

Challenges and Solutions in the Opioid Abuse Crisis

Testimony of J. Spencer Morgan

Commonwealth's Attorney for Accomack County

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Introduction

Mr. Chairman, Ranking Member, and members of the Committee, thank you for inviting me to testify on this important topic. I will address several issues concerning opioid addiction and increased amounts of heroin, fentanyl, and carfentanil in Accomack County from the perspective of a local prosecutor. I will outline some of the challenges presented to my locality by the widespread abuse of opioids. Next, I will address some of the approaches to problems presented by heroin and opioid abuse which may prove useful and those which have not.

Accomack County is located at the southern tip of the Delmarva Peninsula. Covering over 1,300 square miles, of which more than 800 square miles are water, Accomack is a unique mixture of agriculture, aquaculture, tourism, and aerospace technology. The United States Census has reported a population decline since the 1990s with a current population projected at just over 32,000.¹

Increased Heroin in Accomack County

When I first arrived in Accomack County in the fall of 2011, opioids and heroin had yet to make a substantial impact in the county. Arrests were generally low and while abuse of prescription medications was present, the extent of the problem had yet to be revealed. Around that time, a prosecutor in a jurisdiction from across the state told me that heroin abuse had become one of the biggest problems facing his jurisdiction and described a pattern where addicts in that jurisdiction would commit property crimes in the morning, drive to Baltimore, purchase heroin, return to use what they had purchased, only to repeat the cycle day after day. While this is not what I found when I arrived in Accomack, I quickly learned that such scenarios were not far from the county borders in speaking with Lt. Nate Passwaters of the Worcester County

¹ United States Census Bureau, Annual Estimates of the Resident Population for Counties: April 1, 2010 to July 1, 2017, *available at* <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

Criminal Enforcement Team (CET), the Maryland counterpart to our Eastern Shore Drug Taskforce. Lt. Passwaters explained that heroin had become a substantial issue for Worcester County and that working the cases presented challenges, not the least of which was dealing with the addicts themselves who are driven by psychological and physical dependency on the drug and largely prone to untruthful and deceitful behavior.

In Accomack, buprenorphine, or Subutex under the brand name, was one of the first indicators that widespread opioid abuse had taken root in Accomack County. This drug is used in the treatment of opioid addiction. Increasingly, our local law enforcement was encountering addicts trading these medications for more potent narcotics. On several occasions, the Accomack County Sheriff's Office has disrupted sophisticated schemes to introduce these substances into the Accomack County Jail.² It was not long after the problems of buprenorphine presented themselves that my office prosecuted one of the individuals engaged in a scheme to introduce narcotics into the jail for attempting to clean up the scene of an overdose.³ The more widespread use of Suboxone over Subutex in the last few years has seen a decrease in law enforcement encountering contraband buprenorphine as Suboxone is harder to abuse. However, shortly after regularly seeing "subs" as the drug is referred to on the street, agents with the Drug Task Force learned that there were dealers in the northern corner of Accomack who would, when serving an addict with cocaine, provide gratis a bag of heroin and coax the user to return to them when they wanted more of the drug.

Challenges Faced in Prosecuting Opioid and Heroin Crimes

² Women had drug-stuffed Bibles taken to Accomack jail, *available at* <https://www.delmarvanow.com/story/news/local/virginia/2014/12/08/drugs-bibles-jail/20089619/>.

³ Chincoteague woman pleads guilty to heroin possession, *available at* <https://www.delmarvanow.com/story/news/local/virginia/2017/02/15/chincoteague-woman-pleads-guilty-heroin-possession/97944874/>.

The problems of widespread opioid abuse and addiction have presented challenges to our locality. The worst of these challenges is the death of a defendant before we ever have the opportunity to apply any of the programs available under the Code of Virginia, be it the first offender program, a specialized drug docket, or the Therapeutic Community Program provided by the Virginia Department of Corrections.

Some of the substances being discussed by the Committee today are lethal in very small doses. Direct contact with heroin can make individuals sick and minute quantities of fentanyl and carfentanil can cause someone who comes into contact with it to overdose.⁴ This potential for lethality has resulted in added precautions for law enforcement officers and first responders. In Accomack, officers no longer field test suspected narcotics that resemble heroin such as cocaine or methamphetamine. To make matters worse, we are now learning that some opioids are disguised to look like legitimate medications. The immediate result of this policy change is an increased workload on the Virginia Department of Forensic Science and could result in delays in prosecutions. The potential lethality of fentanyl and carfentanil also pose a significant risk to other individuals exposed to the user or distributor. As one of my first heroin distribution cases involved a video and audio recorded controlled purchase where the defendant's infant child was present throughout the sale I am acutely mindful of the dangers of these substances. The danger of exposure to these substances is frequently highlighted by the coordinator of the Eastern Shore Drug Task Force, Special Agent Scott Wade, in his opioid educational program where he tells the story of a mother who died while cleaning her son's room after finding him overdosing and taking him to the hospital.⁵

⁴ Police officer overdoses after brushing fentanyl powder off his uniform, *available at* <https://www.cnn.com/2017/05/16/health/police-fentanyl-overdose-trnd/index.html>.

⁵ Coroner: Mom dies while trying to clean from son's overdose, *available at* <http://www.wbaltv.com/article/coroner-mom-dies-while-trying-to-clean-from-sons-overdose/13788650>.

In addition, our largely rural community is now seeing what the jurisdiction I mentioned previously saw almost seven years ago. We have users who are committing crimes in Accomack and traveling to Maryland or Delaware to purchase heroin. We are also seeing users from those areas coming to Accomack to commit crimes such as larceny or burglary to fund the purchase of drugs in their own area. The increased geographical range of these offenses has highlighted the need for a shift in how we approach an overdose scene. Some of our smaller law enforcement departments with fewer than 10 sworn officers find themselves responding to what are, in effect, homicide scenes and investigating them like accidental deaths. It did not take long to realize that investigations into these deaths were falling short of the attention needed.

A Coordinated and Cooperative Response

Response to the increase in opioid abuse in Accomack has ushered in a hereto unseen level of cooperation between law enforcement and treatment providers. Immediately, in the wake of increased risk to first responders and the increased number of overdoses in the county, our Drug Task Force coordinator reached out to a company providing Naloxone auto injection devices and most of our local law enforcement officers have received training in the use of these devices. The devices are credited with saving at least one life in Accomack County and the life of a Drug Task Force officer trained through the program in a locality across the Chesapeake Bay when opioid based narcotics became airborne and were inhaled by the officer's partner.

In conjunction with Captain Todd Wessells of the Accomack County Sheriff's Office and the Eastern Shore Community Services Board, a regional mental health and substance abuse provider, Special Agent Wade has made a presentation to every public high school and middle school student on the Eastern Shore, to include Northampton County. This general education program on the dangers and signs of opioid addiction includes two films conceived by Special

Agent Wade and produced by the Virginia State Police. The first, entitled “Broken Dreams, Ruined Lives”, documents the struggle of Ryan Hall, the son of the sheriff of Allegheny County, Virginia. Hall, a star athlete and student, and his father recount how a sports injury and the medications associated with the treatment of the injury quickly led to addiction to heroin.⁶ The second film, entitled “Heroin: No Second Chance”, documents the tragic story of Katlyn Sterling, an Accomack County resident until her death in 2016.⁷ It is the second video that Wade, Wessells, and the CSB providers have found to have the greatest impact on our students. Katlyn’s story has resonated without students and after each presentation students have approached the speakers and sought help for themselves or for a family member.

To better deliver services to users and those who want to help a user, our Community Services Board, in conjunction with the Community Partners of the Eastern Shore of Virginia, has produced a pocket sized pamphlet containing a listing of local resources for those seeking help with substance abuse.⁸ Our officers carry these resource guides and can share this information with members of the public they come into contact with through the performance of their duties. As a prosecutor, the resource guide is helpful because the information can be shared with victims and witnesses struggling with substance abuse and increase the odds that person will be available for court. Too many cases are in jeopardy from reliable testimony becoming unavailable because the declarant is abusing opioids. By combining contact with the police and treatment resources we hope to achieve two goals at once, successful administration of justice and reduced opioid abuse in our community.

⁶ “Broken Dreams, Ruined Lives”, Virginia State Police, *available at* <https://www.youtube.com/watch?v=f4g4AwKv2Hk>

⁷ “Heroin: No Second Chance” Virginia State Police, *available at* <https://www.youtube.com/watch?v=pW-1QjeGLo>

⁸ See attachment 1.

A little over a year ago our Chief of Probation and Parole, Ann Wessells, and Special Agent Wade, in their personal capacities, approached our local representatives in the Virginia General Assembly and requested legislation to establish overdose fatality review teams. A bill sponsored by Senator Lynwood Lewis, passed both chambers unanimously and was signed into law by the Governor on March 30, 2018.⁹ This legislation allows for the establishment of local or regional overdose fatality review teams comprised of law enforcement, treatment providers, and the Department of Health. The teams review the circumstances surrounding an overdose death for the purposes of promoting cooperation and coordination among agencies involved in investigations of overdose deaths or in providing services to surviving family members, developing an understanding of the causes and incidence of overdose deaths in the locality, developing plans for and recommending changes within the agencies represented on the local team to prevent overdose deaths, and advising the Department of Health and other relevant state agencies on changes to law, policy, or practice to prevent overdose deaths. The idea of these panels was brought to Accomack County, and the entire Commonwealth, after Chief Wessells and Special Agent Wade were invited to observe a similar body in Worcester County, Maryland. I am hopeful that our review team will help better equip both our local law enforcement and treatment providers with the information needed for an effective response to the opioid abuse in our community.

Targets of Prosecution and Treatment Availability

My office continues to prosecute opioid related criminal offenses with particular attention to the distribution of illegal and contraband narcotics. A cursory review of cases handled by the Office of the Commonwealth's Attorney for Accomack County between 2016 and 2017 shows nearly half of the individuals prosecuted for simple possession of a Schedule I or II narcotic were

⁹ Senate Bill 399, available at <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0600>.

facing additional criminal charges aside from criminal possession of a Schedule I or II narcotic and the number of distribution charges was almost double that of the simple possession cases. I believe these numbers demonstrate that our local law enforcement officers are focusing their efforts on pursuing distributors and solving crimes, as opposed to targeting addicts.

When an individual is charged and convicted of a first offense felony simple possession that person will frequently fall under Virginia's first offender statute.¹⁰ This program requires that the defendant participate in a substance abuse assessment, complete any treatment ordered, remain drug free, carry the costs of any treatment, and perform 100 hours of community service. Participants in this program are monitored by the Department of Probation and Parole. If after one year the offender has met all the requirements, the charge is dismissed.

If an individual charged with simple possession does not qualify under the first offender statute, any period of incarceration is usually followed by a period where the individual is supervised by the Department of Probation and Parole. Substance abuse treatment and abstinence from drugs and alcohol can be ordered as a condition or term of probation. Failure to comply with the terms of probation can result in the re-imposition of a probationer's suspended sentence. Our office and the probation officers recognize that relapse is a component of addiction recovery. Within the Department of Probation is a system of graduated sanctions which are imposed if a substance abuse related violation is discovered while the probationer is on supervision. However, multiple violations result in requests for action from our office. Once that request is made, a show cause or a *capias* is issued and the probationer is brought back before the court for judicial sanctions. In my experience, the success rate of individuals in either of these scenarios, first offender or probation, is much higher for users of cocaine than opioids.

¹⁰ Code of Virginia § 18.2-251

Once a defendant has been brought back before the court for a violation of probation terms related to their addiction there are custodial programs available to that defendant. The Community Corrections Alternative Program (CCAP) is a residential program which lasts between five and eleven months. While CCAP is not strictly a drug treatment program, there is considerable programming devoted to helping inmates address substance abuse issues. Alternatively, the Therapeutic Community, an eighteen month long custodial program operated at three facilities, requires a documented substance abuse history for admission. This highly structured program is aimed at addressing the lifestyle and thought pattern changes needed for a participant to address their substance abuse and criminal behavior.

As a prosecutor, one of my primary goals is to prevent further harm to the community by an individual engaged in criminal conduct. Traditionally, when evaluating the threat posed by an individual whose criminality is largely limited to self-destructive behaviors, such as simple possession, this was a one sided equation and, insofar as the individual was not directly victimizing the community, sanctions would be geared to trying to help them avoid long term incarceration. With opioid addiction I now find that I am heavily weighing the threat posed by the behaviors to the defendant because of the inherent danger of a fatal overdose and incidental contact by others to the narcotic. An example of this different standing of an addict to opioids is highlighted by how I might advise the handling of a positive drug screen for cocaine with an admission by a defendant/probationer that they smoked some crack versus a positive screen for heroin with an admission that the defendant/probationer was injecting the narcotic. In the former I might advise the supervisory agency to continue working with the individual and pursue alternative treatment options, whereas in the latter, I would advise the individual be taken into immediate custody for their own safety and the safety of others.

Conclusion

I appreciate the time to share our experiences with this problem. I am hopeful that Accomack County will continue to meet the challenges presented by opioid abuse head-on. The inherently dangerous nature of these drugs and the threat to public safety are significant. However, the addictive properties of these substances are so powerful that we must continue to couple the criminal justice process with treatment and see new opportunities for cooperation between two disciplines, law enforcement and treatment providers, which have traditionally been at odds. In conclusion, I would say that second only to a crime victim's appreciation, I have no better professional satisfaction than when I encounter an addict in recovery who thanks me for helping them on a path to recovery through the discharge of my duty as a prosecutor.