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Prosecutors Target Drugs on Skid Row

Public Defenders Say Plea Deals No Longer Available

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LOS ANGELES - Since launching their "safer cities" initiative in early August, Los Angeles police have made 4,800 arrests on Skid Row. The program, police say, is aimed at making Skid Row a safer area. But opponents say the purpose is to clear the homeless and make way for development.

As part of its enforcement effort, police say they have been targeting drug dealers who prey on the region's homeless population.

Prosecutors also have been getting tough on drug sales stemming from Skid Row, an area in downtown Los Angeles that is home to the nation's largest concentration of homeless people.

But some defense attorneys say their caseloads have doubled with homeless addicts who would have been brought in on possession charges just six months ago and are now charged with sales, usually of small amounts of rock cocaine, known as crack.

And they contend the district attorney's office no longer negotiates on drug sales cases coming out of Skid Row.

According to 10 public defenders who talked to the Daily Journal, district attorneys now discriminate between a drug case coming out of Skid Row and an identical case coming from another part of Los Angeles County.

"This is a blatant DA policy that they are going to treat these cases differently," said a public defender, speaking on condition of anonymity for fear her comments might negatively affect her clients.

"It's not abnormal for the DA to have a policy. But this policy is about targeting the homeless in that area because the city is redeveloping that area. It's a policy to get people off the streets and into state prison, jumping right over rehab and jail."

Prosecutors defend their handling of Skid Row drug sales cases, arguing that, previously, drug sales in the area were settled too leniently.

Janet Moore, the district attorney's director of central operations, said her office does not have a different policy for Skid Row cases.

Moore said prosecutors are taking sales arrests coming from the area more seriously.

"I have instructed my deputies that I want them to take recidivism drug activities very seriously and that we will no longer roll over and give those cases away. We are trying to give meaningful sentences to these people," she said. "But there has been no direction from our office not to plea-bargain."

Moore said her department is responding to dissatisfaction by the public and police about how cases from the area were treated in the past. Much of that dissatisfaction followed media reports about major offenders who received lenient sentences.

But public defenders said these are not the people affected by the new strategy.

"My caseload six months ago was primarily violent and serious predators, people most would agree should be locked up," said Deputy Public Defender Jack Keenan.

Keenan said that his caseload has doubled to 50 and that "they are almost exclusively drug cases from the [Skid Row] area."

He said his clients generally have no prior sales records and are charged with selling small amounts of crack to undercover cops.

"We're talking in the neighborhood of \$2 to \$20 worth of crack," he said. "Typically, I get a guy who's a user. In fact, that person is usually on probation for possession. Police officers will ask him where they can get a rock. Most often, this guy will break off a piece of his own rock and sell it."

Public Defender Robert Hill said the district attorney's office used to make a distinction between minor sales cases and serious dealers, but that policy has changed.

"I was told by DAs that they would love to negotiate, to give us a reasonable offer, but they can't because the police department is watching them," he said. "Cases that would have settled early and easily are settling later or going to trial."

He said those affected by the new policy "are the lowest-level addict selling for a chip of a rock."

"But they're still getting prison offers," he said. "That is something that would never have happened before. They would have gotten probationary offers."

A first-time sales case, even if it goes to trial, doesn't necessarily mean a prison sentence if the defendant has no criminal record, according to public defenders. A defendant with no record could get 180 days in jail at trial.

But homeless addicts are likely to have a record. And public defenders say many of their clients are on their second sales arrest, each involving small amounts of drugs.

Sentences for drug sales cases range from three to five years. Deputy Public Defender Lisa Lichtenstein said each sales conviction means a three-year sentence enhancement.

"If they have a sales prior, add a three-year sentence enhancement, so their maximum jumps to eight years. If they've been to state prison, that goes up. That's how the maximum gets huge," she said. "It's hard to tell someone that their maximum is 22 years when they have no violent history."

Constance Rice, a Los Angeles civil rights lawyer, said such a strategy by the district attorney's office could raise equal protection and due process concerns.

"If you decided to only offer probation in the Valley and not in South Central, you could raise an equal-protection argument," Rice said. "There is prosecutor discretion, but are they exercising that discretion in a way that doesn't have an adverse impact on class or race?"

Rice notes that Skid Row is "disproportionately African-American men."

Moore insisted cases from the Skid Row area were once settled too easily.

"It has been more lenient here than in other areas," she said. "At least, that's the public's perception."

She said the department did a comparison a few years ago.

"We were not the most lenient of all the courthouses," she said, "but we were certainly below average."

One way public defenders say these cases are being handled differently is exclusion from early-disposition court, where defendants who want to plead guilty can avoid trial. The incentive is a lesser sentence.

"For nonserious cases, that's where you're likely to receive the best offer," Mearl Lottman, a deputy public defender, said.

Lottman is one of a handful of public defenders assigned to early-disposition court, where he said Skid Row drug cases no longer end up.

"Now those cases are going on to preliminary hearings court," he said, "because the judge is more likely in early disposition to undercut the DA's offer."

But Moore said there is no policy to keep these cases out of early-disposition court.

"To say we are not participating in the early-disposition process is just wrong," she said.

Because the district attorneys typically are offering prison time for Skid Row drug sales cases, many defendants opt to go to trial, said Deputy Public Defender Rigoberto Arrechiga.

"I completed one of these trials in December, where a guy had a miniscule amount, no money on him, no phone or pager, no individually wrapped drugs in multiple bags - Just some rock cocaine in his pocket. The guy had no prior record of sales," Arrechiga said. "He got four years in state prison."

The offer before trial, he said, was three years in state prison.

"On possession, a person is eligible for treatment programs," he said. "Nine months ago, even as a sales case, we would have been allowed to go to early-disposition court."

But Moore said you have to look at the history of the individual, even if someone has no prior drug sales.

"Has he been on probation? That's the kind of stuff they got away with in the past that we're being stricter on," she said.

Like many public defenders handling these cases, Arrechiga believes the LAPD is turning possession cases into sales cases to ensure stricter punishment.

"If a person has a rock but no pipe, that's an indication that it's for sale and not personal consumption," he said.

"They give a lot of weight to an officer's opinion. And lately, it seems like every officer's opinion is that everything they find in the Skid Row area is for sale. Everything is a sales case."

Of the 1,400 arrests made by undercover narcotics officers for drug sales since the initiative began, 1,093 were

categorized as "possession for sale." These cases are treated like any other sales case. If that defendant was charged with possession, he likely would get a combination of probation and treatment.

But Central division patrol Cpt. Jody Wakefield said her uniformed officers are making plenty of possession arrests. She said that, since the safer cities initiative started, they have made 630 arrests for possession. She said the drug sales cases have gone up because Central division has increased its focus on sales.

"We put a large contingency of narcotics officers in the area," Wakefield said. "So, yes, their caseloads would double."

Arrechiga said most of his clients are homeless veterans with psychiatric issues.

"That's the bulk of my clients downtown," he said.

As many as one-third of Skid Row's homeless have mental illnesses. Many of them have what psychiatrists call a dual diagnosis: mental illness coupled with drug addiction. They are likely to sell small amounts of drugs to support their own habit.

Wakefield said her officers are aware that many of the sales arrests they make are "people selling a rock to get their own."

She said that her officers are focusing on those drug dealers who prey on the homeless, as they have said publicly when discussing the initiative, but that they're also "focusing on all illegal activities out there."

"If they have a narcotic and they're selling it to someone, is that not a drug sale?" she said. "Where do you draw the line between who's a dealer and who's not?"

Keenan said officers don't seem to be going after the big sellers.

"The biggest complaint we have is: OK, you caught this guy. Ask him where he got [the drugs] and then follow that guy to the house the rock came from," he said. "They don't follow the chain, and a lot of this is due to business owners who want this blight off the street. I can't disagree with them for wanting to get rid of blight, but [for the police] to say they're going out there to get the people who prey on the homeless, it's just a mischaracterization. At this point, they're the ones who seem to be preying on the homeless."

But Wakefield insisted her officers are trying to "catch the big fish."

"We have made some very large arrests," she said. "We are following up any time we can. A lot of the time, the person who is caught doesn't want to give up that name because they know they have to go back on the street and they don't want to get hurt."

Arrechiga said he was surprised by the kind of resources the LAPD allocates to these types of cases.

"In that [December] trial it came out that there were 24 officers involved in the sting," he said. "That floored me. Twenty-four officers for that amount of cocaine?"

Public defenders question whether this type of policing is wise during a time when gang violence is up in the city.

"If you're trying to stop the sale of drugs," Butko said, "you're not going to in this fashion."

Wakefield said she would welcome feedback from public defenders. "How are we to be made aware of things if they don't come to us?" she said.

She strongly disputed accusations of wasted resources. She said undercover operations are dangerous and require more officers.

"And it's not about that \$10 dollar rock," she said. "It's about the effect on the entire area. They know that we're out there and we're watching."

She said police efforts have made a big difference downtown.