

# Drug-free zones target blacks unfairly, critics say

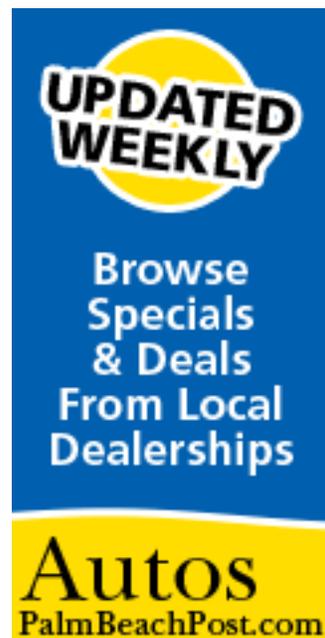
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The 400 block of Martin Luther King Boulevard, where four men stood on a recent Sunday beckoning passing cars, doesn't appear to enjoy special protection from drug crimes.

But with two signs warning that this city street is a "drug-free" zone, this neighborhood of modest homes and aged apartment complexes is one of the front lines of a quarter-century-old "war on drugs."



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It is a war that has seen years of casualties with no end in sight; the number of people imprisoned for drug-related crimes has only climbed each year since 1982. And while police say the heightened penalties for selling drugs in drug-free zones fortify their position, critics say the size and number of these zones have only increased the toll with a disproportionate impact on black offenders.

"The crimes aren't being displaced because there's nowhere to displace them to. There's no incentive for drug dealers to move," said Ben Barlyn, a New Jersey deputy attorney general who heads a state commission that in 2004 examined the impact of drug-free zones in that state.

That study, followed by two more, concluded that drug-free zones cover densely populated urban corridors where black neighborhoods predominate. As a result, researchers said, zones have created

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two systems of justice, penalizing black offenders for where they live as well as for their crimes, while white offenders who tend to live and work out of the zone face lesser penalties.

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Those examining the impact of drug laws have pointed to other factors leading to disproportionate numbers of blacks serving time for drug crimes, including higher penalties for crack cocaine than powder

cocaine, and for street narcotics than unauthorized prescription drugs. Racial profiling also has been cited as contributing to racially disparate incarceration rates.

While policy analysts have found all of these factors have led to longer prison sentences for black offenders and distrust of law enforcement in black communities, they cite one more problem with 1,000-foot zones.

The zones, they say, have proven to be a losing strategy in the war on drugs.

Still, Florida lawmakers have continued to expand the zones and add more.

A *Palm Beach Post* study of the law's effects shows that the zones now blanket Palm Beach County's inner cities and:

- Of 440 people arrested in Palm Beach County last year on "selling within 1,000" charges, 406 - 92 percent - were black;
- Statewide, 80 percent of those charged with selling within 1,000 last year were black;
- Application of the law is inconsistent, with cases dismissed for 16 percent of white defendants and 6.6 percent of black defendants.
- The numbers of people sent to prison on selling within 1,000 charges have climbed steadily in the past 10 years, with black convicts outnumbering whites 12-1.

On Boynton Beach's Martin Luther King Boulevard, two signs warn that this is a "drug-free school zone," while the sign down the block states that this is a "drug-free park zone."

Alone, either sign means that people caught selling drugs here can face more serious charges and more prison time than drug sellers elsewhere. Together, the signs mean two sets of raised charges and penalties. And, although no sign says so, churches in the neighborhood and the convenience store across

the street mean dealers could face four criminal charges for one drug transaction.

The same four crimes can also be charged to residents of this street caught with saleable amounts of drugs in their homes.

That is because people living on this street live within the overlapping circumferences of four invisible thousand-foot circles.

Across Florida, these circles also surround community centers, day-care facilities, colleges, housing projects, and, after a 2005 addition to state drug laws, nursing homes.

"Now they're protecting people who can't even leave the premises," said Anthony Calvello, a Palm Beach County public defender who appealed some of South Florida's first drug-free zone arrests to the state's Supreme Court. "What's the thinking behind all this?"

While lawmakers put them in all 50 states during the past 20 years, researchers have found the zones have not slowed drug selling.

"The premise was to protect certain places and drive drug dealing away from vulnerable people," said William Brownsberger, a former prosecutor and policy analyst, who in 2001 completed the first critical study of the law in Massachusetts. "But when every place is special, no place is special. What the laws do is lock people up for exorbitant periods of time for relatively low-level crimes."

Police, weary of arresting and rearresting drug dealers, say any law that keeps criminals off their streets for longer is valuable to them.

Opponents of the law say the money now spent on longer prison sentences could be better spent on drug treatment and entrepreneurial training.

### **'A nice fat round number'**

Calvello calls the law establishing the zones "a draconian statute with no rationality."

To get an idea of how long 1,000 feet is, imagine standing at the corner of one city block and seeing what's happening three blocks away. A thousand feet is nearly a fifth of a mile, more than the span of three football fields and as long as the town of Briny Breezes.

Nobody seems to know how lawmakers concluded that 1,000 feet was the distance necessary to protect children from drug dealers.

"It was a nice fat round number," said Barlyn, of the New Jersey commission. "When push comes to

shove, we find the law casts too broad a net."

In 1982, though, the late Sen. Strom Thurmond's proposal to add extra penalties to those caught selling within 1,000 feet of schools helped to set the stern tone for the "war on drugs" the Reagan administration had promised.

When Florida passed its own law in 1987, police in Fort Lauderdale set up stings within 1,000 feet of schools.

"There were about 50 of these cases," recalled Calvello, who appealed many of them. Judges threw out about 20 cases, saying that luring offenders into the zones was an unconstitutional application of the law. Prosecutors appealed those cases.

Defendants appealed the cases that weren't thrown out.

Calvello wrote the appeals brief for the State of Florida vs. Stacy Burch, representing Burch in an appeal of what was actually a group of cases, under the name of one of the first arrested under the law.

He argued that the law had a disparate impact on members of racial minorities of whom a greater number tend to live in the densely populated urban areas now decreed "drug free."

The 4th District Court of Appeal in West Palm Beach rejected that argument and the case went before the Florida Supreme Court, which upheld the statute, saying it was not intended to be discriminatory but to protect children.

Many arrests, however, took place when schools were not in session.

"It could be midnight in the middle of July," Calvello said.

The Florida high court, along with other state supreme courts, also said it had seen no evidence that the law disproportionately affected black offenders.

That would have been impossible to prove in the early years of the law, Calvello said.

In the past 10 years, however, while the number of white offenders imprisoned on selling-within-1,000 convictions has tripled, the number of black offenders imprisoned on the charges increased tenfold.

"If these statistics are borne out, maybe the court should take another look at it," Calvello said.

The law's scope has only grown, with little investigation of its impact.

The Florida Legislature added a minimum sentence provision to the law, saying those convicted of selling drugs near a school would serve at least three years in prison. The provision had originally applied to drug buyers as well, but they, along with rapists, were exempted from mandatory sentences when the threat of explosive jail crowding became clear.

In addition to the 1,000-foot school zones, lawmakers added a number of smaller zones to the law, eliminating good behavior time-off for those convicted of selling controlled substances within 200 feet of public housing projects, vocational schools and public parks in 1990. In 1998, they tagged on day-care centers, places of worship and convenience stores.

In 2001, a research team in Boston headed by the former prosecutor and policy analyst Brownsberger found that dealers continued to sell drugs where they lived, with urban drug dealers simply paying stiffer penalties.

Those penalties, he added, didn't "serve anyone because when they eventually do come out, they're often unable to function in society."

### **Crime 'deserves ... special severity'**

While Brownsberger's study had found that drug sellers seldom sold to minors, a Hialeah high school civics class was pushing for a law to expand drug-free zones, saying that would better protect children. In 2003, a bill based on their work and sponsored by Sen. Dave Aronberg, D-Greenacres, passed, turning previously 200-foot zones into 1,000-foot zones.

Aronberg keeps a photo on his wall of then-Gov. Jeb Bush signing the bill into law.

His intent, he says now, was to make sure that the law was consistent.

"If that means that drug deals are treated more seriously throughout the city, then so be it," he said recently. "I think this is a crime that is so destructive that it deserves to be treated with special severity."

Police in cities now consisting of almost uninterrupted "drug-free" zones agree.

"Obviously when we arrest drug dealers, we want them to get the highest penalty they can," said Sgt. Rick Ponce, spokesman for the Lake Worth Police Department, "because then they won't be committing crimes in the city."

West Palm Beach Lt. Thomas Wills said, "if it's within 1,000 feet, we will charge it 100 percent of the time."

The charge makes getting bond more difficult as well, helping slow the revolving door effect of drug sellers immediately re-offending after their arrests.

## **Called a distortion of due process**

Gabriel Sayeth, of the Drug Policy Alliance, a New York-based nonprofit organization that examines the effects of drug laws, said that clout comes at a cost.

"The idea of due process is distorted beyond recognition under these laws. The people who live in school zones face something that people living elsewhere never have to face - a very strong reason to plea out," Sayeth said.

The Drug Policy Alliance commissioned the study "Disparity by Design" that examined laws across the country in 2006, finding them to have been ineffective in reducing drug crimes, inconsistently enforced, and, with a record now of 20 years, indefensibly discriminatory.

In addition, researchers concluded that money spent on longer prison sentences would be better spent on drug addiction treatment.

Florida now spends an average of \$49.61 a day - \$18,108 yearly - to imprison each of its inmates, while the average cost for a person completing addiction treatment through Palm Beach County's drug court is \$2,250 a year.

While it costs \$90 a day to keep an inmate in the Palm Beach County Jail, the average cost of an inpatient treatment bed is \$36 day, said Marty Epstein, assistant state attorney for the Palm Beach County Drug Court.

Recidivism for drug court graduates is about 12 percent, as opposed to close to 50 percent for those sentenced to incarceration.

"Show us the data that these drug-free school zones have accomplished what they were intended to do," Sayeth said.

Aronberg concedes he does not know what prompted lawmakers to surround schools with 1,000-foot zones.

"It's the first time I've heard there's a great racial disparity," said Aronberg, a former prosecutor. "It clearly had no racial bias in the intent. It had the unanimous support of the black legislative members. If the effects of the law show racial bias, I'll be willing to review that."

At least four other states had by 2005 begun to consider changes to their laws that would reduce drug-free zones from 1,000 feet to 200 feet.

In Florida however, legislators voted in 2005 to add 1,000-foot drug-free zones around nursing homes.

"I'd like to say I'm surprised, but I'm not. Florida tends to be weird," Sayeth said.

While 1,000-foot zones remain politically popular for state legislatures, Sayeth said, candidates for municipal offices have begun to make the law's effect on their communities a campaign issue.

And former Massachusetts prosecutor Brownsberger, who wrote the first critical study of the laws, is optimistic, especially now that he is a member of the legislature.

"There's a lot of sentiment that we've gone too far."