

COMMITTEE ON PUBLIC SAFETY AND HOMELAND SECURITY

Bill Summary

Bill Number: S. 1353

Name: AN ACT RELATIVE TO PUBLIC SAFETY

Sponsor(s): Sen. Barrios

Hearing Date: May 16, 2007

Similar Bills: n/a

Current Law:

The current Massachusetts Buffer Zone Law establishes an 18 foot buffer zone outside of reproductive health facilities; however, protesters can be within that zone as long as they are not within six feet of an entering patient or staffperson, and can be within that six-foot "bubble" zone if they have the patient or staffperson's consent. There is a white outline marking the buffer zone.

Summary of Proposed Law:

This bill will establish a fixed 35-foot buffer zone surrounding the entrances and driveways of all of the reproductive health facilities in the state.

S 1353

In favor:

Rep. Peake

Rep. Richardson

Rep. Sciortino

Rep. Walz

Rep. Wolf

Sen. Candaras

Rep. Festa

Rep. Story

Rep. Brownsberger

Rep. Moran

Sen. Chandler

Rep. D'Amico

AG Martha Coakley

BPD Cpt. Bill Evans

Undersecretary Mary Beth Heffernan

Liam Lowney

Peggy Konner

Dianne Luby

Gail Kaplan

Liz McMahon

Mike Banvecwiz

Susan Criscione

John Henn

Kelly O'Bryan

Ann Murphy

Terri Febo

In opposition:

Evelyn Reilly, Massachusetts Family Institute

Professor Dwight Duncan, Southern New England School of Law

Marie Sturgis, MA Citizens for Life

Wendy Kaminer, Defending Dissent Foundation

Larry Tecce



Legal Analysis of S.1353: "An Act Relative to Public Safety"

- S1353 -- which amends G.L. c.266, § 120E1/2 to provide for a "fixed" buffer zone instead of a "floating" buffer zone that has proved unworkable -- is a clearly constitutional time place and manner restriction on speech.
- The amendment would return the statute to what was originally proposed as S.148 of 1999-- a "fixed" buffer zone of a specified number of feet.
- In reviewing S.148, the Supreme Judicial Court said that such a fixed buffer zone does not "violate the right of freedom of speech or the right of the people peaceably to assemble as provided by [the United States and Massachusetts constitutions]." Opinion of the Justices, 430 Mass. 1205, 1207, 1212 (2000). S. 148 differs from the present bill only in that S.148 provided for a fixed zone of 25 feet, and the present bill's zone is 35 feet. The SJC also noted:
 - "Senate No. 148 is a content-neutral statute" (id., 1209);
 - "the interests stated in the bill [now incorporated by reference in the current bill] are substantial governmental interests" (id., 1210);
 - the bill is narrowly tailored to meet those interests because it's fixed zone is of the size "substantially comparable to "other 'fixed' clinic buffer zones that we or the Federal courts have previously upheld" (id., 1211); and
 - "Senate No. 148 leaves open ample alternative means of communication" (id., 1211-12);
- The SJC further noted that floating buffer zones [such as the current statute] are **more** constitutionally problematic than fixed zones, because floating zones "are difficult for a protestor to comply with, and this lack of certainty leads to a substantial risk that much more speech will be burdened." Id., 1211. A fixed buffer zone avoids this problem by giving precise notice to both the public and the police as to where speech can take place.
 - NOTE: Subsequently, the United States Supreme Court upheld the constitutionality of floating buffer zones. Hill v. Colorado, 530 U.S. 703 (2000). Consequently, if a floating buffer zone is now clearly constitutional, there can be no doubt that a fixed buffer zone is constitutional.
- Subsequently, the floating buffer zone created by the existing statute was upheld as constitutional by the U.S. Court of Appeals for the First Circuit against challenges based on the exclusive access for clinic employees. McGuire v. Reilly, 260 F.3d 36 (2001) and McGuire v. Reilly, 386 F.3d 45 (2004).
- When dealing with time, place and manner restrictions, the First Amendment guarantees ample means to engage in public speech, but not the most effective or most desirable means. Board of Trustees of State University of New York v. Fox, 492 U.S. 469, 477-478 (1989). Time, place and manner restrictions of this kind are always creatures of

compromise, requiring consideration of the particular safety concerns at issue with the existence of ample, alternative means of communication available to the speakers. Cornelius v. NAACP Legal Defense and Educational Fund, 473 U.S. 788, 817 (1985).

- o In Burson v. Freeman, 504 U.S. 191, 210 n.3 (1992), the U.S. Supreme Court upheld a fixed 100 foot buffer zone around polling places.