient use of public funds to promote public safety by preventing future drug crimes. Further study is urgently required.
-  The Commission’s findings and recommendations with regard to the drug free zone laws are unanimous.
-  The Commission will continue to collect data and carefully monitor application of the current drug free zone provisions, as well as subsequently enacted provisions. These findings will be presented to the Legislature and the public on a periodic basis.



 This report and recommendations is the first of many anticipated studies the Commission will undertake in the coming years regarding sentencing law and policy in New Jersey.



I. INTRODUCTION

A. THE NEW JERSEY COMMISSION TO REVIEW CRIMINAL SENTENCING

This report presents the findings and recommendations of the New Jersey Commission to Review Criminal Sentencing on N.J.S.A. 2C:35-7, commonly known as the school zone law, and N.J.S.A. 2C:35-7.1, commonly referred to as the park zone law. The Commission itself represents a cross-section of individuals whose positions and experience within the New Jersey criminal justice system render it well-equipped to collectively confront and address important issues concerning sentencing law and policy. Specifically, the Commission is composed of the following fifteen members: two members of the Senate; two members of the General Assembly; the Chief Justice of the Supreme Court of New Jersey or judicial designee; the Attorney General or designee; the Commissioner of Corrections or designee; the state Public Defender or designee; the Chairman of the State Parole Board or designee; the President of the New Jersey County Prosecutors Association or representative; the President of the New Jersey State Bar Association or representative; one public member appointed by the Senate President; one public member appointed by the Speaker of the General Assembly, and two public members of different political parties appointed by the Governor. Prior to his appointment to the Commission and selection as its Chair, the Honorable Barnett E. Hoffman, J.S.C. (Ret.), served as the Presiding Criminal Judge of the Middlesex County vicinage.

Consistent with its legislative mandate, which is to assess sentencing provisions for fairness and proportionality, the Commission has been reviewing key elements of New Jersey's Code of Criminal Justice. This report and its recommendations reflect the unanimous consensus reached by Commission members with diverse perspectives and experiences regarding the school zone and public park zone laws. Simply stated, the Commission recommends legislative change to make these provisions at once more effective and less discriminatory in application.

B. NEW JERSEY'S SCHOOL ZONE LAW

On April 23, 1987, former Governor Thomas Kean signed into law the Comprehensive Drug Reform Act of 1987 (The Act), a sweeping revamping of New Jersey's criminal drug laws. The Act at once: 1) consolidated and revised all criminal drug statutes, many of which prior to 1986 were situated outside of New Jersey's Code of Criminal Justice; 2) harmonized these provisions with the basic philosophical and structural framework of the Code of Criminal Justice enacted eight years earlier; and 3) established several new crimes to delineate and punish more severely those drug offenders perceived as especially dangerous.

Underlying this comprehensive overhaul of New Jersey's drug laws was the Legislature's judgment, specifically articulated at the very outset of the Act, that the unlawful use,



manufacture and distribution of illicit substances “pose[s] a serious and pervasive threat to the health, safety and welfare of the citizens of [New Jersey].”¹ In addition, the Legislature expressed its conviction that this threat was to be effectively countered and repelled by the enforcement of newly enacted provisions that would ensure “strict punishment, deterrence and incapacitation of the most culpable and dangerous drug offenders, and to facilitate where feasible the rehabilitation of drug-dependent persons.”² While rehabilitation is invoked as a goal, the overarching thrust of the Act was, and remains, the deterrence of illicit drug activity through strict, consistently imposed sanctions, including lengthier terms of imprisonment.³

The Legislature singled out children as in greatest need of enhanced protection against the depredations of illicit drug activity. It expressly declared that this goal would be advanced by “ensur[ing] that all schools and areas adjacent to schools are kept free from drug distribution activities” through the imposition of “especially stern punishment for those drug offenders who operate on or near schools and school buses, who distribute to juveniles, or who employ juveniles in a drug distribution scheme.”⁴ The provision of the Act that best reflects the dual emphasis on deterrence and the desire to protect children is, without question, N.J.S.A. 2C:35-7, New Jersey’s school zone law.

The school zone law provides that it is a third degree crime to distribute, dispense, or possess with intent to distribute a controlled dangerous substance within one thousand feet of school property. Here, it should be emphasized that the school zone provision was intended by the Legislature to supplement those existing laws that criminalize the distribution or possession with intent to distribute illicit drugs.⁵ Accordingly, a defendant who sells or distributes illicit drugs while in a school zone commits, at a minimum, two entirely separate crimes: the offense of distribution of a controlled dangerous substance and the school zone offense. A defendant’s culpability for the former crime is based on the type and amount of the drug possessed while criminal liability for the latter is based exclusively on his or her location at the time of the offense.

Knowledge or awareness of one’s presence in a school zone is not an element of the crime. In fact, the school zone law explicitly precludes a defendant from raising as a defense the fact that he or she was unaware that the prohibited conduct occurred on or near school property.⁶ Nor is it a defense that no juveniles were present on school property at the time of the offense or that school was not in session.⁷ Indeed, there need be no intention on the part of defendants to involve or corrupt school children in drug trafficking. In one case, for example, a defendant’s conviction for distributing drugs in a school zone was based her attempt to provide drugs to an inmate while visiting him at a correctional facility.⁸ The facility happened to be located within 1,000 feet of a high school. For this reason, the defendant’s school zone conviction was upheld, notwithstanding the absence of any intention on her part to sell drugs to school children or distribute drugs on school property

The foregoing fact pattern, involving a defendant’s fortuitous or happenstance presence within a school zone is typical. A review of all reported decisions issued by the New Jersey trial courts,



Appellate Division and Supreme Court of New Jersey involving school zone convictions since the law's enactment in 1987 underscores that the law applies without regard to whether the defendant intended to sell illicit drugs on or near school property or to students. In only two cases out of 90 (less than 2%) did the drug transactions actually occur on school property. In one case, the defendant was a student. In the other, the defendant was arrested while riding his bicycle through a public park. Because the park was leased by the municipality's board of education, it technically constituted "school property" for purposes of the school zone law.

Most telling, perhaps, is the fact that out of the 90 reported cases, not one involved the sale of illicit drugs to a minor. Instead, 11 defendants were apprehended while in possession of drugs after being stopped in proximity to a school for a traffic violation or suspicious activity regarding a vehicle; 13 defendants were arrested following the execution of a search warrant at their residences, and rest of the cases involved circumstances where defendants were observed by police officers possessing or selling within 1,000 feet of, but not directly on, school property.

Although the school zone offense is classified as a third-degree crime, the punishment expressly authorized by the law is especially stern. Except for a violation involving twenty-five grams or less of marijuana, a sentencing court must impose a mandatory minimum term of imprisonment between one-half and one-third of the sentence imposed, or three years, whichever is greater. During this time period, the convicted person is not eligible for parole. If the offense involves less than one ounce of marijuana, the minimum term must be fixed by the sentencing court at between one-third and one-half of the sentence, or one year, whichever is greater.⁹ A fine of up to \$100,000 may also be imposed.

New Jersey's school zone provision is by no means unique: at least 35 states and the federal government have enacted school zone provisions over the past twenty years.¹⁰ This state's school zone law, like many others, was roughly patterned after a federal statute enacted in 1984 as an amendment to the Comprehensive Drug Abuse, Prevention and Control Act of 1970.¹¹ Like New Jersey's provision, the federal statute was clearly intended by Congress to establish an antiseptic buffer zone or "cordon sanitaire" around educational facilities in order to shield school children not only against the direct solicitations of drug dealers, but also from the equally pernicious secondary effects of the illicit drug trade, such as discarded drug paraphernalia, gang activity, and drug-related violence. Given the prevalence of similar provisions, however, it is notable that the legislative history of the federal school zone statute is remarkably scant: despite considerable effort, the Commission was unable to ascertain why 1,000 feet was selected as the appropriate demarcation of the protective zone. No empirical data was cited by Congress, and the Commission has found no related evidence or research relied upon by Congress to inform its legislative determination.

On January 9, 1998 – over ten years after the enactment of the school zone law, the governor signed into law N.J.S.A. 2C:35-7.1 (commonly referred to as the "park zone law"), which created the crime of distributing drugs within 500 feet of a public housing facility, public park or a public library or museum. Although this provision is similar in certain respects to its



predecessor, N.J.S.A. 2C:35-7, there are two critical and pronounced differences between the two statutes. First, with regard to N.J.S.A. 2C:35-7.1, the Legislature projected a radius one-half as long as that established by the school zone law. Second, N.J.S.A. 2C:35-7.1 does not, in marked contrast to the school zone law, require the imposition of a mandatory parole ineligibility term but instead upgrades the crime to one of the second degree, except for violations involving less than one ounce of marijuana, which is graded a third degree crime. As with the federal school zone law, what little legislative history exists with respect to N.J.S.A. 2C:35-7.1 does not reveal why the Legislature enacted a subsequent “zone crime” so markedly different in two key respects from its obvious antecedent, N.J.S.A. 2C:35-7.

C. LEGAL CHALLENGES

Shortly after the enactment of the federal and New Jersey school zone laws, defendants charged with “zone crimes” mounted myriad constitutional challenges against the statutes. Many of these challenges were directed at the more unique provisions of the law.¹² As noted previously, the New Jersey statute does not require the state to prove that a defendant knew or had reason to know that he or she was in a school zone. Such laws, known as strict liability provisions, have, according to the United States Supreme Court, a “generally disfavored status” since the requirement of culpable mental state is consistent with the retributive principle that one who does not choose to cause social harm does not deserve to be punished.¹³ Generally speaking, state courts apply the same presumption against strict liability provisions. Nonetheless, defendants in New Jersey failed to persuade the courts that the school zone’s lack of a culpable mental state rendered the provision constitutionally infirm.

Equally unsuccessful were challenges made that the statute operated in a racially discriminatory manner and therefore violated the Equal Protection Clause of the United States Constitution. Only two years after the enactment of the school zone provision, the issue of disparate impact was discussed in a reported Law Division opinion, State v. Rodriguez.¹⁴ In that case, the defendants alleged that enforcement of the school zone law denied them equal protection of the law because the enhanced penalties were based on the demographic configuration of the inner-cities, and would therefore be enforced disproportionately against minorities. This argument foundered on the inability of the defendants to establish a racially discriminatory intent or purpose underpinning the legislation, which is neutral on its face. The trial judge concluded that merely because the law could incidentally affect a greater proportion of one race than another, this was insufficient to justify invalidating the statute. Identical claims were raised and rebuffed in other jurisdictions, including Alabama, Massachusetts, Ohio, Utah, Florida, Indiana, and Louisiana.¹⁵



II. THE FINDINGS OF THE COMMISSION

A. THE URBAN EFFECT OF NEW JERSEY'S DRUG FREE ZONE LAWS

The trial judge's conclusion in Rodriguez was correct: there is no evidence that New Jersey's Legislature deliberately sought to target minorities by enacting the school zone and park zone laws. However, a particular law's capacity to withstand constitutional challenge does not invariably mean that it advances sound policy. In this vein, New Jersey's school zone law in particular historically has served as a lightning rod for criticism based on the intuition that, owing to the unique demographics of New Jersey, the law and its harsh sentencing provisions has a profoundly disproportionate impact on minority defendants.

Hard evidence aside, the logic of this hypothesis is compelling - the more densely populated the area, the greater number of schools. The more schools per square mile, the greater number of drug free school zones. The greater number of zones in a municipality, the more the zones intersect with one another, creating oddly-shaped, overlapping entities that leave little else unencumbered. In city neighborhoods, the sheer number and concentration of public schools and other designated places (parks, public housing, museums, and libraries) create extensive sets of overlapping zones that effectively encompass entire swaths of city centers as massive drug free zones. Call it the "urban effect" - the virtual omnipresence of urban drug free zones means that offenders living in densely populated urban areas are much more likely to face zone-based charges - and much more likely to be sentenced, and to be sentenced for longer terms - for the same crimes committed by those in suburban and rural areas with less densely concentrated drug free zones where large areas are outside of drug free zones altogether. Further, since New Jersey's urban population is predominately minority, and the populations in New Jersey's suburban and rural areas are predominately white, minorities are disproportionately subjected to the provisions of the school zone law.

Theoretically, it follows that the pervasiveness of this "urban effect" is greatly amplified in New Jersey because of the state's highly unique demographic characteristics. According to the 2000 Census, New Jersey is by far the most densely populated state in the nation, with 1,134 people per square mile. This figure is 14 times the average population density of the United States. Only six states in addition to New Jersey have population densities greater than 300 people per square mile, and Rhode Island is the only other state that has at least 1,000 people per square mile. Of the 11 states in the nation with populations greater than eight million people, New Jersey is geographically the smallest (slightly more than 7,000 square miles) and is the only state among the 11 whose land mass is less than 40,000 square miles.

With respect to New Jersey's counties, 10 have more than 1,000 people per square mile, and seven have over 2,000 people per square mile with Hudson County reaching as high as 13,043 people per square mile. Population density within New Jersey's cities is even higher. To take but one example, Jersey City has a greater population density (16,094 per square mile) than Chicago, Boston, or Philadelphia, and falls just short of San Francisco (16,634 people per square



mile) as one of the most densely populated urban areas in the country. Paterson has 17,675 people per square mile, and is second only to New York City in terms of population density. Newark (11,495 people per square mile) also ranks among the 15 most densely populated cities (over 100,000 residents) in the country.

B. COMMISSION DATA AND ANALYSIS

The Commission empirically assessed the extent to which the density of schools and other drug free areas in three of New Jersey's largest urban centers – Newark, Jersey City and Camden – resulted in overlapping drug free zones that created large, uninterrupted zones covering large segments of each city's surface area. Large scale, hard copy official city maps depicting the statutorily defined drug free zones were obtained from the City of Newark Department of Engineering, the City of Camden Division of Engineering and Construction Management and the City of Jersey City Division of Engineering. In accordance with N.J.S.A. 2C:35-7 (the "school zone" law) and N.J.S.A. 2C:35-7.1 (the "park zone" law) a map produced by any municipal or county engineer for the purpose of depicting the location of and boundaries of school zones and park zones is admissible in a prosecution and constitutes prima facie evidence of the locations and boundaries of those areas. Furthermore, these statutes provide that an original of every map shall be filed with the clerk of every municipality or county and shall be maintained as an official record of the municipality or county. The maps obtained by the Commission were copies of each city's official representations of the specific areas that fell within drug free zones. Additionally, the City of Newark Department of Engineering provided a digital file outlining the footprints of all schools in that City.

Using ESRI ArcGIS software (version 9.1) the perimeters of all drug free school, park, public housing, museum and library zones depicted on each city's official maps were digitized. For the City of Newark, digital school footprints were directly imported into ArcGIS, and the ArcGIS boundary feature was used to create 1000' perimeters around each of the school footprints included in the City's digital school file. Through this process, ArcGIS geomaps incorporating areas that comported to each city's depictions of their current statutory drug free zones (1000' around schools and 500' feet around parks, public housing, museums and libraries) were constructed.

Initially, the Commission based its analysis and consideration of drug free zone distributions in these cities on the ArcGIS geomaps created from the official city maps. After limited distribution of these ArcGIS geomaps, however, some glaring omissions were detected. Specifically, field staff from the Office of the Public Defender noticed that two large parks in Jersey City – Liberty State Park and Lincoln Park, a municipal park, were not included in the official City of Jersey City Division of Engineering map depicting drug free park zones, and thus were not included in the ArcGIS geomap of Jersey City created by the Commission. Another problem was that while City of Newark maps depicted drug free zones around areas (schools, parks, etc.) in neighboring municipalities that protruded into Newark, maps from Jersey City and Camden City did not include such cross-municipal zones.



The discovery of these omissions led to a concerted effort to identify any and all areas in each of the three cities that fell within a statutorily-defined drug free zone but that were not included in official city maps depicting such zones. First, ESRI ArcGIS 9 2005 data files containing park and school locations were overlaid on the geomaps created from official city maps. Parks included in the ArcGIS 9 2005 database that were not depicted in the official city maps were added to the Commission's geomaps. This led to the addition of four parks (including Liberty State Park and Lincoln Park) in Jersey City and an expansion of the Wiggins Park area around the New Jersey State Aquarium in Camden City. Additionally, areas in drug free zones around schools and parks in contiguous municipalities that protruded into Jersey City and Camden City were added to the geomaps.¹⁶ This in turn led to the addition of portions of two drug free school zones from neighboring municipalities in Jersey City and the addition of portions of five drug free school zones in Camden City that originate from neighboring municipalities.

Newark, a city with an area of 24 square miles, has 129 schools, 69 parks, 150 public housing complexes, 13 libraries and two museums that fall under the ambit of the drug free zone laws. Figure 1 is an ArcGIS geomap for the City of Newark that depicts the current drug free zones around each of these areas. As is evident in Figure 1, there is considerable overlap between existing zones. Large, uninterrupted areas completely encompassed in these overlapping zones are prominent. In fact, over one half (51%) of Newark's surface area falls within a drug free zone. When the airport area in the southeast quadrant of the city is excluded from consideration, over three-quarters (76%) of Newark's surface area falls within a drug free zone.

Jersey City is just under 15 square miles. The city has 88 schools, 60 parks, 15 public housing complexes and 12 libraries that fall within the provisions of the current drug free zone statutes. Figure 2 is a geomap that depicts the configuration of drug free zones in Jersey City. As was the case with the City of Newark, there is considerable overlap of drug free zones in Jersey City, particularly in the central wards of the City. Currently, over one half (54%) of Jersey City falls within a drug free zone.

Camden City encompasses just under nine square miles and has 36 schools, 26 parks, seven public housing complexes and five libraries that fall within drug free zone statutory provisions. Figure 3 is a geomap that depicts the spatial distribution of the current drug free zones in Camden City. Although there is less overlap of drug free zones in Camden City than there is in the City of Newark or Jersey City, Camden City still has large groupings of drug free zones that are contiguous or overlapping. In fact, over one-half (52%) of Camden City's area currently falls within a statutorily defined drug free zone.

To contrast the distribution of drug free zones in these three large urban areas, the Commission also constructed a geomap of current drug free zones for Mansfield Township, Burlington County. The drug free zones for Mansfield Township, which is classified as a rural area by the New Jersey State Police, were digitized from a hard copy drug free zone map provided by the Burlington County Prosecutor's Office. Figure 4 is the drug free zone geomap of Mansfield



Township. As illustrated in the geomap, the density of drug free zones is significantly lower than the density of zones in the three urban areas that the Commission mapped. Analogously, the percentage of Mansfield Township included in a drug free zone - 6% - is significantly less than the percentages of the three urban areas included in drug free zones.

This contrast in the density of drug free zones between Mansfield Township and Newark, Jersey City and Camden reflects the reality of drug free zone distribution in New Jersey. As population density increases, the density of schools (and, to a lesser extent, the density of libraries and public housing and perhaps museums) also increases and as a result, the density of drug free zones increases. Thus, as the degree of urbanization increases, the density of drug free zones increases. This results in greater percentages of urban areas falling within drug free zones than in rural and suburban areas.



Figure 1
City of Newark
Current Drug Free School and Public Property Zones

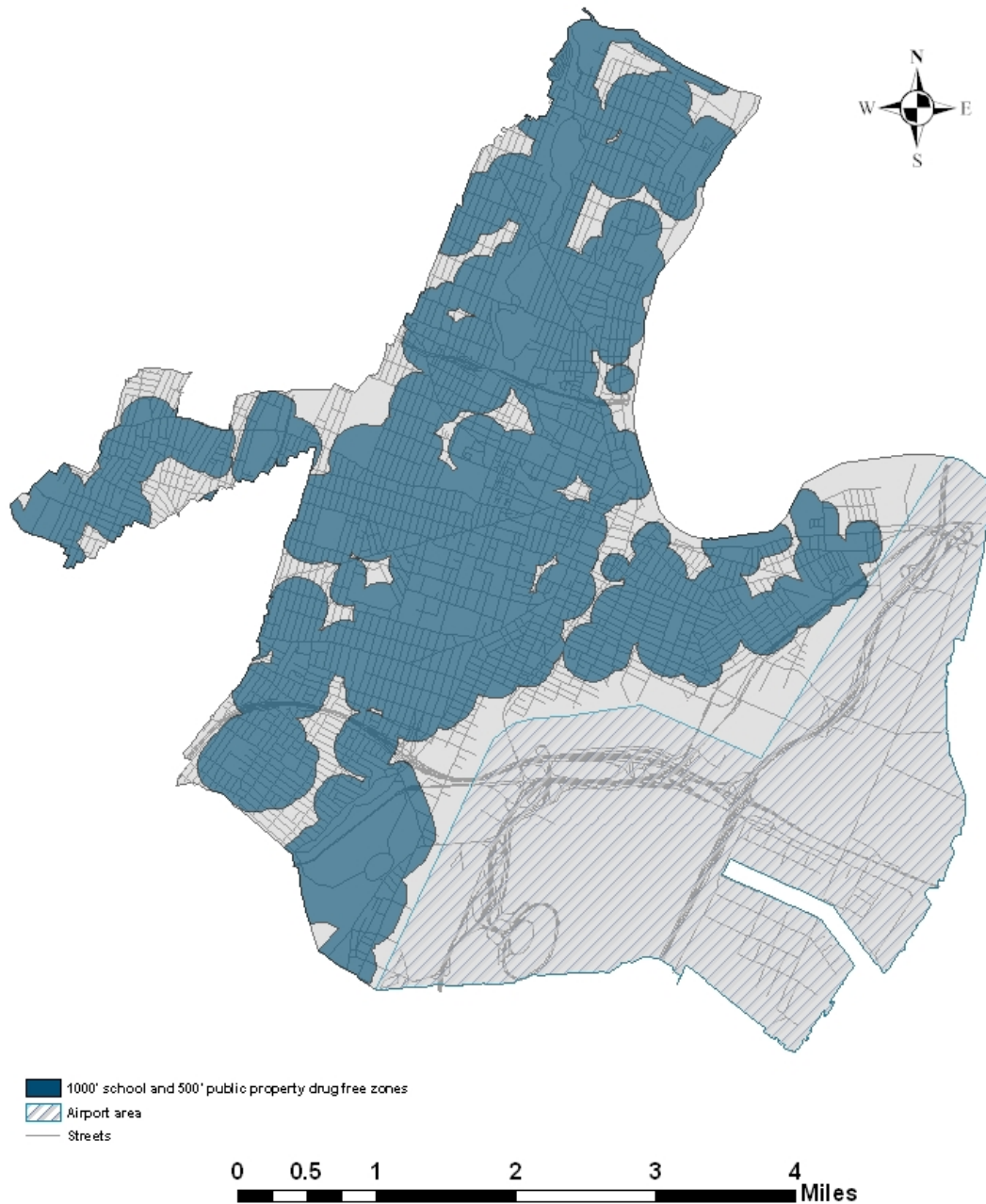


Figure 2
City Jersey City
Current Drug Free School and Public Property Zones

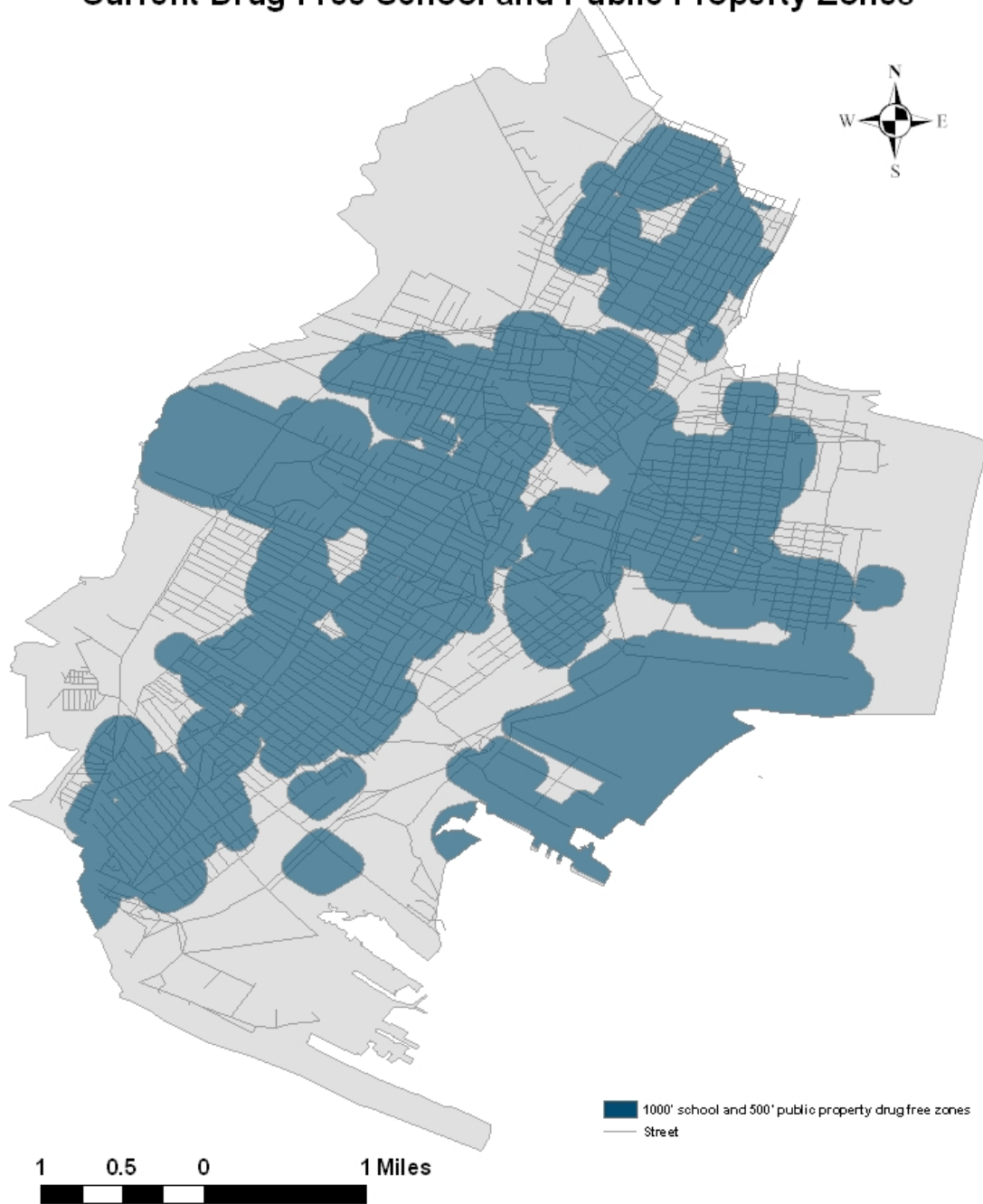


Figure 3
City of Camden
Current Drug Free School and Public Property Zones

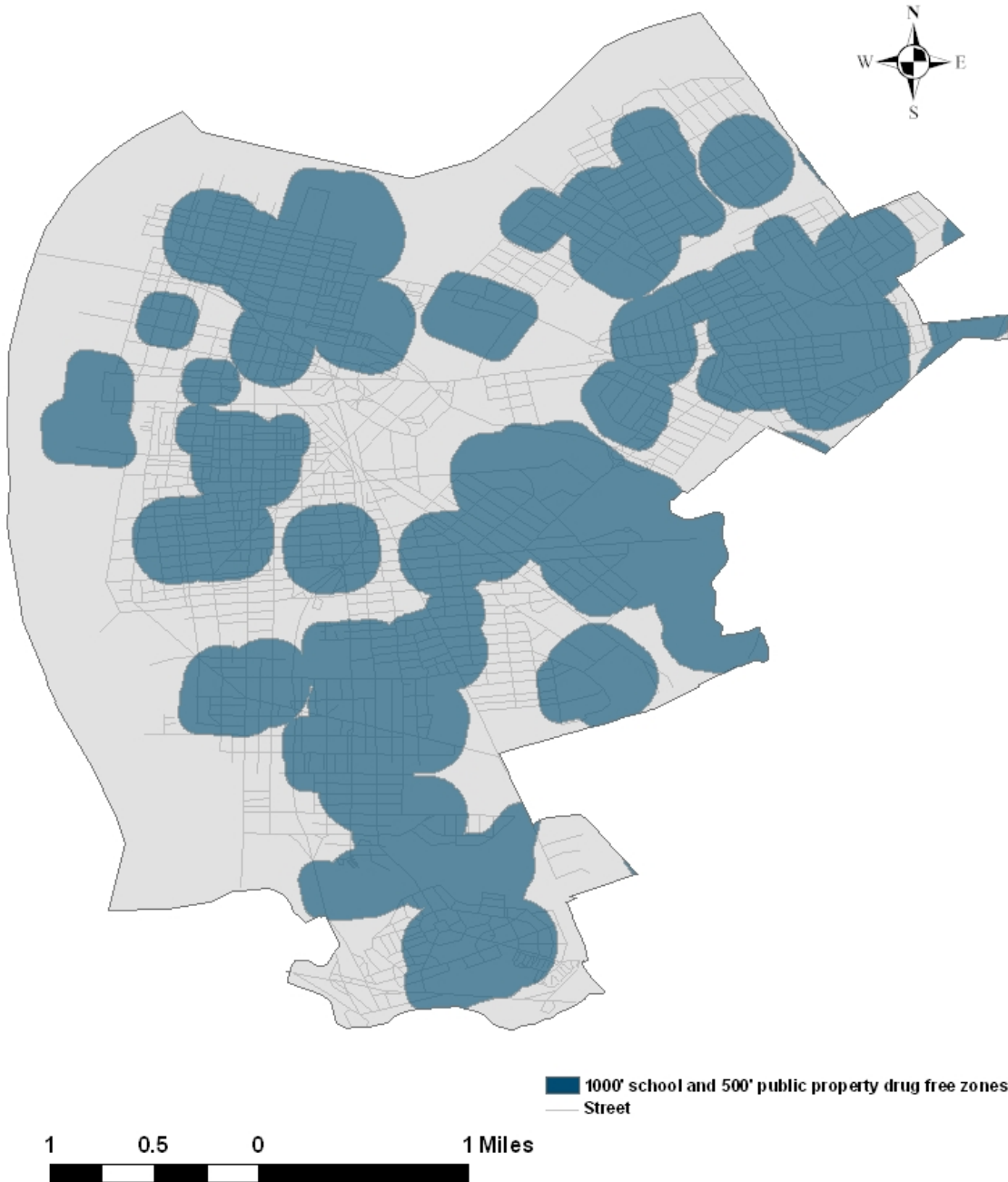
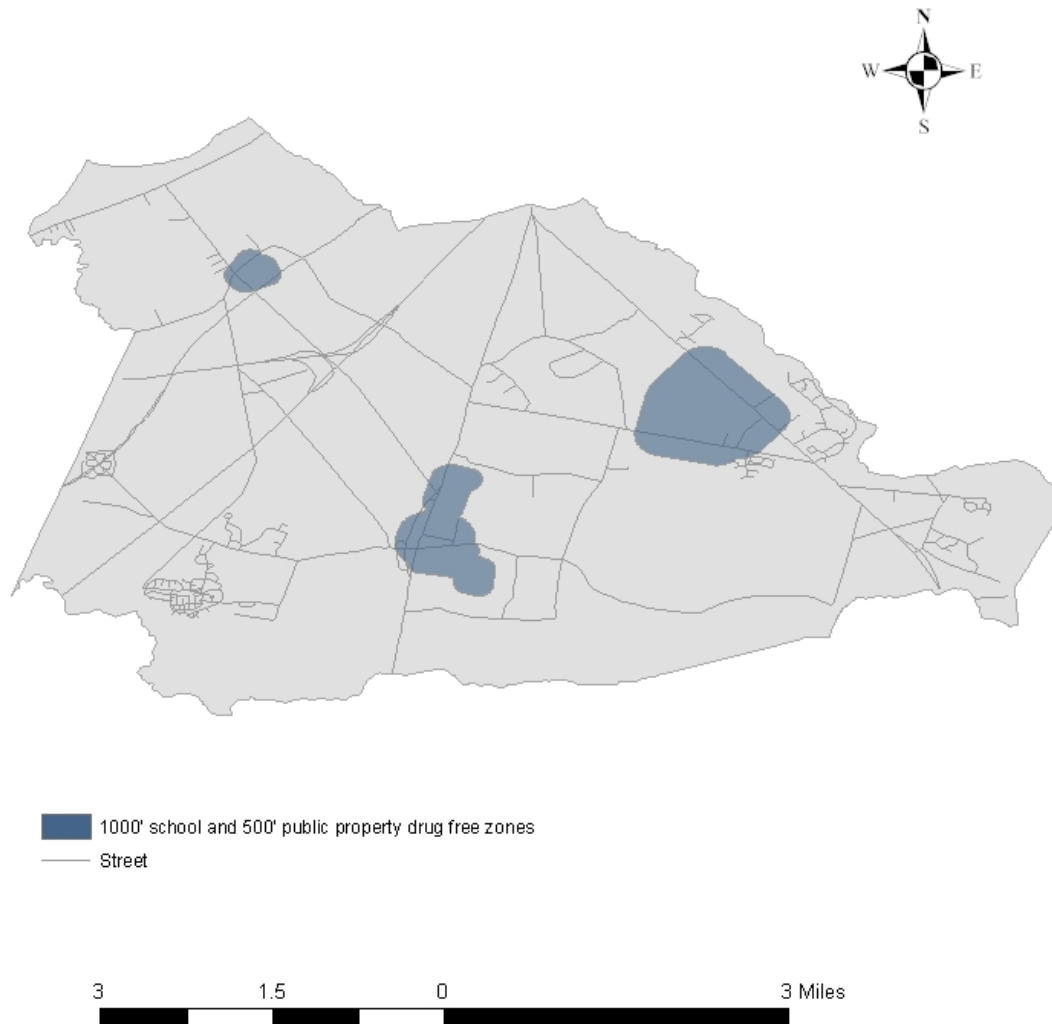
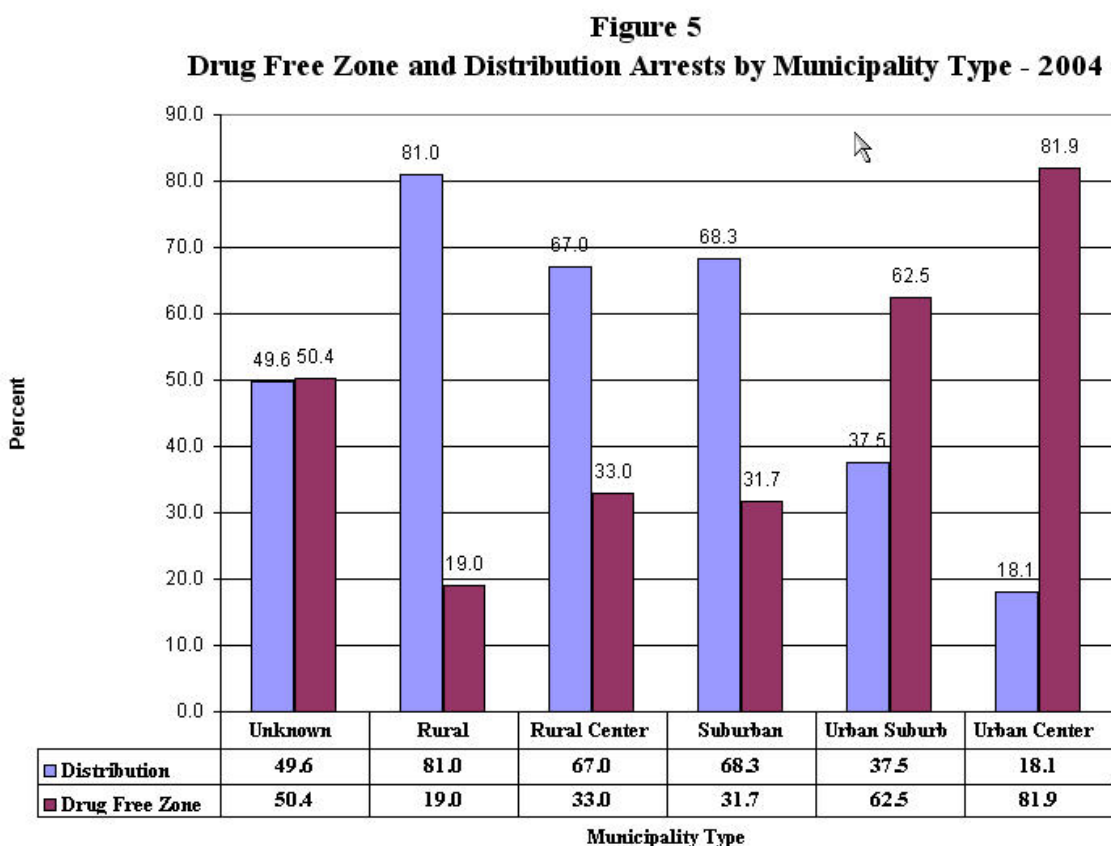


Figure 4
Township of Mansfield, Burlington County
Current Drug Free School and Public Property Zones



This rural/suburban/urban difference in drug free zone distribution and density results in a positive relationship between degree of urbanization and likelihood that a drug offense will occur within a drug free zone - as degree of urbanization increases, the likelihood that a drug offense will transpire in a drug free zone increases. This relationship is illustrated by an analysis of drug distribution arrests made in 2004 using data extracted from the State Police's Computerized Criminal History (CCH) database. Any incident that involved a school zone, drug free park or distribution charge was examined.¹⁷ Multiple charges within the same incident were only counted once. If an incident involved both a drug free zone and a non-drug free zone distribution charge, it was classified as a drug free zone incident. Information pertaining to the location of the crime was obtained and the municipality was then collapsed into one of the five categories describing degree of urbanization (urban center, urban suburban, suburban, rural and rural center) as defined by the State Police in the annual publication Crime in New Jersey.¹⁸

The 2004 CCH drug distribution arrest data clearly show that as the degree of urbanization in a municipality increases, the likelihood that a drug distribution arrest will be made within a drug free zone also increases. Figure 5 outlines the 2004 CCH drug distribution arrests by municipality type and by



whether they occurred in a drug free zone or outside of a drug free zone. As the data illustrate, fewer than 2 out of every ten (19.0%) drug distribution arrests in rural municipalities occurred within a statutorily proscribed drug free zone. Conversely, more than 8 out of every ten (81.9%) drug distribution arrests in urban centers occurred within a drug free zone.

Owing to New Jersey's demographic characteristics, the increasing likelihood that a drug distribution offense will occur within a drug free zone in urban areas has a disproportionate effect on minorities, who comprise greater proportions of urban populations than rural and suburban populations. As illustrated in Table 1, according to the United States Census Bureau's 2000 Census Report, the racial makeup of the state is 66.0% White Non-Hispanic, 13.0% Black Non-Hispanic, 13.3% Hispanic, and 7.7% Other Non-Hispanic. There are, however, significant differences between cities and suburban and rural areas in the racial composition of residents. In rural areas, for example, 87.6% of residents are White Non-Hispanics but in urban centers, only 27.2% of residents are White Non-Hispanics. Conversely, while 65.7% of urban center residents are Black Non-Hispanic or Hispanic, only 9.1% of rural area residents are Black Non-Hispanic or Hispanic. Thus, all things being equal, minorities, who comprise greater proportions of urban area populations, have greater probabilities of becoming ensnared in a drug free zone statute by virtue of the expanded coverage of drug free zones in urban areas.

Table 1
Racial and Ethnic Breakdown by Municipality Type
2000 Census Data

Municipality Type	Race								
	White Non Hispanic		Black Non Hispanic		Hispanic		Other Non Hispanic		Total
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number
Rural	621,225	87.6	37,962	5.4	26,343	3.7	23,245	3.3	708,775
Rural Center	181,937	79.8	21,057	9.2	17,865	7.8	7,215	3.2	228,074
Suburban	2,955,173	80.0	262,311	7.1	178,625	4.8	298,546	8.1	3,694,655
Urban Suburb	1,324,656	65.0	216,844	10.6	306,323	15.0	189,454	9.3	2,037,277
Urban Center	474,218	27.2	557,997	32.0	588,035	33.7	125,319	7.2	1,745,569
Statewide	5,557,209	66.0	1,096,171	13.0	1,117,191	13.3	643,779	7.7	8,414,350



The disproportionate impact of drug free zone statutes on minorities is illustrated by the racial breakdown of those arrested for N.J.S.A. 2C:35-7 (school zone) and N.J.S.A. 2C:35-7.1 (drug free park) offenses in 2004 by municipality type. Table 2 contains that racial breakdown of arrestees by municipality type using 2004 CCH arrest data. As these data indicate, the proportion of drug free zone arrestees who are minority increases as the degree of urbanization of the municipality increases. For example, less than one-third (32.4%) of those arrested in 2004 for a drug free zone offense in a rural municipality were Black. In urban centers, however, over three-quarters (76.7%) of those arrested for a drug free zone offense were Black.

Table 2
Racial Composition of Drug Free Zone Arrests
by Municipality Type
2004

Municipality Type	Race						Total
	White		Black		Other		
	Number	Percent	Number	Percent	Number	Percent	
Rural	46	64.8	23	32.4	2	2.8	71
Rural Center	44	37.9	72	62.1	0	0.0	116
Suburban	458	52.9	378	43.6	30	3.5	866
Urban Suburb	407	34.4	709	59.9	67	5.7	1,183
Urban Center	1,574	16.2	7,447	76.7	689	7.1	9,710
Unknown	128	20.6	461	74.2	32	5.2	621
Total	2,657	21.1	9,090	72.3	820	6.5	12,567

The racial composition of those convicted of drug free zone offenses mirrors that of those arrested for that offense.¹⁹ Table 3 contains CCH conviction data for drug free zone offense convictions that transpired in 2004. In urban centers nearly three out of every four (74.4%) of those convicted of a drug free zone charge were Black and only about one out of every six (16.5%) were White. A slightly different picture emerges from suburban areas, where just over one-third (36.2%) of the defendants convicted of a drug free zone charge were White. It should be noted, however, that drug free zone convictions in suburban areas constitute only 4.8% of the total number of drug free zone convictions in the state.



Table 3
Racial Composition of Drug Free Zone Convictions
by Municipality Type
2004

Municipality Type	Race						Total
	White		Black		Other		
	Number	Percent	Number	Percent	Number	Percent	
Rural	7	70.0	3	30.0	0	0.0	10
Rural Center	11	25.0	31	70.5	2	4.5	44
Suburban	67	36.2	112	60.5	6	3.2	185
Urban Suburb	101	38.8	135	51.9	24	9.2	260
Urban Center	519	16.5	2,344	74.4	289	9.2	3,152
Unknown	29	15.1	155	80.7	8	4.2	192
Total	734	19.1	2,780	72.3	329	8.6	3,843

The cumulative effect of disproportionate minority arrest and conviction rates for drug free zone offenses is found in incarceration statistics. Table 4 provides the racial composition for state prison residents on May 10, 2005 grouped by the most serious offense type for which they were incarcerated. These data reveal that of all the inmates imprisoned with a drug free zone charge as the most serious offense, virtually all (96%) are minorities (79% Black and 17% Hispanic). In comparison, three-quarters (75%) of the inmates incarcerated for all other offenses are minorities (58% Black and 17% Hispanic).

Table 4
State Prison Residents with Drug Offenses versus Other Offenses
May 10, 2005

Race/Ethnicity	Most Serious Offense			
	Drug Free Zone	Distribution	All Drugs	All Other Offenses
Black	79%	69%	73%	58%
Hispanic	17%	19%	17%	17%
White	4%	12%	10%	25%



In summary, the Commission's analysis confirms beyond doubt that the density of schools, parks, public housing, museums, and libraries in urban areas results in significantly greater percentages of cities than suburban and rural municipalities being encompassed in statutorily defined drug free zones. The Commission's mapping of drug free zones in three of New Jersey's largest cities (Newark, Jersey City and Camden) illustrates the extent to which overlapping drug free zones in these cities create large, uninterrupted areas that fall within drug free zone provisions. As the degree of urbanization of a municipality increases, the probability that drug distribution offenses will be committed in a statutorily defined drug free zone also increases. The fact that as degree of urbanization increases the proportion of a municipal population that is minority also increases means that the proportion of those arrested and convicted of drug free zone offenses who are minority increases. The end result of this cumulative "urban effect" of the drug free zone laws is that nearly every offender (96%) convicted and incarcerated for drug free zone offenses in New Jersey is either Black or Hispanic.

C. THE CURRENT DRUG FREE ZONE LAWS DO NOT PROTECT SCHOOLS AND OTHER DESIGNATED PROPERTY

Not only do the enormous and overlapping zones account for the "urban effect" discussed above, but the Commission is firmly convinced based on its review of pertinent data that the size of the zones directly subverts the policy objectives of the laws for several reasons. Stated simply, the drug free zone provisions, as presently written, are intrinsically incapable of effectuating their stated purpose of shielding schools and other property from drug-dealing and related activity for the following reasons.

First, it is sufficiently difficult to ascertain where the zones begin and where they end when they are easily demarcated, as they tend to be in suburban neighborhoods. But in inner cities, the contiguity and size of the zones renders any sort of intelligible demarcation impossible. As noted, the law nonetheless places the burden of knowing where the zones are squarely on the shoulders of defendants but does not require that signage be posted to delineate the enormous boundaries that extend far beyond the property boundaries of those facilities subject to enhanced protection.

In this vein, contrast the approach embodied in the school zone and park zone laws with another mechanism relied on throughout the nation to forestall harm to the inhabitants of a protected area through the imposition of enhanced sanctions – reduced-speed highway work zones. Highway workers who routinely work in proximity to construction equipment and motor vehicle traffic while in work zones are exposed to the significant risk of death and serious injury. To address the significant role that speeding plays in work zone accidents, many jurisdictions have increased fines for motorists exceeding work zone speed limits as well as increased penalties for motorists convicted of driving through the work zone under the influence of drugs or alcohol. As noted in a recent national study,²⁰ the efficacy of using increased sanctions as a deterrent in this context is dependant upon motorists having advanced warning of upcoming work zones by means of adequate and highly visible signage, as well as the presence of law enforcement at the beginning



of the zones. This same study further emphasizes that reduced speed zones should be avoided as much as practical and that normal speed limits should be restored when work is no longer in progress, when workers are no longer on the job site, or when hazards have been removed or protected. These observations underscore the common-sense notion that with respect to limited geographic areas, deterrence of criminal or otherwise inappropriate conduct through the imposition of enhanced punishment can only be accomplished if those to whom the laws are directed, be they drug-dealers or speeding motorists, are fully aware of the proscribed areas and, preferably, the enhanced sanctions applicable for violating the applicable laws.

Second, if the purpose of the laws is, as the Commission believes it to be, the establishment of secure drug free perimeters around schools and other designated public areas, the ubiquity of zones in urban areas renders that goal all but impossible. The point to be emphasized is that the size of the zones actually dilutes the “special” protection the laws are supposed to offer, undermining its practical ability to create incentives to drug dealers to relocate their operations away from schools, parks and other protected property. By analogy, envision the entire length of the New Jersey Turnpike as one enormous reduced-speed highway work zone. It is reasonable to assume that compliance in such circumstances will be non-existent. Applying this logic to the drug free zone laws, the solution is self-evident: reduce the surface area of the zones to establish smaller, more discrete and therefore more recognizable areas around those facilities entitled to greater protection.

To empirically assess the veracity of this thesis, the Commission obtained, from the City of Newark Police Department, location data for all drug distribution arrests that were made in the City of Newark for the period January 1, 2005 through September 6, 2005. There were 3,341 drug distribution arrests made in the City of Newark during this time period. Using the geocoded drug free zone map for the City of Newark that the Commission created using ArcGIS (version 9.1) software, the Commission was able to geocode locations for 2,821 (84%) of the arrests. Location could not be definitely determined or geocoded for 520 (16%) of the drug distribution arrests. The Commission was then able to determine, for the 2,821 arrests whose locations were geocoded, the proximity to a school.

If the school zone were effective in displacing drug distribution offenses to areas outside of proscribed school zones, given the large percentage of the City of Newark encompassed in a drug free zone, we would expect to see a large number of arrests made immediately beyond the perimeters of school zones. In fact, there is no evidence, based on these arrest data, that drug dealers are aware of school zones and chose to conduct their illicit drug transactions outside these zones. Table 5 displays the proximity from a school of the 2,821 City of Newark drug distribution arrests that the Commission was able to pinpoint the location of. With the exception of fewer arrests being made within 100 feet of schools, drug distribution arrests are fairly evenly distributed throughout school zones. Most importantly, however, is the fact that the arrest data indicate that there was not a significant increase in arrests immediately outside of school zones. As the data in Table 5 indicate, fewer than nine percent of all drug distribution arrests occurred immediately beyond a 1000’ school zone perimeter to up to 1200’ distant from a school.



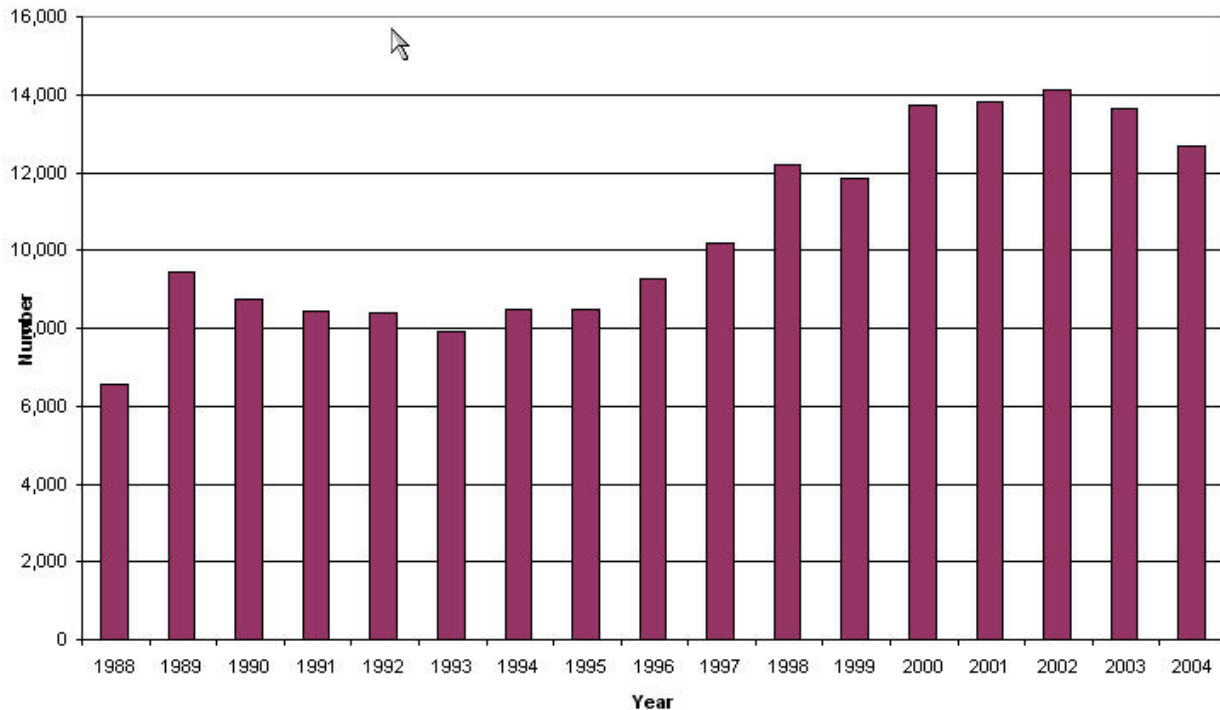
Table 5
Proximity of Drug Distribution Arrests to Schools
City of Newark
January 1, 2005 - September 6, 2005

Distance	Count	Percentage	Accumulated Percentage
Inside 100 Ft	110	3.90%	3.90%
100 - 200 Ft	164	5.81%	9.71%
200 - 300 Ft	216	7.66%	17.37%
300 - 400 Ft	225	7.98%	25.35%
400 - 500 Ft	275	9.75%	35.09%
500 - 600 Ft	294	10.42%	45.52%
600 - 700 Ft	245	8.68%	54.20%
700 - 800 Ft	266	9.43%	63.63%
800 - 900 Ft	170	6.03%	69.66%
900 - 1000 Ft	135	4.79%	74.44%
1000 - 1200 Ft	252	8.93%	83.37%
Outside 1200 Ft	469	16.63%	100.00%
Mapped Location (Score > 60)	2821	100%	
Undeterminable Location	520		

Furthermore, if the enhanced penalties associated with the school zone offense were effective in deterring drug dealers from plying their illicit trade within 1000' of a school, we would also expect that enactment of the statute would result in a reduction in such offenses over time. In fact, there is no evidence that the statute has had such a deterrent effect. The school zone provision became effective on April 23, 1987. Table 6 illustrates the number of drug free zone arrests that have been made each year from 1988 through 2004.²¹ While there have been increases and decreases in the number of drug free zone arrests from year to year, the general trend is strongly upward. In 2004, for example, there were 12,658 arrests for drug free zone offenses, 6,092 more than the 6,566 school zone arrests made in 1988, the first full year following enactment of the statute.





Figure 6
Number of Drug Free Zone Arrests





The above findings are consistent with an earlier assessment of the impact of school zone laws in Massachusetts. In 2001, a report entitled “An Empirical Study of the School Zone Law in Three Cities in Massachusetts” was published through the Boston University School of Public Health. The principal author of the report, William Brownsberger, a lecturer at Harvard Medical School, was well-suited to undertake this study, having previously served as a Massachusetts Assistant Attorney General in the Narcotics and Special Investigations Units, as well having had devoted ten years studying anti-drug law enforcement in Massachusetts. The school zone study focused on 443 drug dealing incidents in three cities in Massachusetts – New Bedford, Fall River and Springfield – with a particular emphasis on the role of school zone laws in each municipality.

The Brownsberger study illustrated in many respects how the geographic scope of the Massachusetts school zone law was inconsistent with its intent. In pertinent part, the report concluded with the following observations that are equally relevant to New Jersey’s drug free zone experience:

-  the school zone boundary distance of 1,000 feet was selected with no empirical basis to indicate how it would actually operate in older, larger cities;
-  despite the law, drug dealing was as prevalent inside school zones as it was outside of them



-  a statistically insignificant number of drug transactions involved the sale of drugs to minors; and
-  the intersecting zones made it impossible for drug dealers and children to distinguish the school zones from the rest of the city.

Notably, Brownsberger did not, despite his findings, advocate the repeal of the Massachusetts law. On the contrary, he asserted that the law’s effectiveness would be enhanced by “defining a small enough zone that it could be consistently recognized – 100 to 250 feet around a school.”


III. RECOMMENDATIONS OF THE COMMISSION

The Commission likewise rejects any call to repeal the drug free zone laws. All children, whether in urban, rural, or suburban neighborhoods, are entitled to learn in an academic setting free from the parasitic exploitation of drug dealers, as well as exposure to the incidental effects of the drug trade. It follows that drug dealers who deliberately target educational facilities to prey upon children should indeed face enhanced punishment, including the prospect of state imprisonment. The Commission’s goal, therefore, is to illustrate and address the weaknesses of the statutes and to recommend changes to better effectuate the intent of the provision in a scrupulously fair manner.

Against this backdrop, the Commission proposes the amendment of the drug free zone laws in order to tailor their geographic scope and sentencing provisions more precisely to the harm they were intended to address, specifically, the sale and distribution of drugs to children within and in close proximity to educational facilities and other designated property. Based on its review of the foregoing data, it is the Commission’s opinion that the most significant deficiency of the drug free zone laws is their geographic overbreadth. It is this shared attribute of the laws that clearly accounts for the disproportionate percentage of urban minority drug dealers who are arrested for, and convicted of, these crimes.

A. CONTRACTING THE SCOPE OF THE ZONES

With respect to the geographic component, substantially contracting the surface area of the school and park zones by reducing the distance from the outer boundaries of designated property that defines the perimeter would have several salutary effects, including:

-  ensuring that the zones themselves are clearly recognizable by potential law breakers by approximating a line-of-sight approach;



- ⚖ minimizing arrests, charges, and convictions for transactions that clearly fall outside of the law's original intent;
- ⚖ reducing, if not eliminating, the overlap of multiple zones that directly contributes to the previously discussed "urban effect," thereby
- ⚖ substantially mitigating rural-suburban-urban sentencing disparity, along with its unintended consequence of disproportionately higher numbers of poor people and minorities in state prison.

Although there is much to recommend confining application of any school zone law or variant exclusively to school property, after much deliberation the Commission determined that a geographic buffer which extends a certain distance beyond the actual boundary of school property is necessary to dissuade drug dealers from congregating on the periphery of educational facilities. The goal was to select a radius that would sufficiently break apart the massive zones derived from the overlapping 1000' and 500' zones. This led the Commission to create geomaps depicting alternatively-sized zones starting at 100'. Appendix B contains geomaps of Newark, Jersey City and Camden that depict drug free zones with 100', 200', 300', 400' and 500' perimeters.

In addition, Commission staff conducted a comprehensive photographic study of the Ulysses S. Grant Elementary School located on North Clinton Avenue in Trenton, New Jersey. Specifically, a Commission staff member was photographed standing at various distances from the school, thereby providing the Commission with a first-person, ground-level perspective of the various zones in relation to the elementary school. Appendix C contains the photographs taken as part of this study.

Based on its review of the geomaps depicting various zone perimeters and the photographic survey, the Commission unanimously agreed that a uniform perimeter of 200' for all property currently designated by the Legislature as deserving of enhanced protection was appropriate. The Commission forthrightly acknowledges that its determination was not informed by a metaphysically precise "metric" since no such metric exists. That being said, the Commission placed significant weight on the preponderance of discrete and non-overlapping zones reflected in the geomaps depicting a 200' alternative zone size. Figure 7 depicts the drug free zones in the City of Newark with 200' perimeters. As this map depicts, the zones still encompass a large proportion of the City's surface area (21.5% of the entire City; 32.0% of the City exclusive of the airport area) yet the drug free zones are more discrete and fewer zones overlap. Furthermore, it was readily apparent from the photographs that, within a 200' radius, it would be extremely unlikely that a defendant would not be aware of his or her close proximity to a school.

In addition, the Commission assumes that the population of New Jersey's urban areas will increase substantially over time. We will therefore continue to update our geomaps of Newark,

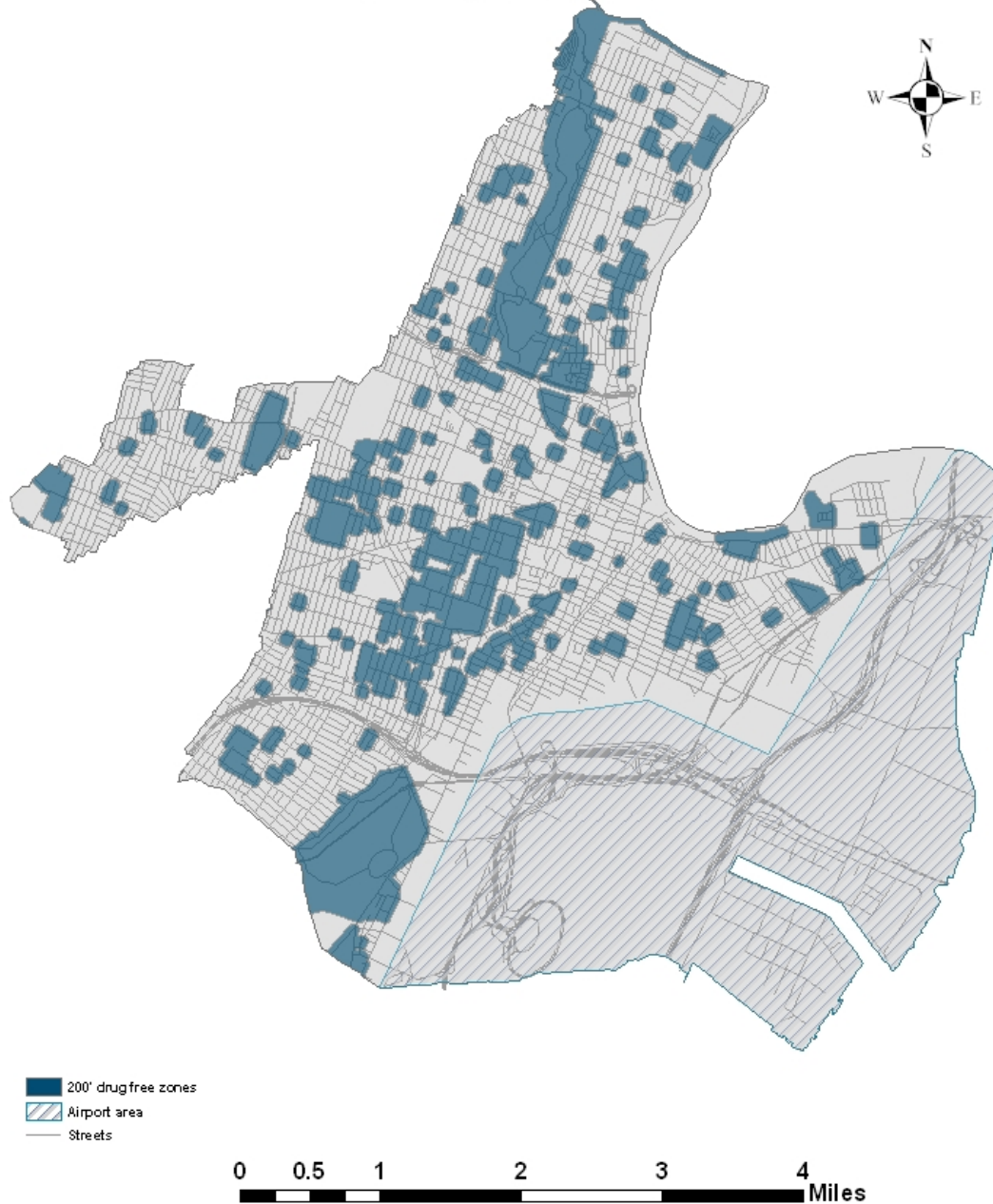


Jersey City, and Camden on a periodic basis, and collect sentencing data for the purpose of monitoring the impact of existing and new legislation and relate our findings to the Legislature.

Finally, the Commission rejects as impractical any limiting of the school zone law's application to only those times when children are in school. Both curricular and extracurricular activities take place prior to and after regular school hours. To impose upon local law enforcement the obligation to ascertain when such activities occur at different facilities on different days is simply unworkable from an enforcement perspective. After substantial debate, the Commission further rejects confining the law's reach to conduct that occurs only on school property.



Figure 7
City of Newark
Drug Free School and Public Property Zones
with 200' Perimeter



B. UPGRADING THE DEGREE OF PUNISHMENT WHILE ELIMINATING THE MANDATORY PERIOD OF PAROLE INELIGIBILITY

The Commission recommends the same range of punishment for all zone offenses by upgrading the school zone crime from a third-degree to a second-degree crime and eliminating the mandatory period of parole ineligibility authorized under the current school zone statute. Punishment would thus be consonant with that authorized for distributing drugs near or on public property which can result in a term of imprisonment anywhere from five to 10 years depending on the circumstances of the offense and the character of the defendant. The Commission notes in this regard that a defendant convicted of the present second-degree public park zone offense cannot be subject to mandatory enhanced punishment as a persistent drug offender pursuant to N.J.S.A. 2C:43-6f for that conviction. Because the new second-degree zone law will be subject to a significantly increased sentence range over the current third-degree school zone law, the Commission has determined that it is not necessary for the new zone law to be subject to the extended term provisions of N.J.S.A. 2C:43-6f. Thus, a conviction for the new zone offense will not be a predicate for a future mandatory extended term of imprisonment under N.J.S.A. 2C:43-6f. Other current features of N.J.S.A. 2C:35-7 and N.J.S.A. 2C:35-7.1, including affirmative defenses, and provisions for the sale of less than one ounce of marijuana, are incorporated largely without modification in the proposed legislation.²²

The Commission collectively agrees that defendants who know or should reasonably know that they are engaged in illicit drug activity on or very near school property should be subjected to increased punishment, including the certainty of state imprisonment. In this regard, the Commission does not advocate a “softening” of the school zone provision. Nonetheless, as discussed extensively above, the current drug free zone laws cast far too broad a net to facilitate their goal of protecting certain property. The Commission’s recommendations for amending the school zone and park zone statutes are designed to both ameliorate the “urban effect” of the current statutes that lead to a disproportionate negative impact on minority city residents and to increase the likelihood that the force of criminal law and punishment will contribute to actually ridding protected zones of drug dealers and the associated ills that the illicit drug trade brings with it. Specifically, the Commission believes that by creating smaller, more readily identifiable zones while concomitantly increasing the severity of the punishment for the offense of distributing drugs within a prohibited zone, these policy goals will be more attainable. The geocoded maps presented in this report for Newark, Jersey City and Camden depicting current and alternatively sized zones illustrate the impact of decreasing the radius of drug free zones on reducing zone overlap and on creating discrete, readily identifiable zones.

As noted previously, the school zone law requires the imposition of a mandatory three-year period of parole ineligibility. From a historical perspective, prior to the enactment of Comprehensive Drug Reform Act in 1987, New Jersey’s Code of Criminal Justice authorized mandatory periods of parole ineligibility for only three extremely serious first-degree crimes – murder, kidnapping, and the sexual assault of a child – as well as for certain enumerated crimes of violence committed with a firearm. It was not until the advent of the Act in 1987 that



mandatory sentencing provisions, especially for non-violent offenses, became prevalent in New Jersey's Criminal Code.

The Commission does not consider this report an appropriate platform to articulate its collective judgment on the wisdom and propriety of mandatory sentencing provisions generally. Nonetheless, despite the diverse perspectives and experiences of its members, the Commission is in full agreement that the mandatory sentencing provision of the school zone law does, in fact, foster unjustly harsh punishment for many offenders by entirely divesting trial judges of their traditional authority to fashion just sentences premised on individualized considerations of the offender and the circumstances of the offense. This is especially true when compared to punishments authorized for other crimes in the Code of Criminal Justice and where enhanced culpability derives exclusively from a defendant's location. It is sufficient to note in this regard that the school zone provision stands virtually alone in the New Jersey Code of Criminal Justice as a third-degree non-violent crime that incongruously mandates the imposition of a term of parole ineligibility.

Furthermore, it is critical to keep in mind that eliminating the mandatory parole ineligibility provision of the school zone law will in no way unsettle the authority of sentencing judges to impose discretionary periods of parole ineligibility and extended terms of imprisonment when clearly delineated aggravating circumstances relevant to the offense or offender are found in the record. Under the Commission's proposal, judges will simply regain the latitude they traditionally possessed to impose a custodial sentence that more precisely reflects a defendant's culpability and prospects for rehabilitation.

In addition, the elimination of the mandatory period of parole ineligibility will obviate, in a substantial number of drug prosecutions, the application of prosecutorial guidelines promulgated by the Attorney General. Commonly referred to as the "Brimage Guidelines" after the 1998 New Jersey Supreme Court decision that compelled their creation²³, the Guidelines were the culmination of litigation over the authority conferred exclusively on prosecutors by the Comprehensive Drug Reform Act to waive mandatory minimum and extended terms of imprisonment in drug cases.²⁴ Notably, the Brimage Guidelines were considerably revised in 2004 in response to ongoing concerns that the existing version not only failed to sufficiently address – but, in fact, directly contributed to – the disproportionate impact of the school zone law on low-level offenders, many of whom were minority residents of New Jersey's inner cities.²⁵

Finally, the potential impact of the Commission's recommendation to increase the degree of the underlying offense from a third to a second degree crime can be estimated by determining the incarcerative terms served by offenders convicted of the offense most like the new second degree school zone offense the Commission is recommending – the second degree offense of distributing drugs within 500 feet of a public park. Table 6 lists the mean and median number of days served for offenders paroled or maxed out in 2004 whose only commitment offense was a third degree school zone offense, a second or third degree drug free park offense, or a second or third degree drug distribution offense outside of a drug free zone of any type. As the data



indicate, the mean number of prison days offenders convicted of a second degree drug free park offense served (944) was 128 days longer than offenders committed for a third degree school zone offense and 30 days longer than offenders sentenced for a second degree drug distribution offense outside a drug free zone. Analogously, the median number of days served by offenders convicted of a second degree drug free park offense (973) was also significantly greater than the median number of days served by offenders convicted of either a third degree school zone offense (731 days) or a second degree drug distribution offense committed outside a drug free zone (772 days). Thus, the Commission's recommended changes would result in a significant increase in the length of imprisonment terms served by offenders convicted of a second degree school zone offense.

Table 6
Time Served in Days by Offense and Degree

Offense	Degree	Number	Mean	Median
School Zone	3	2,155	816	731
Drug Free Park	2	195	944	973
	3	49	842	929
Distribution	2	281	914	772
	3	736	703	653

C. ISSUES OF COST

Finally, the school zone law not only promotes disproportionate sentencing, but does so at enormous cost to the state without any appreciable contribution to public safety. New Jersey spends \$279 million a year in direct costs to maintain its drug prisoner population, an amount greater than what one third of the other states spend on their entire corrections system. While it costs \$31,636 to incarcerate a person for one year, it costs only \$19,800 to send him or her to drug court for a year, including six months of residential treatment. Many national studies have revealed that most drug and even non-drug crimes are committed by persons who are under the influence of illicit drugs or alcohol. Of equal significance, empirical studies confirm that drug treatment can be effective for offenders, who are compelled to participate in the treatment process as a condition of a sentence. It is thus critically important to utilize the criminal justice system constructively to induce substance-abusing and addicted offenders to accept help and to enter and stay in treatment for as long as necessary to deal effectively with their drug problem.

D. CONCLUSION

Doubtless, there will be those who argue that the current school and park zone laws must be retained as effective enforcement mechanisms regardless of whether they further their intended purpose of protecting school children and others from the onslaught of drug dealers. Arguments of expediency must, however, be assessed against a stark statistical backdrop: New Jersey presently suffers the regrettable and embarrassing distinction of having the highest percentage of prisoners incarcerated for drug offenses in the country (36% compared to the national average of 20%). Moreover, the extraordinary rate at which New Jersey incarcerates drug offenders falls



disproportionately on minority communities, particularly the African-American community. According to the Administrative Office of the Courts, between 1987 (the year the Comprehensive Drug Reform Act was enacted) and 1999, the percentage increase in the state's drug admission rate for African-Americans was four times that for whites. In 2003, 73% of the total adult drug offenders in New Jersey state prisons were African-Americans. To be certain, there are many variables, apart from the drug free zone laws, that have and continue to contribute to this stark racial disparity. The time has arrived, however, for New Jersey to forthrightly acknowledge the role that these provisions have played in this development and to address the problem accordingly.

The most rudimentary notions of justice demand not only that our laws are facially neutral as written but that, as implemented and enforced, they are fair, rational, and proportionate. Moreover, such carefully crafted and considered laws enhance respect for both law and order and those charged with their administration. Because New Jersey's present school zone law is incompatible with these principles, the New Jersey Commission to Review Criminal Sentencing strongly urges the Legislature to heed its call for change and enact the Commission's attached proposed legislation.



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Endnotes

- ¹ N.J.S.A. 2C:35-1.1b
- ² N.J.S.A. 2C:35-1.1c
- ³ State v. Ivory, 124 N.J. 582, 586-87 (1991).
- ⁴ N.J.S.A. 2C:35-1.1c
- ⁵ N.J.S.A. 2C:35-5 makes it unlawful for any person to purposely or knowingly manufacture, distribute, possess with intent to distribute, or dispense a controlled dangerous substance. The penalties set forth in the provision reflect a precise classification by the type of drug and amount. N.J.S.A. 2C:35-10 criminalizes the possession and use of controlled dangerous substances, as well as being under the influence or failure to make lawful disposition of illicit drugs.
- ⁶ N.J.S.A. 2C:35-7 (“It shall be no defense to a prosecution for a violation of this section that the actor was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property”).
- ⁷ N.J.S.A. 2C:35-7 (“Nor shall it be a defense to a prosecution under this section, or under other provision of this title, that no juveniles were present on the school property at the time of the offense or that the school was not in session”).
- ⁸ State v. Ogar, 229 N.J. Super. 459, 460-61 (App. Div. 1989).
- ⁹ The Commission notes that under current prosecutorial guidelines, a defendant who enters a plea of guilty may not in fact receive the full 3-year period of parole ineligibility authorized by the statute.
- ¹⁰ Tracey A. Bateman, Validity, Construction, and Application of State Statutes Prohibiting Sale or Possession of Controlled Substances Within Specified Distance of Schools, 27 A.L.R.5th 59 1995-2005.
- ¹¹ 21 U.S.C. sec. 845a
- ¹² State v. Ogar, 229 N.J. Super. 459 (App. Div. 1989); State v. Brown, 227 N.J. Super. 429 (Law. Div. 1988); State v. Morales, 224 N.J. Super. 72, 77 (Law. Div. 1987).
- ¹³ Morissette v. United States, 342 U.S. 246 (1952).
- ¹⁴ State v. Rodriguez, 225 N.J. Super. 466 (Law. Div. 1987).
- ¹⁵ Tracey A. Batemen, Validity, Construction, and Application of State Statutes Prohibiting Sale or Possession of Controlled Substances Within Specified Distance of Schools, 27 A.L.R.5th 59 1995-2005.
- ¹⁶ A comparison of the list of schools in the City of Newark provided by the City of Newark Department of Engineering and the list contained in the ArcGIS 9 2005 data file indicated that the ArcGIS 9 2005 data file was not complete. We can only speculate that the ArcGIS 9 2005



data file lists of schools for Jersey City, Camden City and neighboring municipalities were also incomplete. If true, the Commission's geomaps actually underrepresented, albeit not significantly, the true nature of drug free zones in these two cities.

¹⁷ For purposes of analysis, the distribution category consists of the following statutes: 2C:35-3 (Leader of a Narcotics Trafficking Network), 2C:35-4 (Drug Production Facility), 2C:35-5 (Distribution) and 2C:35-6 (Using a Juvenile in a Drug-Distribution Scheme).

¹⁸ The municipal groupings used by the New Jersey Police are published in the annual "Crime in New Jersey" Uniform Crime Reports. Definitions for the municipal groupings are as follows: "Urban Center - densely populated with extensive development; Urban Suburban - near an urban center but not as extremely developed and more residential areas; Suburban - predominately single family residential, within a short distance of an urban area; Rural - scattered small communities and isolated single family dwellings; and Rural Center - high density core area with surrounding rural municipalities." The municipality type is classified as unknown if the county, and not the specific municipality, is known.

¹⁹ Although the arrests and convictions are two cross-sectional extractions of data from the same time period, calendar year 2004, given the typical lag between arrest and conviction, the arrest and conviction data are not necessarily from the same cases.

²⁰ Stephanie G. Pratt, et al., Building Safer Highway Work Zones: Measures to Prevent Worker Injuries From Vehicles and Equipment, United States Department of Health and Human Services (April 2001).

²¹ N.J.S.A. 2C:35-7 (the "school zone law") was enacted in April, 1987. N.J.S.A. 2C:35-7.1 (the "park zone law") was enacted in January, 1998. Inclusion of these new drug free zones in 1998 is responsible, at least in part, for the increased levels of drug free zone arrests that began in that year.

²² After careful consideration, the Commission decided that the following provision of the school zone law, as well as its counterpart in the public park zone law, should be eliminated: "Notwithstanding the provisions of N.J.S. 2C:1-8 or any other provisions of the law, a conviction arising under this section shall not merge with a conviction for a violation of subsection a. of N.J.S. 2C:35-5 (manufacturing, distributing or dispensing) or N.J.S. 2C:35-6 (employing a juvenile in a drug distribution scheme).

²³ State v. Brimage, 151 N.J. 1 (1998).

²⁴ N.J.S.A. 2C:35-12.

²⁵ Peter C. Harvey, The New Brimage Guidelines - Achieving Fairness as Well as Uniformity Under the Comprehensive Drug Reform Act, New Jersey Lawyer, February 2005, p. 10 ("Perhaps most disturbing, because urban offenders are more likely to operate in a school zone than their suburban counterparts, a disproportionate percentage of minority citizens have been imprisoned under the Brimage guidelines, and the guidelines are also partly responsible for placing New Jersey in the unenviable position of having the highest proportion of convicted offenders convicted for drug offenses.").



Appendix A

The Commission's Proposed Legislation Creating Crime of N.J.S.A. 2C:35-7.2, Controlled Dangerous Substances Near or On School or Certain Public Property



State of New Jersey
Commission to Review Criminal Sentencing

Proposed Initiative

1 AN ACT supplementing Title 2C concerning criminal penalties for distributing, dispensing,
2 and possessing with intent to distribute controlled dangerous substances while on or near
3 school and certain public property, and on a school bus, and repealing N.J.S. 2C:35-7 and
4 2C:35-7.1.

5 <>.

6 BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

7 1. 2C:35-7.2 (New Section) Distributing, Dispensing or Possessing Controlled Dangerous
8 Substances in Designated Zones. a. Any person who violates subsection a. of N.J.S. 2C:35-5
9 by distributing, dispensing or possessing with intent to distribute a controlled dangerous
10 substance or controlled substance analog while on or within 200 feet of any school property
11 used for school purposes, or on or within 200 feet of real property comprising a public housing
12 facility or a public park or a public building, or on any school bus, is guilty of a crime of the
13 second degree. Where the violation involves less than one ounce of marijuana as set forth in
14 N.J.S. 2C:35-5b(12), or a violation of 2C:35-5b(14), the person is guilty of a crime of the third
15 degree.

16 b. It shall be no defense to a prosecution for a violation of this section that the actor was
17 unaware that the prohibited conduct took place while on or within 200 feet of school property,
18 or on or within 200 feet of a public housing facility or a public park or a public building. Nor
19 shall it be a defense to a prosecution under this section that no juveniles were present at the
20 time of the offense. Nor shall it be a defense, if the offense was on or within 200 feet of school
21 property, that the school was not in session.

22 c. (1) If the prohibited conduct occurred on or within 200 feet of school property, it is an
23 affirmative defense that the prohibited conduct took place entirely within a private residence,
24 that no person 17 years of age or younger was present in such private residence at any time
25 during the commission of the offense, and that the prohibited conduct did not involve
26 distributing, dispensing or possessing with the intent to distribute or dispense any controlled
27 dangerous substance or controlled substance analog for profit.

28 (2) If the prohibited conduct occurred on or within 200 feet of real property comprising a

1 public housing facility or a public park or a public building, it is an affirmative defense that
2 the prohibited conduct did not involve distributing, dispensing or possessing with the intent
3 to distribute or dispense any controlled dangerous substance or controlled substance analog
4 for profit, and that the prohibited conduct did not involve distribution to a person 17 years of
5 age or younger.

6 (3) The affirmative defenses established in sections c.(1) and (2) shall be proved by the
7 defendant by a preponderance of the evidence. Nothing herein shall be construed to establish
8 an affirmative defense with respect to a prosecution for an offense defined in any other section
9 of this chapter.

10 d. In a prosecution under this section, a map produced or reproduced by any municipal or
11 county engineer, or a true copy of such a map, for the purpose of depicting the location and
12 boundaries of the area on or within 200 feet of school property used for school purposes, or the
13 area on or within 200 feet of a public housing facility or a public park or a public building,
14 shall, upon proper authentication, be admissible and shall constitute prima facie evidence of
15 the location and boundaries of those areas, provided that the governing body of the
16 municipality or county has adopted a resolution or ordinance approving the map as an official
17 finding and record of the location and boundaries of the area or areas of such property. Any
18 map approved pursuant to this section may be changed from time to time by the governing
19 body of the municipality or county. The original of every map approved or revised pursuant
20 to this section, or a true copy thereof, shall be filed with the clerk of the municipality or
21 county, and shall be maintained as an official record of the municipality or county. A copy
22 shall also be filed with the Office of the Attorney General of New Jersey. Nothing in this
23 section shall be construed to preclude the prosecution from introducing or relying upon any
24 other evidence or testimony to establish any element of this offense; nor shall this section be
25 construed to preclude the use or admissibility of any map or diagram other than one which has
26 been approved by the governing body of a municipality or county, provided that the map or
27 diagram is otherwise admissible pursuant to the Rules of Evidence.

28 e. An extended term of imprisonment pursuant to subsection f. of N.J.S. 2C:43-6 shall not
29 apply to a conviction under this section. Nothing in this subsection shall be construed to
30 prevent imposition of an extended term of imprisonment pursuant to subsection f. of N.J.S.
31 2C:43-6 for a conviction under N.J.S. 2C:35-5.

1 f. As used in this section:

2 "Public housing facility" means any dwelling, complex of dwellings, accommodation,
3 building, structure or facility and real property of any nature appurtenant thereto and used
4 in connection therewith, which is owned by or leased to a local housing authority in accordance
5 with the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) for the
6 purpose of providing living accommodations to persons of low income.

7 "Public park" means a park, recreation facility or area or playground owned or controlled
8 by a State, county or local government unit.

9 "Public building" means any publicly owned or leased library or museum.

10 "School property" means any property owned by or leased to any elementary or secondary
11 school or school board used for school purposes.

12 2. X. Section 1 of P. L.1987, c. 101 (C.2C:35-7) and section 1 of
13 P.L.1997, c. 327 (C.2C:35-7.1) are repealed.

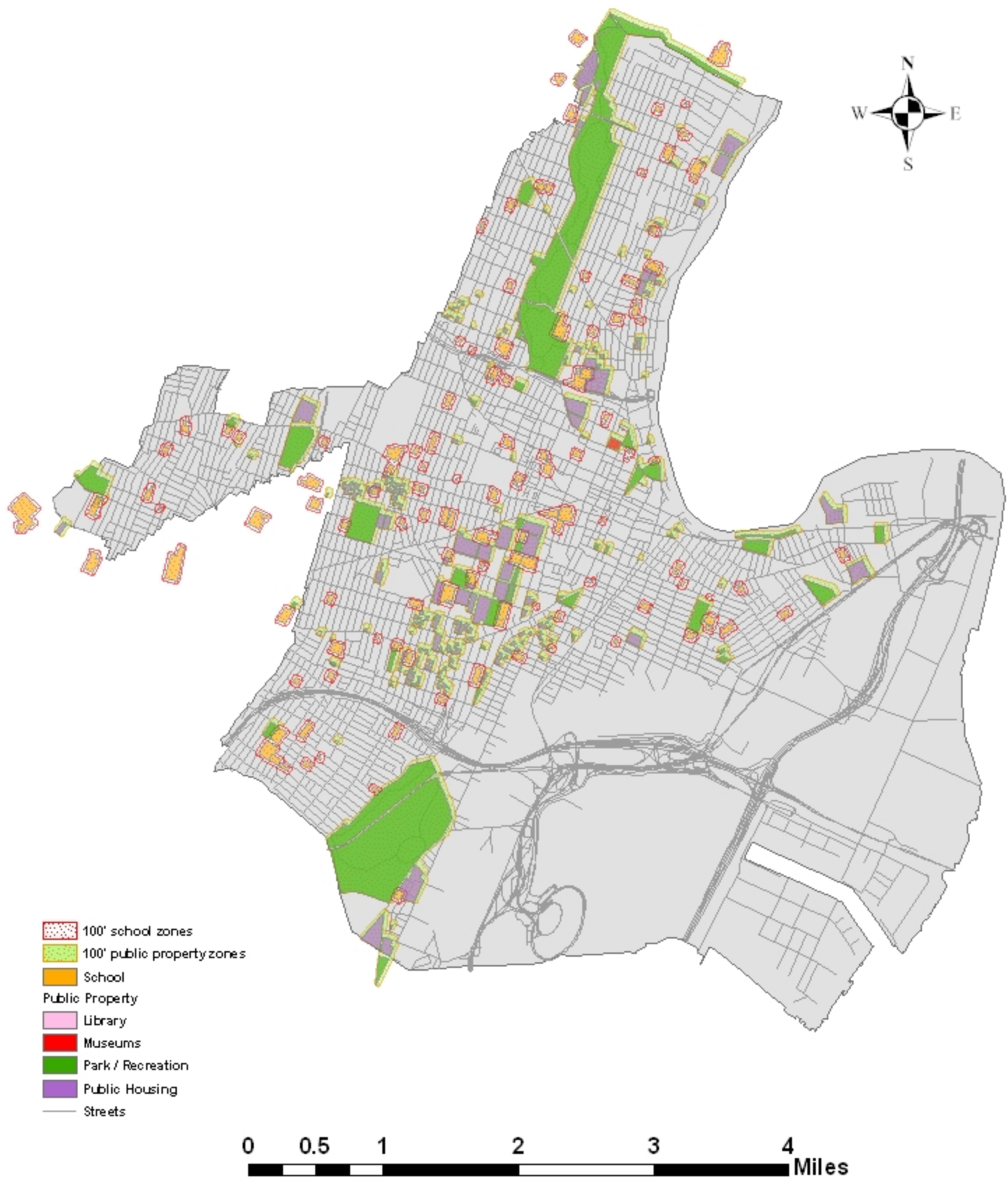
14 3. This act shall take effect 180 days after enactment<>.

15
16 STATEMENT

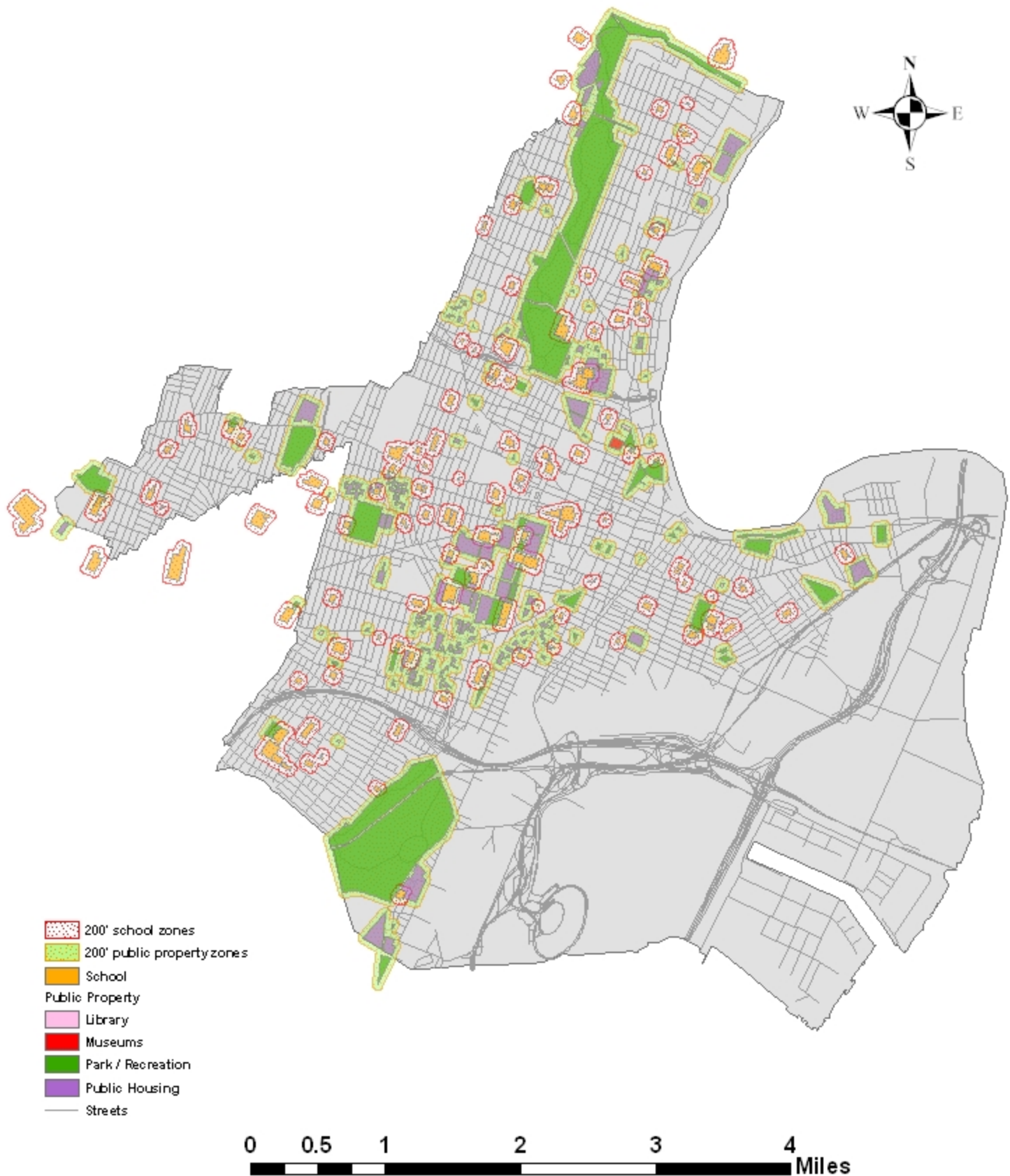
Appendix B

Maps of Newark, Jersey City and Camden Depicting Drug Free Zones with Perimeters of 100' to 500'

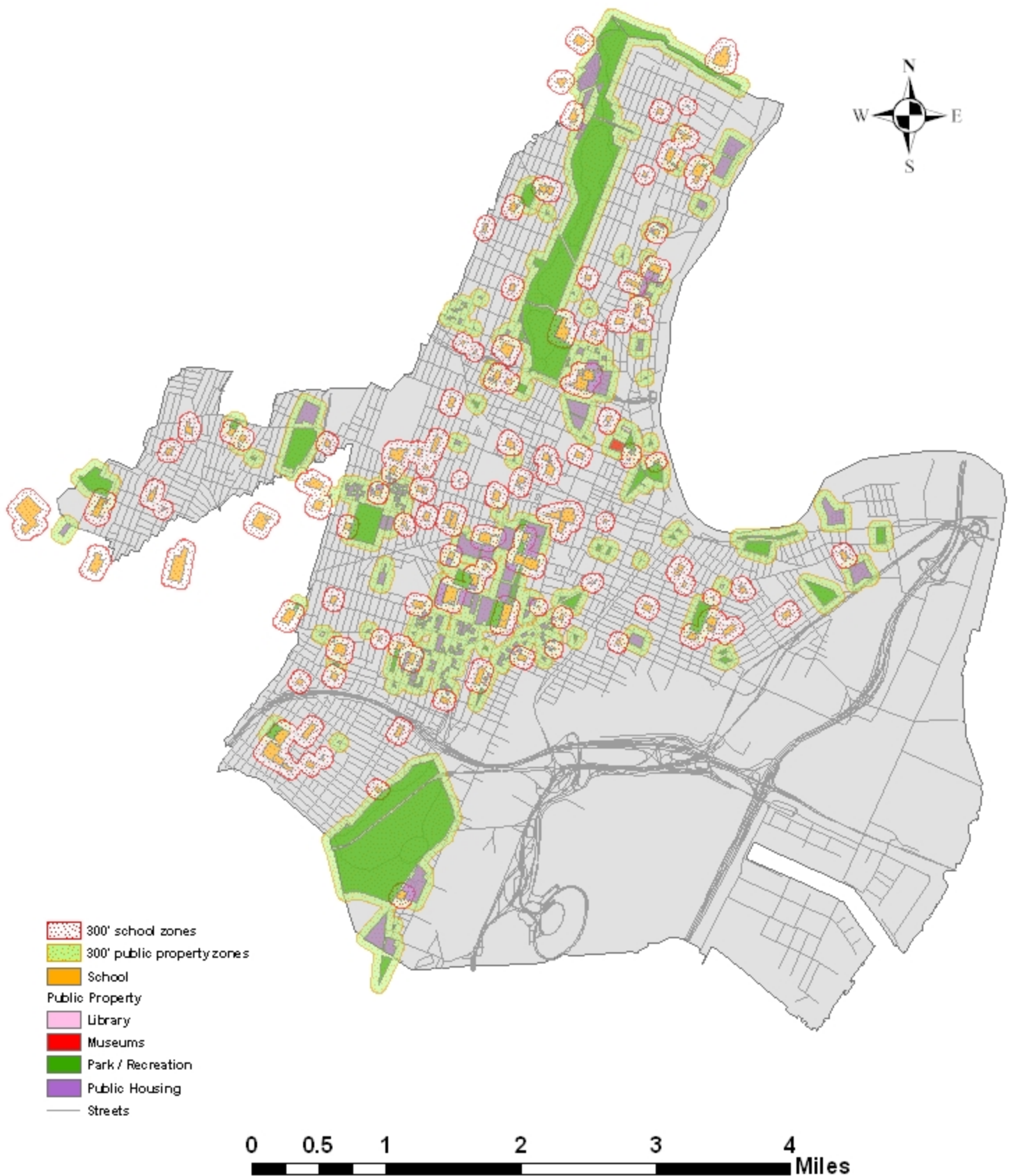
Map Depicting 100' Drug Free Zones Around Schools and Public Property in Newark, NJ



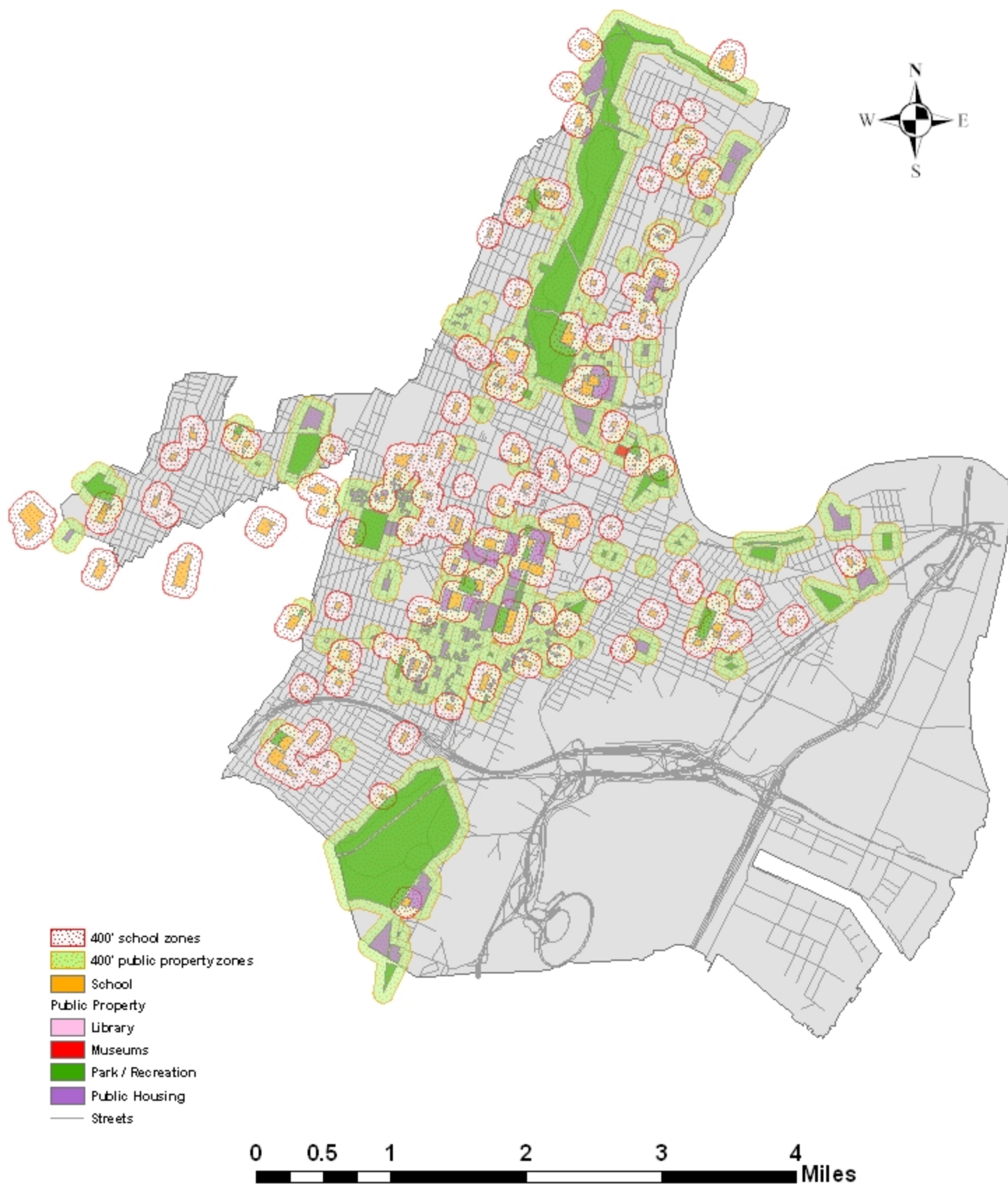
Map Depicting 200' Drug Free Zones Around Schools and Public Property in Newark, NJ



Map Depicting 300' Drug Free Zones Around Schools and Public Property in Newark, NJ



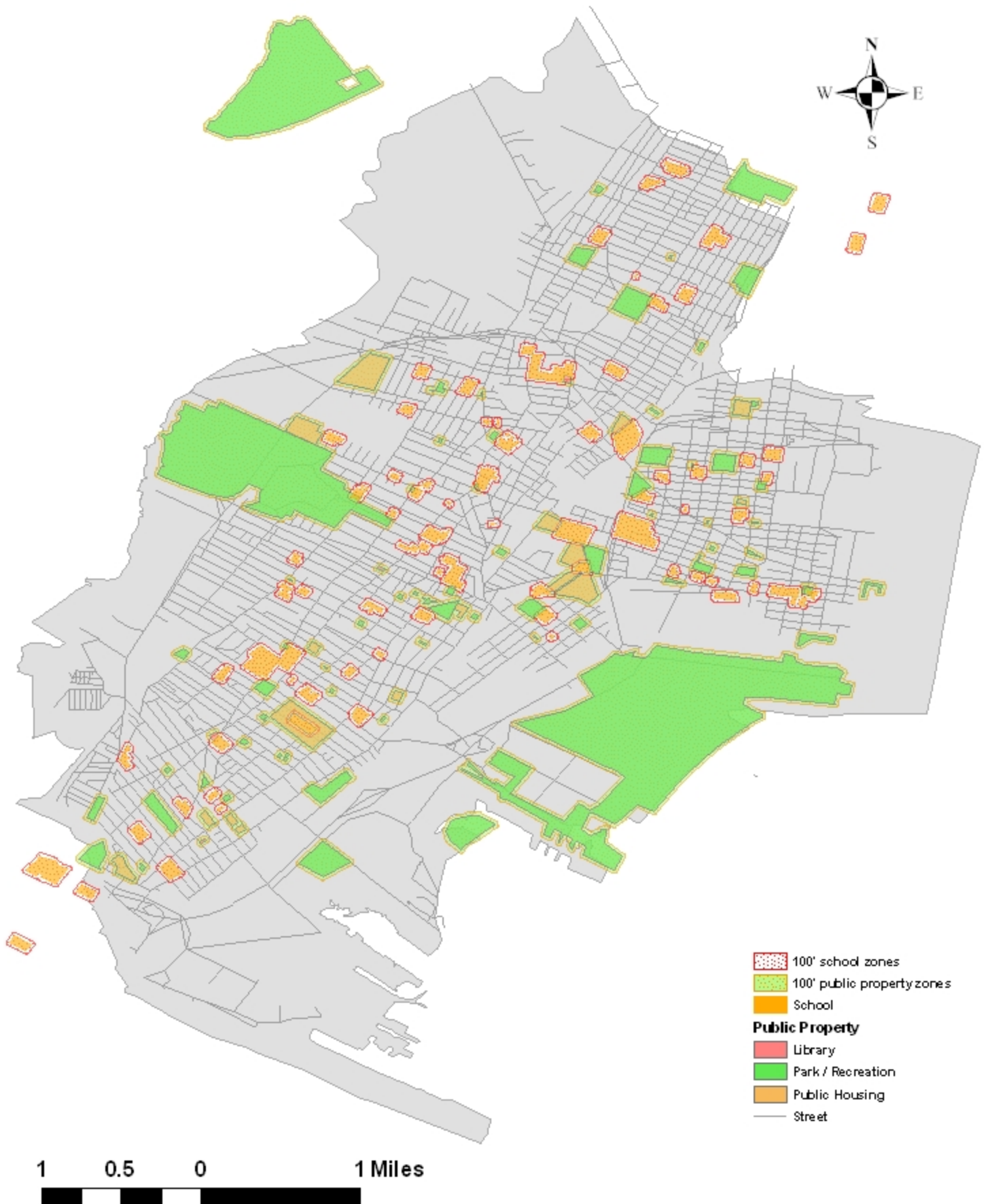
Map Depicting 400' Drug Free Zones Around Schools and Public Property in Newark, NJ



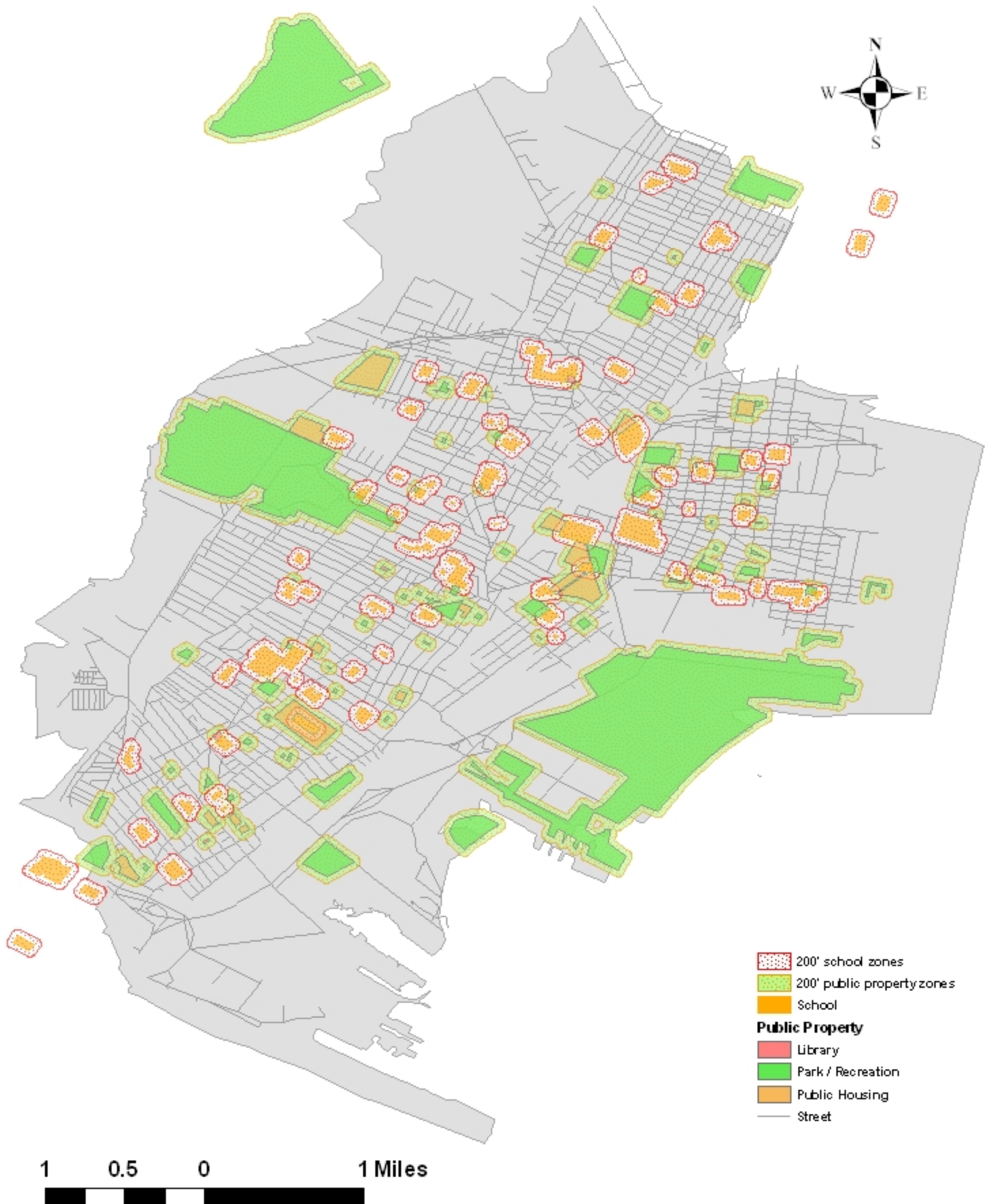
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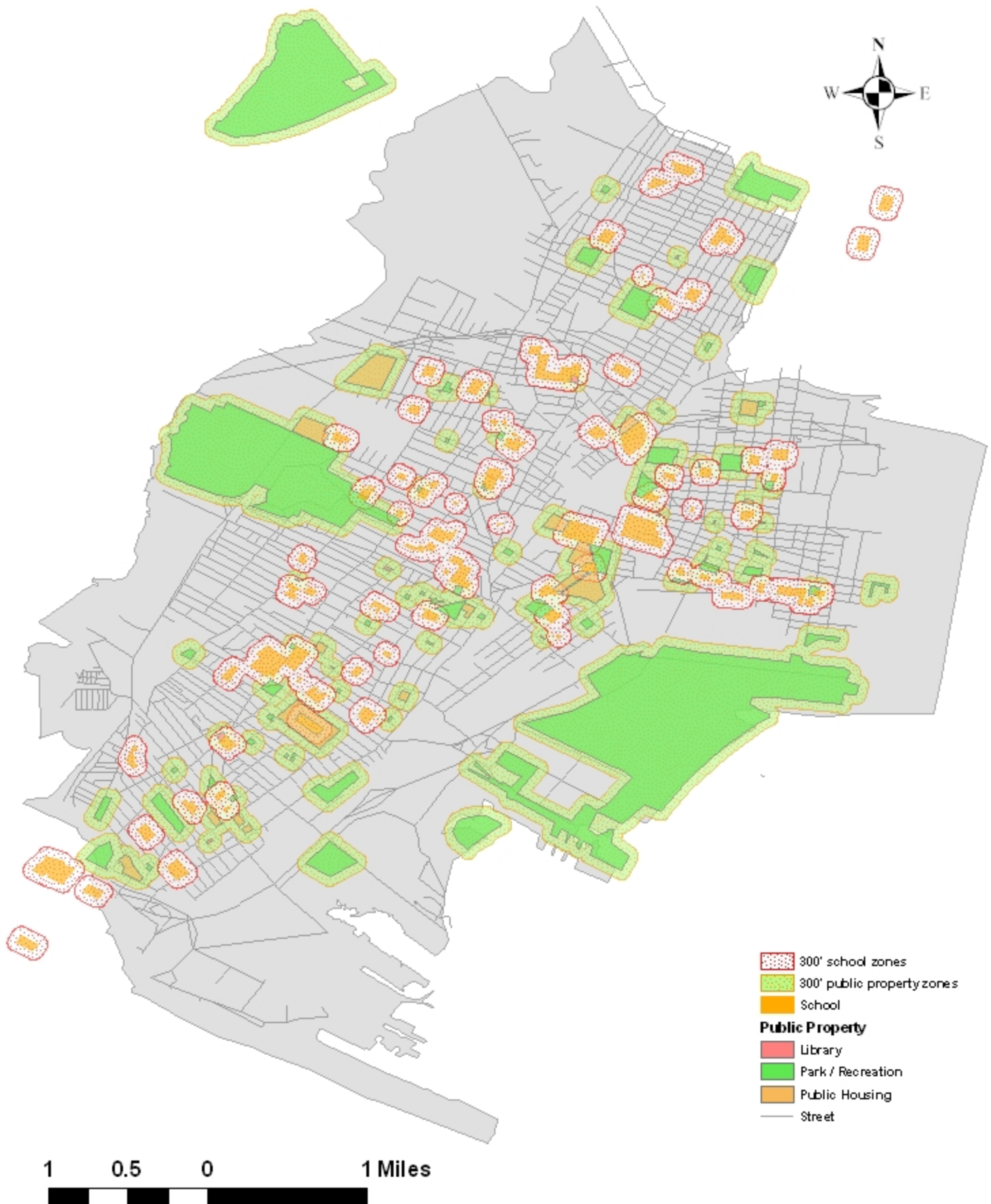
Map Depicting 100' Drug Free Zones Around Schools and Public Property in Jersey City, NJ



Map Depicting 200' Drug Free Zones Around Schools and Public Property in Jersey City, NJ



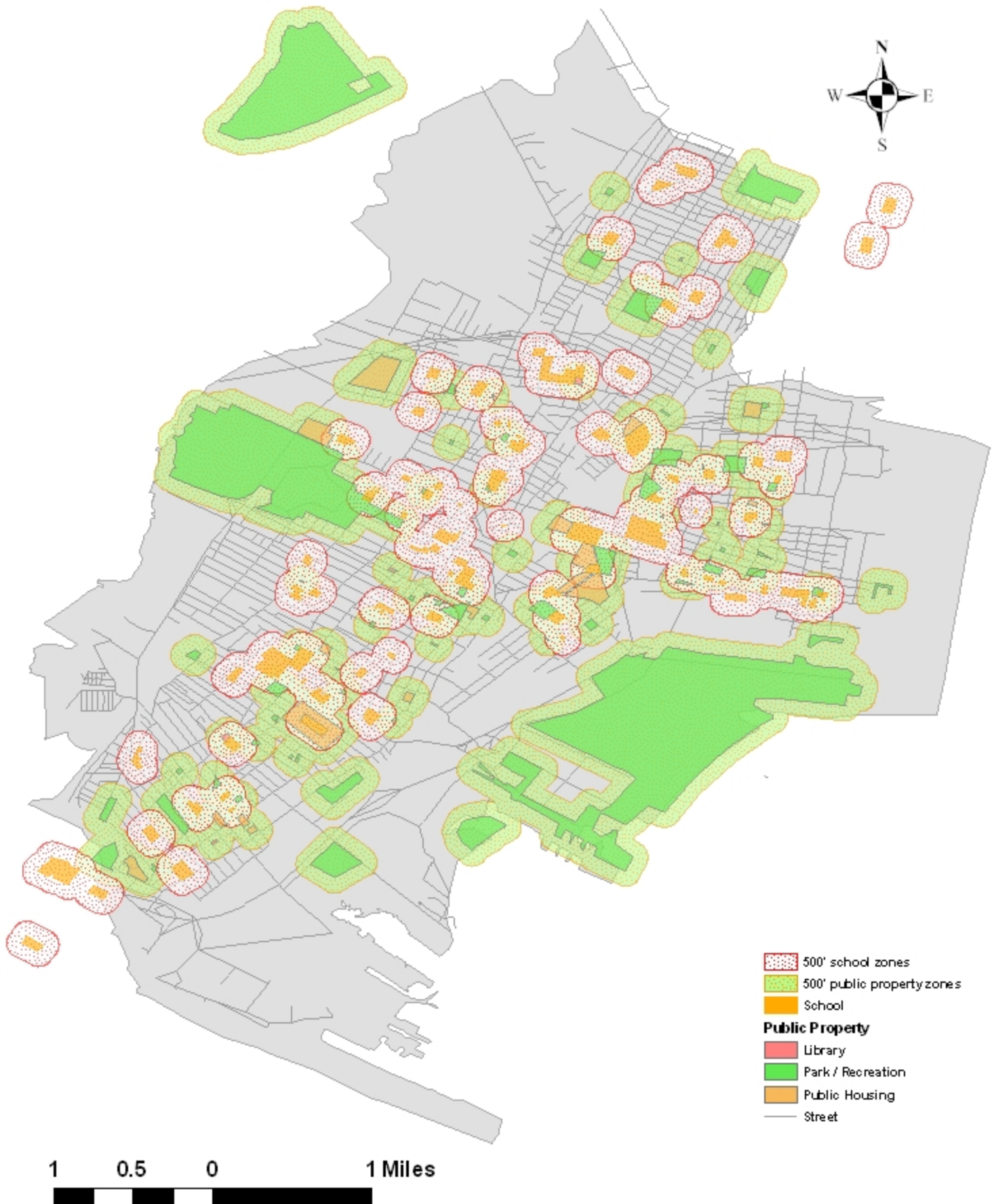
Map Depicting 300' Drug Free Zones Around Schools and Public Property in Jersey City, NJ



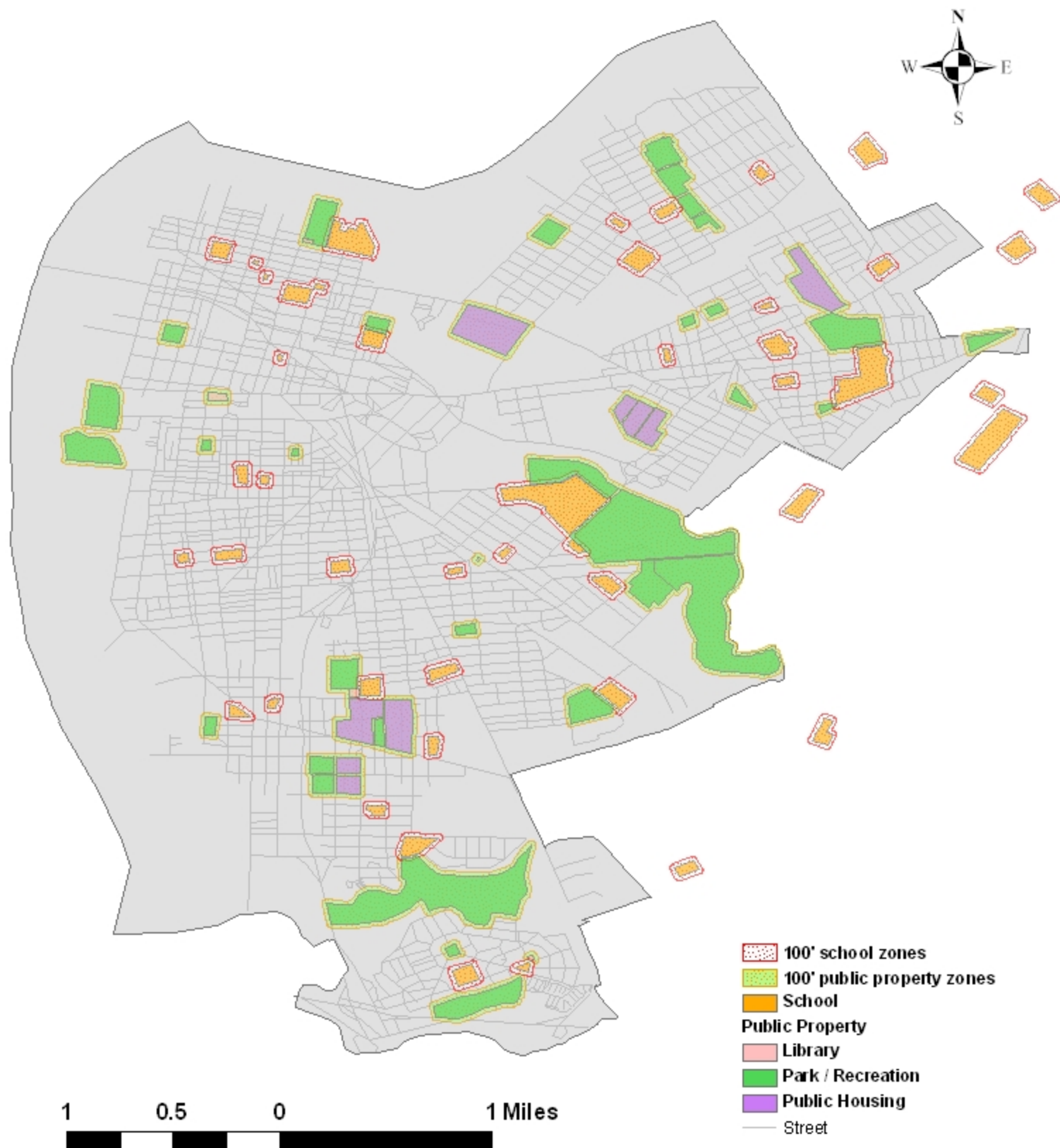
Map Depicting 400' Drug Free Zones Around Schools and Public Property in Jersey City, NJ



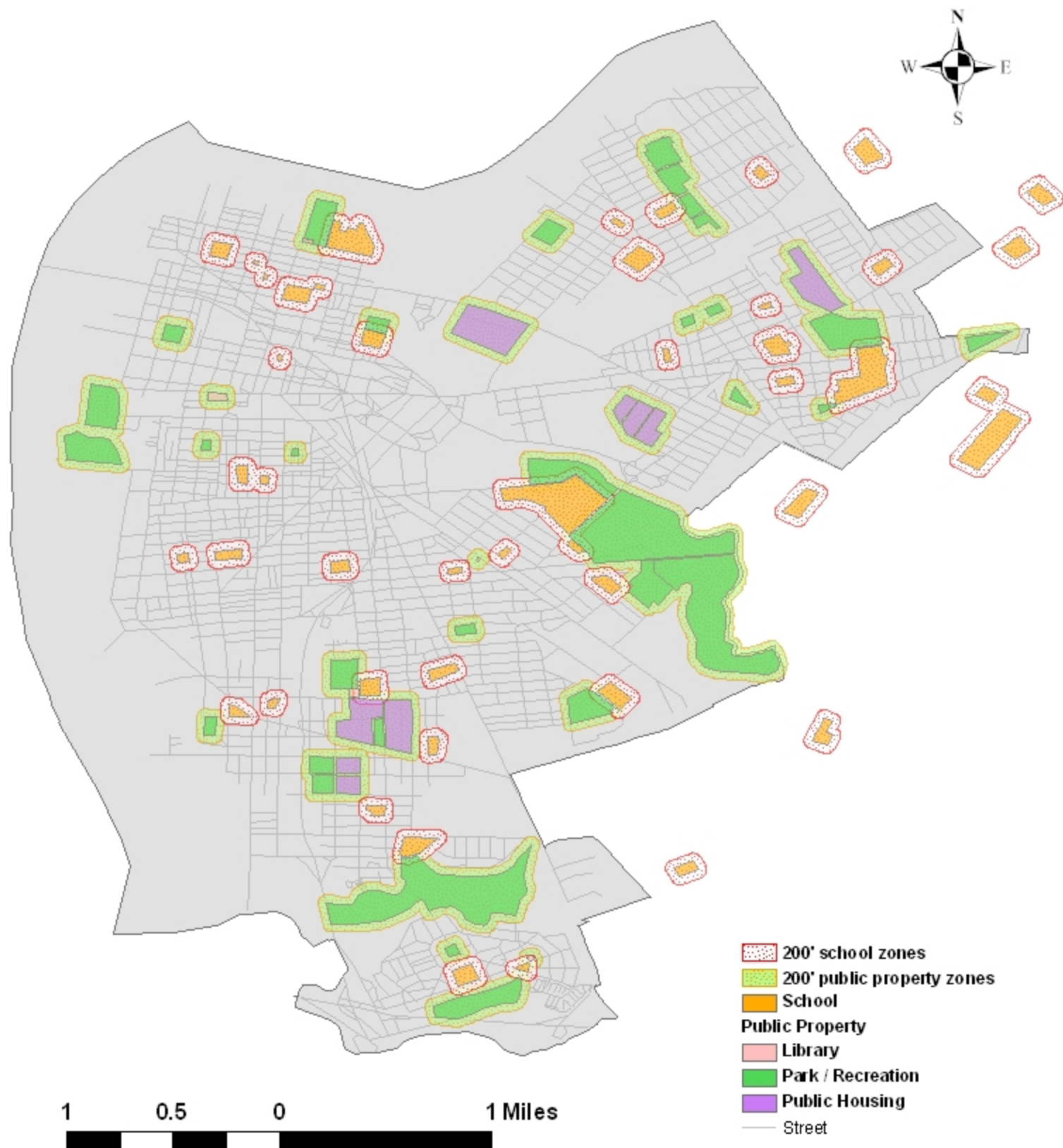
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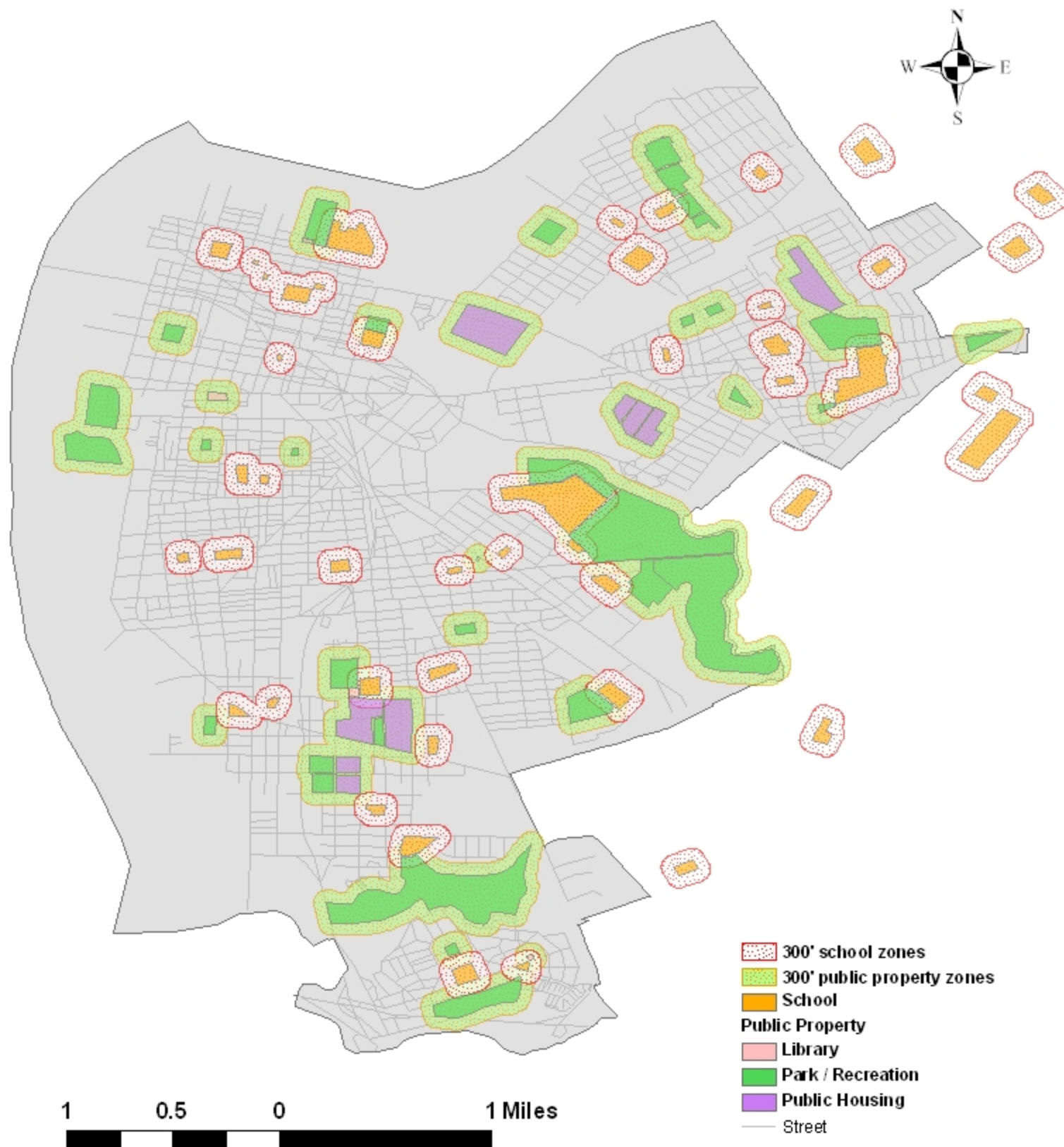
Map Depicting 100' Drug Free Zones Around Schools and Public Property in Camden, NJ



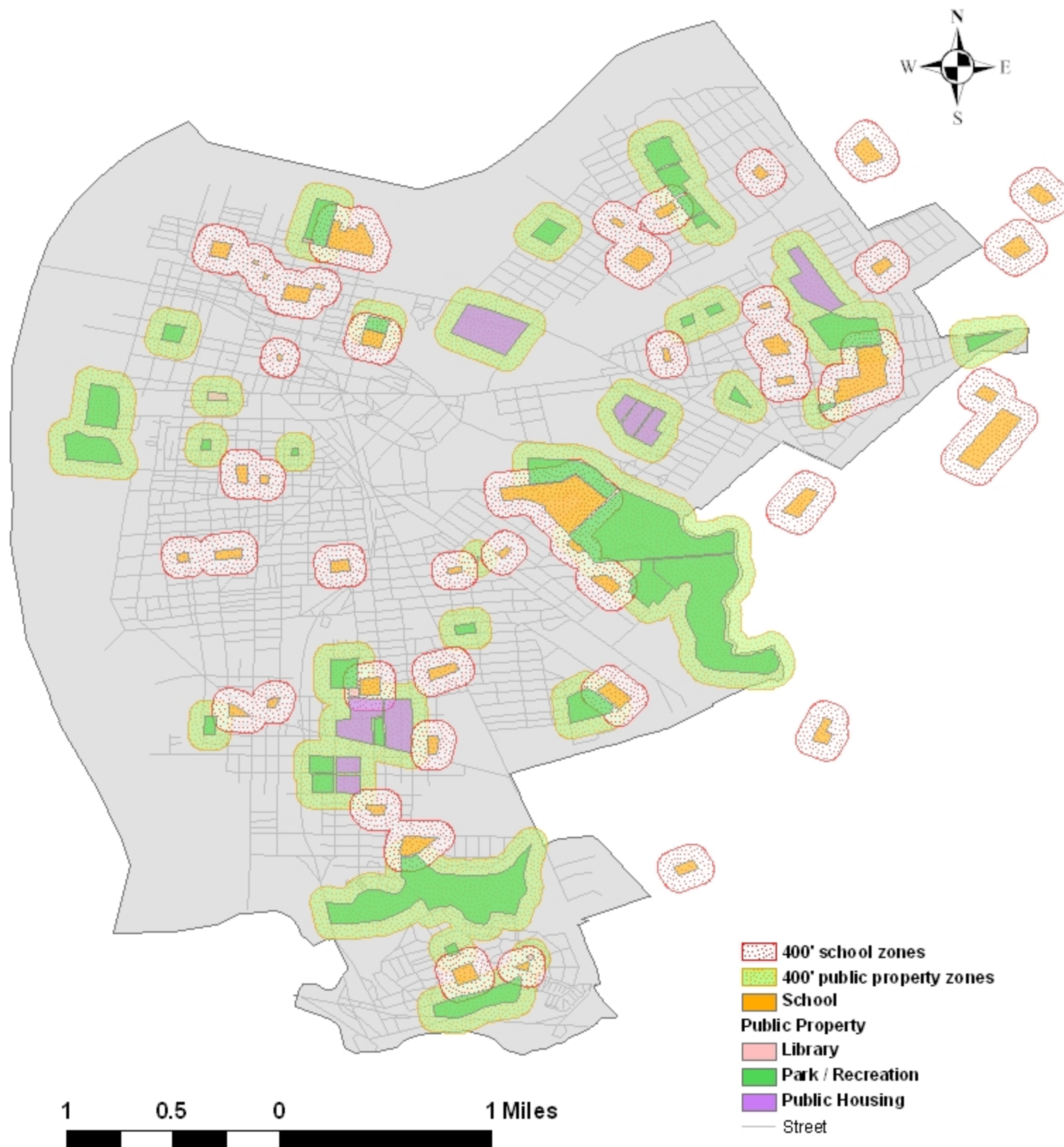
Map Depicting 200' Drug Free Zones Around Schools and Public Property in Camden, NJ



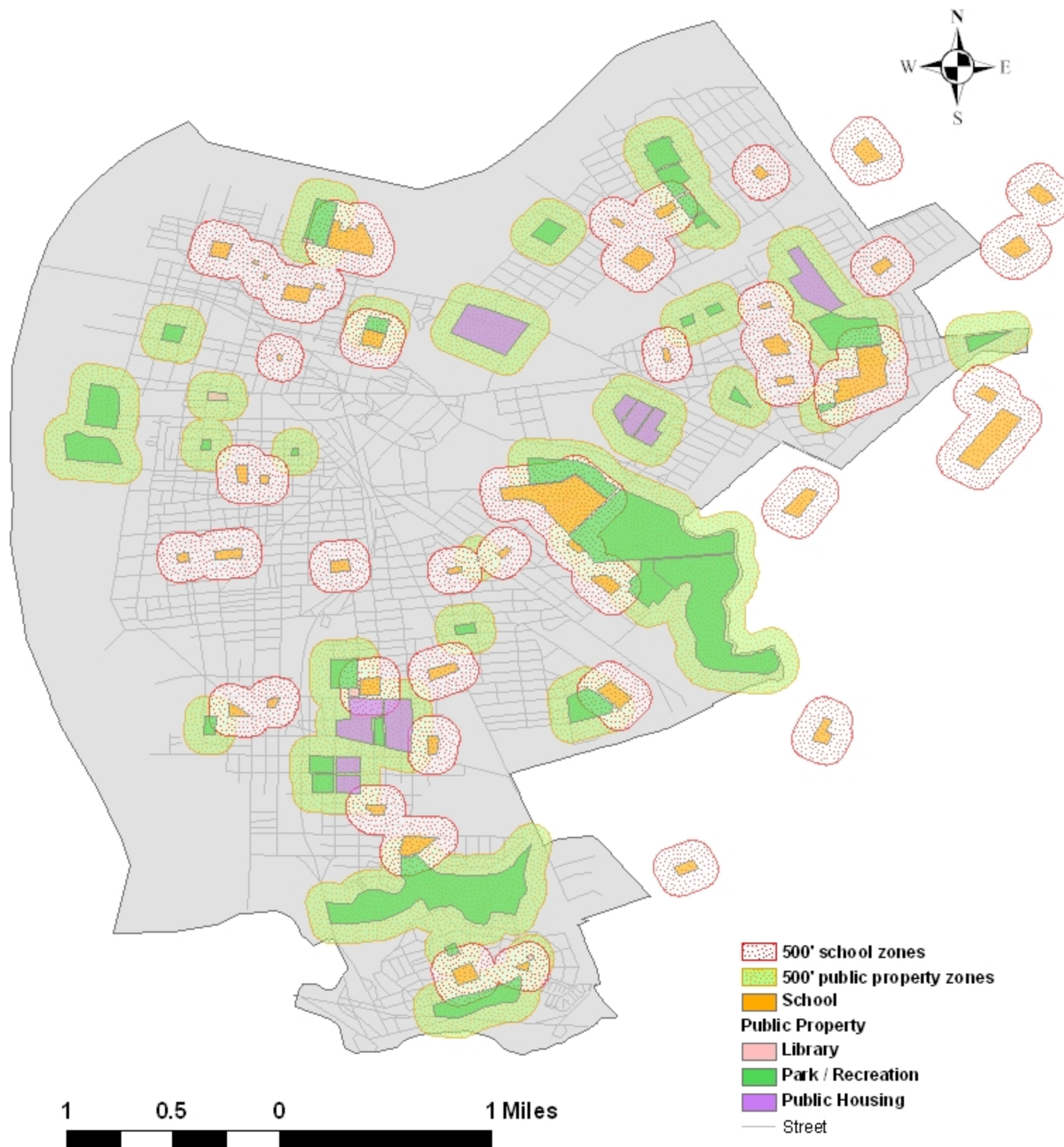
Map Depicting 300' Drug Free Zones Around Schools and Public Property in Camden, NJ



Map Depicting 400' Drug Free Zones Around Schools and Public Property in Camden, NJ



Map Depicting 500' Drug Free Zones Around Schools and Public Property in Camden, NJ



Appendix C

Photographs Taken at the Grant School,
Trenton, New Jersey
At Various Distances from the School Perimeter

Front of Grant School Trenton, NJ



Front Corner of School Property



Ben Barlyn with Measuring Wheel



100' Directly Across Street



100' Facing School



200' Directly Across Street



200' Facing School



300' Directly Across Street



300' Facing School



100' Diagonally Across Street



150' Diagonally Across Street



200' Diagonally Across Street



100' Directly Across Street



100' Facing School



200' Directly Across Street



200' Facing School



100' Diagonally Across Street



100' Facing School



200' Diagonally Across Street



200' Facing School



300' Diagonally Across Street



300' Facing School



Front of Right Corner of Grant School, Trenton NJ



View Away from Right Corner of Grant School, Trenton NJ



100' Diagonally Across Street



200' Diagonally Across Street



300' Diagonally Across Street



400' Diagonally Across Street



500' Diagonally Across Street



View Toward School From 500'



Left View From 500' feet



Right View From 500' Feet



100' Directly Across Street



200' Directly Across Street



300' Directly Across Street



400' Directly Across Street



495' Directly Across Street



View Toward School From 495'



View in Front of Public Housing at 495'

