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Utah prison chiefs say no to drug law

School, church zones misused to beef up sentences, they say

By Lisa Rosetta
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Carol Tafoya was a small-time Cedar City drug dealer.

The 63-year-old woman had six clients - three married couples - to whom she sold methamphetamine so she could support her own daily habit of snorting lines.

When one of her customers decided to become a confidential informant and wear a hidden wire, police busted Tafoya in February 2004 on three counts of possession and distribution of a controlled substance for selling \$50 and \$100 bags of meth - in a "drug-free zone."

Because Tafoya's home was located within 1,000 feet of a church, her crimes, ordinarily second-degree felonies, were bumped up to first-degree felonies - a charge usually reserved for rapists, armed robbers and murderers.

As part of a plea deal, Tafoya pleaded guilty to one of the charges. When it came time for her sentence, "I figured a couple of years [in prison]. That's what I was expecting," she said.

Instead, Tafoya is serving five years to life at Utah State Prison, although other inmates who have committed similar offenses are only serving one to 15 years - if they're serving prison time at all.

Stories like Tafoya's have prompted Kurt Garner, vice chairman of the Utah Board of Pardons and Parole, to ask the Legislature to rethink the state's drug-free-zone penalty enhancement, which applies to both the possession and sale of drugs within 1,000 feet of schools, child-care facilities, parks, churches, shopping malls, sports facilities or parking lots.

The law, designed to keep drugs away from children, has instead created disproportionately long sentences for some offenders, coerced others into pleading guilty to weak cases that would have otherwise been challenged at trial or dismissed, and been inconsistently enforced by police and prosecutors.

Garner said in one rural county, police arrested a man who had used drugs, put him in a patrol car and drove him past a school - a drug-free zone - so they could seek the stiffer penalty.

In other counties, police have deliberately set up undercover buys in church or school parking lots, or initiated stops in front of a parking lot to trigger the more serious charge, Michael Sibbits, former chairman of the Board of Pardons and Parole, wrote in a letter to the Law Enforcement and Criminal Justice Interim Committee.

Most offenders slapped with the enhanced penalty have never dealt drugs or used drugs around children - the very people the law is supposed to protect.

In October, Christine Mitchell, deputy director of the Utah Department of Corrections, looked at 45 first-

degree felony cases over a 12-month period. In only three cases were children present when the offense occurred.

Furthermore, Mitchell found, police agencies in two cities - Logan and Cedar City - made half of the arrests. In many of those cases, the offenders entered pleas in abeyance, which means their cases were dismissed after they completed drug court.

"We were all interested in the fact that so many of them were not ending up in prison. That was interesting since in other categories of first-degree felony offenses, up to 85 percent [of offenders] go to prison," she said.

Utah, like other states, enacted enhanced penalty laws in the 1980s, when President Reagan waged his War on Drugs and developed the Drug Abuse Resistance Education (DARE) school program.

But the Beehive State's statutes, among the most encompassing in the nation, virtually make entire cities drug-free zones, undermining the intent of the law and failing to safeguard children, said Tom Patterson, director of the Utah Sentencing Commission.

"What have we done? We've decided to arbitrarily establish a penalty because of where you live," he said.

In a report to the Law Enforcement and Criminal Justice Interim Committee, Patterson said the drug-free-zones law "goes too far, is too vague and is applied disproportionately throughout the state."

To illustrate the problem, the Utah Automated Geographic Reference Center, at the request of Rep. Wayne Harper, R-West Jordan, plotted drug-free zones in four cities: Randolph, Richfield, St. George and Murray. The zones, the center found, overlap and blanket all four cities. About 85 percent of Murray, for example, is a drug-free zone.

"In Utah, it's hard to not be within a 1,000 feet of a church or a school," Garner said.

When the enhanced penalties were enacted in the '80s, "nobody ever sat down and generated the maps. Nobody bothered to figure out that what we've really done is make the entire Wasatch Front a drug-free zone," he said.

In states such as New Jersey, where drug-free zones similarly overlap, minorities are disproportionately affected by the enhanced penalties, the sentencing commission there found.

Blacks and Latinos make up 96 percent of those imprisoned for a drug-free zone offense, a disparity that is partly the result of what the sentencing commission calls the "urban effect" - the high frequency of zones in urban areas where many blacks and Latinos live.

A report by the Justice Policy Institute also showed:

* In Massachusetts, less than 1 percent of the drug-free-zone cases examined involved sales to youths, and 71 percent occurred when school was not in session.

* In Connecticut, legislative research staff found there was no appreciable decline in drug use or drug trafficking since the introduction of mandatory drug laws, including the state's drug-free-zone law.

* In Washington, prosecutors and defenders alike acknowledge that, rather than sanction those who sell drugs in the presence of children, the state's drug-free-zone laws are used as leverage to encourage guilty pleas. Faced with prison time, many defendants choose to plead guilty rather than challenge the case at trial. Among those cases that did make it to trial, only 22 percent resulted in a drug-free-zone penalty enhancement.

* In Illinois, 99 percent of youths transferred to the adult court in Cook County for drug-free-zone enhancements were black or Latino.

Whether those anomalies exist in Utah will be researched by the newly formed Criminal Justice Center at the University of Utah as part of a drug-free zone study it plans to commence this summer. The endeavor could take up to two years, Patterson said.

In the meantime, he has recommended the Legislature more narrowly tailor the enhanced penalty to target those convicted of selling or manufacturing drugs in the presence of children.

"We want the Legislature to first identify what are the protected interests and then come up with a reasonable zone," he said.

And Tafoya, who is now enrolled in the prison's Excel drug-treatment program, will continue to serve her sentence.

Her first hearing before the Board of Pardons and Parole: 2008.

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