LAW ENFORCEMENT ASSISTED DIVERISION – SANTA FE

United States House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

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*The views expressed here are my own

Chairman Sensenbrenner, and Members of the Committee thank you for the opportunity to appear today. I wish to highlight my experience dealing with the opioid – heroin and prescription pain reliever - crisis that we are witnessing today in my capacity as the First Judicial District Attorney in New Mexico **and describe a comprehensive new strategy that Northern New Mexico has engaged to more effectively address opioid-related crime.**

Scope of Opioid Crisis in New Mexico

In 2008, I was elected to serve the First Judicial District. My jurisdiction in New Mexico includes Santa Fe, Rio Arriba, and Los Alamos counties. The District has a total of 7,879 square miles with 26 persons per square mile.

Since the late 1990s, the three counties under my jurisdiction have struggled with severe opiate use and overdose. Injection drug use is an inter-generational issue in some communities. Heroin has infiltrated a culture that values family, elders and communities that are land rich and cash poor.

New Mexico's drug overdose death rate has been one of the highest in the nation for most of the last two decades. New Mexico's unintentional overdose death rate has almost tripled since 1990, and though in recent years the state has seen a decrease in rates, in 2014 overdose death rates increased 20%. [i]

Unintentional drug overdose death rates surpassed death rates due to alcohol-involved (A-I) motor vehicle crashes (MVC) in 1996 and death due to all MVC in 2007.[ii] However, funding for DWI prevention in New Mexico is approximately seven times the amount for overdose prevention. [iii] In 2007, New Mexico moved from the highest to the second highest unintentional drug overdose death rate behind West Virginia.

In 2010, New Mexico moved to 3rd highest behind West Virginia and Kentucky, and in 2013, New Mexico had the 5th highest unintentional drug overdose death rate behind West Virginia, Kentucky, Rhode Island, and Ohio. However, 2014 Office of Medical Examiner data show that New Mexico has moved back to the number two position in the number of overdose drug deaths in the US.

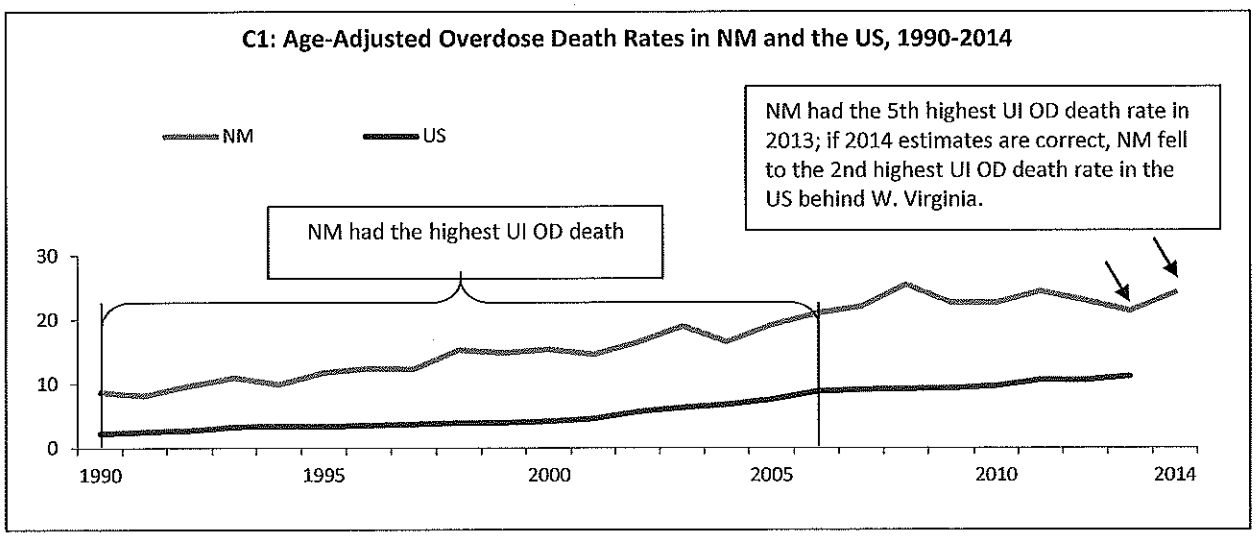

Figure C1 shows the trend in age-adjusted drug overdose death rates in New Mexico and the United States.[iv] Rio Arriba County, in my district, continues to have the highest overdose deaths in the country. In 2014, the County had a death rate of 108 per 100,000 residents, almost ten times the national rate.

In response to the opiate epidemic, New Mexico became the first state to amend its laws to make it easier for medical professionals to prescribe and dispense naloxone, and for lay administrators to use it without fear of legal repercussions. New Mexico was also the first state to amend its laws to encourage Good Samaritans to summon aid in the event of an overdose. Good Samaritan laws provide limited immunity from violations of possession of a controlled substance or paraphernalia to those who seek help for a friend or family member who is experiencing a drug overdose and call 911. Twenty-seven other states have passed a similar law to address the overwhelming rates of drug-related overdoses in their states. Furthermore, New Mexico has a well-established syringe exchange program that was built decades ago in response to very high rates of Hepatitis C infections in our state.

Just last week the New Mexico Department of Health just reported that more than 900 opioid overdose reversals were reported in 2014 due to the use of naloxone, a 29% increase in reversals from 2013. Although the increase is significant, more access to naloxone is needed in our communities. For example, not all of our Public Health Offices in every county dispense naloxone, and only a handful of law enforcement agencies carry naloxone. Only one of our county detention centers dispense naloxone when a person identified as having an addiction to an opiate is leaving the jail and only one of our jails offers medication assisted treatment to people who enter jail with an addiction.

New Mexico's overdose rate in part can be attributed to: the lack of care coordination among health care providers, substance abuse counselors, buprenorphine providers and methadone providers; a lack of medication assisted treatment services and naloxone dispensing in the jails and detention centers; no care coordination upon release for people leaving jail with an addiction; and medical providers who are over prescribing strong opioids and not informing patients about the risks of addiction and overdose or co-prescribing naloxone.

While there has been a dramatic increase in heroin and prescription drug use that has shifted from urban centers to rural areas, including communities affected in rural parts of the United States not accustomed to dealing with heroin use, authorities in my jurisdiction have been dealing with this for a long time.

We see the same nonviolent drug offenders filling the court's dockets over and over again while burdening taxpayers with expensive jail stays. While in jail these people never receive the treatment and social supports they need to address their addiction. We arrest people and then we send them to court on a felony. We tell them, "Stay clean." Within two weeks, they go in and they meet with probation and parole after giving a urine sample. The drug test will come back positive because they are still struggling with their addiction, so then we put them back in jail and we go back to court on a probation violation and we all say, "Don't use drugs."

We put them back out on the street and within a couple of weeks, they go back to probation, they have a positive drug test, then they go back to jail and we do this constantly, every day. Nobody is getting anywhere with this. I feel like a mouse on one of those little wheels. I just keep running and running and running and we're not getting anywhere.

People go through the system without any impact on their behavior. What's worse, is that once they have been in the system, the challenges they face in turning their life around are infinitely greater than they were before. Everything gets harder – from putting food on the table to keeping families together to simply keeping hope alive.

That ends up costing our community far more - in time, in human resources, in un-realized potential, in tax dollars, and in the cost of future crimes - than it would if we could catch these cases before going into the system and get these people the help they need.

Our state, our communities and our families are wrestling with addiction, overdose, incarceration that is costly in more ways than one, and rising property crimes. Not unlike our sister cities across the county, we were frustrated with the level of repeat offenders, frustrated with the predictability, and the futility, of that old, but always tragic cycle.

Arrest, trial, conviction, short stint in jail, release. Arrest, trial, conviction, short stint in jail, release. Again and again.

What we were doing wasn't working, and our community in Northern New Mexico was ready to invest in better options.

So in 2014, Santa Fe became the second city in the nation after the city of Seattle to implement a Law Enforcement Assisted Diversion program, referred to as LEAD, in an attempt to address low-level crime and reduce, where possible, the involvement of a criminal justice system that often seems stacked against poor and minority defendants.

Law Enforcement Assisted Diversion

Under LEAD, police officers exercise discretion to divert individuals for low-level criminal offenses (including drug possession and low-level sales) to a case manager and a comprehensive network of services instead of booking them and initiating the charging process. LEAD fosters true partnership between police and the communities they serve.

Santa Fe's LEAD program was developed after nine months of study and community engagement and is tailored to the community's needs. Unlike Seattle, Santa Fe's main concerns are not drug markets, but rather opioid misuse, dependence and overdose, as well as rising rates of property crime. Eligibility for Santa Fe LEAD is limited to those caught possessing or selling three grams or less of opioids.

The unique collaboration between multiple stakeholders -- including the police, district attorneys, mental health and drug treatment providers, housing providers and other service

agencies, the business community, public defenders, elected officials and community leaders – has directly contributed to the success of LEAD. Traditional adversaries have an opportunity to come together to supervise and encourage participants in the program. In so doing, they grow to have a stake in the success of the people going through the program. The results thus far have been eye-opening.

After three years of operation in Seattle, a new, independent evaluation has shown that LEAD reduces the number of people arrested, prosecuted, incarcerated, and otherwise caught up in the criminal justice system. The University of Washington evaluation found that LEAD participants were 60% less likely to be rearrested within the first six months of the study and 58% less likely to be rearrested during the entire course of the evaluation to date.[v] This result is particularly encouraging based on the high re-arrest rate for this population under the traditional criminal justice model. The Santa Fe program has only been in operation for one-year, however, early data suggests we are seeing this same decrease in recidivism.

The Santa Fe LEAD project allows us to focus on goals we all agree on: protecting our kids, increasing the public safety, and preventing and treating addiction. And, although it is too soon to paint a causal connection, I am proud to say that property crime is dropping in Santa Fe, hitting all-time lows and showing no indications of picking back up again.

LEAD recognizes that drug use is a complex problem and people need to be reached where they currently are in their lives. LEAD has precipitated a fundamental policy reorientation in Santa Fe, from an "enforcement-first" approach, to a health-centered model – reinforced by specialized harm reduction training required of every police officer. In this sense, LEAD helps people with physical and mental health needs escape the cycle of repeated arrests and incarceration for substance use.

An unplanned but welcome effect of LEAD has been the reconciliation and healing it has brought to police-community relations. While tensions rise in many communities between law enforcement and civil rights advocates, LEAD has led to strong alliances among traditional opponents in policy debates surrounding policing, and built a strong positive relationship between police officers and people on the street who are often a focus of police attention.

Benefits of the LEAD Program to the Community

- Increases safety and order for the community by reducing future criminal behavior.
- Reduces the burden on the law enforcement, county jail, prosecution, and court system.
- Redirects public safety resources to more pressing priorities, such as serious and violent crime.
- Reduces opiate overdoses and recidivism.
- Optimizes the use of the Affordable Care Act health coverage for treatment and social supports.
- Improves individual outcomes and community quality of life through research-based treatment, harm reduction and social supports

Too many times, I think we look at this massive, sometimes overwhelming justice system and we say it's too big for local communities to have an impact.

But in Santa Fe, and in Seattle, we're finding more and more every day that in spite of that sense of powerlessness, it's a misconception, and when a really good idea comes along, and circumstances in your community and the public safety demand action, you can move the mountain, and make a real difference in people's lives and in your community's public health and safety.

This was something we had to get right. So we put all the options on the table – and brought all the key stakeholders to the conversation.

City, county and Tribal officials, law enforcement, the District Attorney, public defenders, treatment providers, community groups and citizens all came together to identify a new approach to addiction and the crime that is directly correlated to it.

A few things became clear in those conversations:

- We wanted to see people who were struggling with addiction in a public health system rather than in jail or on the streets.

- We recognized that handling low-level, non-violent drug offenders in the local and state criminal justice system was not only far too costly but also far too ineffective. The evidence suggests that this is not a way to break the cycle of addiction or enhance public safety.

With the economic strain on our local counties, pre-booking diversion programs, like LEAD, offer a viable, cost effective alternative to the status quo that can positively impact our communities. In Santa Fe, LEAD is projected to cost **80% less** than the current system over a 10 year period. [vi]

Santa Fe LEAD Task Force Findings: The Cost to the System

100 individuals, arrested by City of Santa Fe Police for opiate possession or sales, cost more than **$4 million dollars** or an average of **$41K per individual** across local and state systems over the last **3 years.**

These same 100 individuals **cost the city $1 million dollars in jail/detention** costs over 3 years for a total of **11,502 jail days**.

They were **arrested 590 times** by police officers in the 3 years; officers spent an average of 9.3 hours per arrest.

A majority (91 out of 100) were repeat offenders with a pattern of being re-arrested every 6 months.

51% of those individuals had **property crime** histories.

A growing number of jurisdictions are interested in adopting LEAD including Washington D.C., Baltimore, Atlanta, Buffalo, Houston, Ithaca, Los Angeles, New York City, Philadelphia, Portland (ME) and San Francisco. Albany, NY, is on pace to launch LEAD in 2016. Numerous jurisdictions around the country are interested.

Conclusion

At some point, we have to get past the rhetoric. This isn't a question of being soft or tough on crime. There are plenty of politicians out there who tell you the answer is to crack down on criminals and then keep coming back with the same tired solutions like increasing mandatory minimums and throwing more and more Americans – members of our communities – in jail.

If we really care about fixing the problem – not just using it to further our goals, then it is time to invest in better, smarter options. It is time to listen to what the data tells us and treat drug misuse as a health issue, not a criminal one.

Santa Fe is privileged to be on the forefront of this exciting shift in criminal justice policy and we are excited to be in a position to work with other jurisdictions on implementing this model in their communities.

The police rank and file we have working this program will tell that it's changed lives for the better, and already has had an impact on our community that could last a generation or more.

This is about shifting resources so that our law enforcement officers and our prosecutors and our jail and our first responders can really respond to the violent crimes that we know exist in our community. Above all, this is a public safety program and it is a public health program.

Already, our streets are safer and our families are healthier.

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[i] New Mexico Department of Health: http://nmhealth.org/news/information/2015/7/?view=279

[ii] NM, Department of Health, Epidemiology Response Division Data.
[iii] Moeller, Shelly, *An Inquiry into Harm Reduction Policies and Practice to Prevent Drug Overdose in NM*, June 2015.
[iv] NM, Department of Health, Epidemiology Response Division Data.
[v] University of Washington-Harborview Medical Center. *LEAD Program Evaluation: Recidivism Report*, March 27, 2015.

[vi] Rand, Joohee. *LEAD Cost Benefit Analysis*, Santa Fe Community Foundation. June 24th, 2013.