

PUBLIC HEARING

Confronting the Heroin/Opioid Epidemic in Pennsylvania

PENNSYLVANIA SENATE- THE CENTER FOR RURAL PENNSYLVANIA

Thursday, June 2, 2016

**TESTIMONY OF EUGENE A. VITTONI II, MHA, MBA, J.D.,
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Good Afternoon, I wish to thank the committee members, Senator Yaw, Senator Bartolotta and Senator Vogel for inviting me to testify on what I feel is the most important issue facing the Commonwealth at this time. Heroin abuse and its close cousin, prescription opiate abuse and addiction, are the major reason for crime. This epidemic resulted from two major forces, the increasing strength of Mexican heroin and the overprescribing of opioid drugs for the relief of non-terminal, chronic pain. The result of the convergence of these two forces is that in 2015, 73 people died of overdoses in Washington County. All too often, I meet with surviving family members devastated by loss of a family member due to a drug overdose and attempt to comfort them with the knowledge that we are working hard to end this epidemic. Having been in this fight for over four years, I know one thing for sure---- there is no quick answer--- there is no silver bullet to end this epidemic. It will require work at all levels of society--- medical, legal, criminal justice, social services, rehabilitation, treatment, educational just to name a few, to end the devastation and loss. In reviewing the today's agenda, I know that you have heard from many individuals about the scope and extent of the problem. In crafting my testimony, I chose to focus upon what I believe prosecutors and law enforcement needs from you as legislators to help us stop the loss of life and end this epidemic.

Legislation should be passed re-establishing the mandatory minimums for serious, dangerous drug trafficking and firearm offenses.

As you are aware, many of the mandatory minimums in the Commonwealth have been eliminated. These mandatory minimums are important tools which prosecutors used to punish the

most serious offenders and to encourage cooperation from low level offenders to arrest higher level traffickers. Prosecutors had discretion whether to invoke mandatories and there is no indication that this discretion was abused by prosecutors. In fact, prosecutors utilized mandatories only in the most serious cases. There is no indication that these mandatories were used to punish addicts. The Pennsylvania District Attorneys Association supports the justice reinvestment initiative in the Commonwealth and does not believe in incarcerating drug addicts. Incarceration of addicts is not a viable strategy as research indicates that this only creates better criminals and does little to stop crime. It must be remembered that there are criminals who traffic in such large quantities of dangerous drugs, who carry firearms, and are so dangerous that they should not reap the benefits of a Commonwealth sentencing scheme which does not include mandatory minimum sentences. I urge that you consider the passage of two bills presently in the Judiciary Committee (HB 1632 and HB 1601). This legislation would re-establish the mandatory minimums for the most dangerous drug traffickers.

Legislation should be enacted establishing the crime of Drug Delivery Resulting in Serious Bodily Injury and providing for a significant mandatory minimum sentence.

There is no additional state crime or penalty for supplying a dangerous drug combination such as fentanyl and heroin to addicts which results in an overdose. When cluster overdoses occur, it is usually the result of heroin adulterated with more powerful opiates, such as fentanyl. In Pennsylvania, a prosecutor's only option when faced with a criminal defendant who delivered fentanyl laced heroin and caused an overdose is to charge the drug delivery felony and argue for sentencing in the aggravated range for the near-death overdose created by the criminal offender. The federal criminal justice system treats this situation differently and utilizes a specific criminal statute providing for a specific crime of drug delivery resulting in serious bodily injury. This federal crime provides for a minimum mandatory sentence of 20 years and could result in life imprisonment and a \$ 1 million fine. We work extensively with the United States Attorney's Office to use this statute to work up the chain of distribution to identify the mid-level and large level heroin distributors in the Washington County area. Many dealers,

knowing that they are facing decades in prison, become cooperative and will provide the source of the dangerous drugs. In fact, we have had arrests of dealers several levels above the dealer who sold the drug. These arrests occurred within 24 hours of the overdose. This type of result was unheard of a year ago, and is a direct result of the cooperation that we have with the federal authorities and the ability to use the federal mandatory statute. The need for a corresponding state statute arises from the fact that we are presently flooding the federal prosecutors with cases that could be prosecuted in state court if a corresponding state statute existed. This statute would work to incarcerate dealers poisoning individuals in our communities. This is a much needed tool for prosecutors in the Commonwealth and I urge your assistance in passing this necessary legislation.

The Juvenile Act should be amended to exclude drug delivery resulting in death as a delinquent act.

In our work with the DEA task force in Washington County, we have encountered offenders under the age of 18 who have delivered heroin resulting in death and/or overdoses. These individuals, who if they were over the age of 18, would be treated as drug traffickers are sheltered by the provisions of the juvenile act which requires them to be proceeded against solely within the limited confines of the juvenile justice system. Excluding the crime of Drug Delivery Resulting in Death from the list of delinquent offenses would permit prosecutors to treat traffickers as they should be treated while permitting district attorneys the latitude and discretion to permit cases which should be within the juvenile justice system to remain within that system.

The Prescription Drug Monitoring Database needs to be activated and sufficiently funded.

For several years, after the reduction of pill mills in the southern states, the Commonwealth of Pennsylvania has become a source destination for people seeking opioid medications with fraudulent prescriptions. In 2014, the General Assembly passed legislation establishing a Prescription Drug Monitoring Database Program ("PMDP"). At the time, Pennsylvania became the 48th state to enact a functional PMDP. These programs work and cut down on fraudulent prescription being passed at

pharmacies and also identify prescribers who may be overprescribing opioid drugs. While the legislative effort is much appreciated, there are short-comings which will need to be addressed such as the need to mandate the reporting of all prescriptions in a timely manner so that information is available to health care providers making dispensing decisions. This crucial monitoring program needs to be continually funded so that we do not continue to be a source destination for those seeking opioids outside of the Commonwealth.

There needs to be funding established for long term residential (“LTR”) treatment of addicts.

Research indicates that it costs the taxpayers seven times as much to incarcerate addicts as it does to treat them. An additional disadvantage is that incarceration of addicts improves criminal skills and increases criminal behavior. An active opiate addiction requires significant, up-front, long term residential treatment which can consist of several months. At present, only about 10% of addicts are receiving the long term residential treatment that an opiate addiction requires. This is due in part to the lack of funding for LTR facilities and the lack of LTR facilities. Without this necessary resource to treat opiate addicts, jail populations will remain high with undertreated and untreated addicts continuing to swell the populations. LTR programs need to be established and adequately funded particularly in the Western part of the Commonwealth.

The Good Samaritan statute must be amended to encourage revived overdose patients to accept treatment.

In Washington County, first responders have reversed 61 overdoses since June 29, 2015. Many of these reversals happened in outlying, rural areas and the people would have died but for the administration of this life saving drug. Once revived, many of these people refuse treatment by EMS and, due to the provisions of the Good Samaritan statute, the police cannot charge them with any crime. Anecdotally, I have heard reports of reversals of the same person by first responders several times in a short time period. There is a myth that in order for treatment to be effective the addict must want to accept treatment. While this may become true when the addict realizes this at some point in the

recovery process--- it is usually not true when the path to recovery is first started. Many times, the pressure of legal system and criminal prosecution can start an unwilling addict on the path to recovery. The Good Samaritan statute, as it presently exists, does not encourage addicts to enter into recovery. District attorneys want people to get into recovery and stop committing crimes relating to their addiction. District Attorneys and law enforcement should have the ability to charge possessory crimes and to not pursue, or to defer prosecution in order to encourage addicts to accept and enter treatment. In the alternative, consideration should be given to a statute which requires mandatory treatment for individuals who have overdosed and require resuscitation. This type of statute would mirror existing statutes which provides for involuntary commitment of mentally ill individuals.

As a professional prosecutor and an individual who has been involved in health care for many years, I accept the fact that we cannot arrest or incarcerate our way out of this epidemic nor can we legislate our way out of it either. This epidemic requires a multi-dimensional approach to solve the epidemic. It is my hope that my suggestions here today will be helpful to you as you consider necessary legislation to provide law enforcement with the tools to fight this epidemic. I appreciate this opportunity to share my thoughts with you today and I welcome any questions that you may have.