

Code Enforcement

The Opioid Crisis: Does Local Code Enforcement Have a Role?

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News reports from all regions make it clear that no community – small or large, rural or urban, wealthy or not – is immune from the heroin/opioid crisis. Massachusetts Governor Deval Patrick was in 2014 the first U.S. state governor to declare that the crisis constituted a public health emergency. Declaring a public health emergency can bring more resources to address the problem and empower health and human services agencies to more quickly put additional resources in place, including treatments and medication that can reverse the impact of an overdose. Since the first 2014 declaration, seven other Governors (so far) have followed, according to the Network for Public Health Law and other news reports:

Virginia Governor Terry McAuliffe on November 21, 2016;
Alaska Governor Bill Walker on February 14, 2017;
Maryland Governor Larry Hogan on March 1, 2017;
Florida Governor Rick Scott on March 13, 2017;
Arizona governor Doug Ducey on June 5, 2017;
South Carolina Governor Henry McMaster on December 18, 2017; and
Pennsylvania Governor Tom Wolf on January 10, 2018.

The U.S. Centers for Disease Control and Prevention (CDC) reported on December 30, 2016 that opioid overdose deaths hit a record-high of 33,000 nationwide. Following that, a White House commission recommended a national declaration, and on October 16, 2017, President Donald Trump declared the crisis a national health emergency.

It's hard to argue that the word "crisis" is an overstatement. Multiple reports over the last several years show that South Carolina Governor Henry McMaster's reference to the crisis as a "silent hurricane" is accurate. News articles show continual increases in overdose deaths, affecting almost every community. For example, a Boston Globe article from August 10, 2015, reported on the "mounting death toll" from overdoses in both Kentucky and Massachusetts, noting this is one area on which Republican Senate Majority Leader Mitch McConnell, representing Kentucky, and Democratic Senator Ed Markey, representing Massachusetts, can agree more resources are needed.

The numbers certainly prove the point. An October 27, 2017 report on Opioid Addiction by the International City/County Management Association (ICMA) noted an over 200% increase in overdose deaths in 2012 in Lee County, North Carolina. The Pike County Courier on January 17, 2018 reported an increase of overdose deaths of more than one-third for 2017, as compared to 2016. Jo Martin of the Maryland Reporter reports that from 2010 to 2016, overdose deaths rose by 66% in Maryland. Overall, the Network for Public Health Law reported in November 2017 that in a single year, from 2014 to 2015, the nationwide death rate from widely-used synthetic opioids such as fentanyl and carfentanil, increased 72%. As such, the Associated Press reported in an October 27, 2017 article that the CDC reports a more than ten-fold increase in overdose deaths in 2016, totaling 64,000, as compared to 1988 – during the crack cocaine crisis – when less than 5,000 were reported.

The impacts from today's ongoing opioid crisis are widespread, affecting families and individuals as well as communities. Even as almost every report calls for more resources, many efforts are underway – private and public, and at the federal, state and local levels – to try to address it. The role of emergency providers, including police, doctors and treatment facilities, seems clear enough. But other agencies are also involved, and this article will explore the role of local code enforcement in addressing community concerns with illegal drug use in the midst of this 21st century drug crisis.

The historical background. Illegal drug use (and illicit use of otherwise legal drugs) are not new problems but have been issues in the United States for more than a century. This started with opium use even before the Civil War, and was followed by the initial development of heroin and cocaine by drug manufacturers towards the end of the 19th century. At that time, such drug use was not illegal, even without a prescription. As it was first introduced, cocaine was an accepted energizer, as is coffee today. But as Mike Stobbe of the Associated Press reported on October 27, 2017, that changed when some became addicted to cocaine, and then as a link to violent crime and prostitution followed.

The first national anti-drug effort resulted in the Harrison Narcotic Tax Act of 1914. That law, according to a 1972 summary by Consumer Reports, didn't make narcotics or cocaine illegal, but imposed a special tax and requiring a prescription for any legal use – thus making use without a prescription effectively illegal. As a practical matter the Great Depression and World War II limited widespread use of illegal (or costly) drugs, in favor of cigarettes and alcohol. But after World War II, a new era of drug use began. The October 2017 Associated Press article reported that drug use bloomed with the development of amphetamines and methamphetamines for weight loss and depression, but diminished with restrictions in the 1960's and 1970's. At that time, heroin and later cocaine, in the

form of "crack," which could be smoked, became dominant illegal uses. Both distribution and use of these illegal drugs was widespread, leading to urban blight and neighborhood decay in many areas, as well as increased violent crime.

Development of the opioid crisis. The current opioid addiction crisis began in the mid 1990s, with the introduction of a drug called OxyContin, which news reports indicate was intended to be a safe and effective opioid to use for months, Instead, as the October 2017 AP report states, patients became addicted, which became worse with aggressive marketing directly to consumers. Many also turned to less expensive illegal alternatives, such as heroin and synthetic opioids, including fentanyl and carfentanil. These synthetics increased the problem, in part because they can be so powerful – and thus dangerous. Indeed, they are so powerful that they pose serious risks to police officers and detection dogs, according to a June 2017 report by Lakeview Health Drug & Alcohol Rehab of Jacksonville, Florida. That report indicates that many officers now carry naloxone, (the nasally-introduced version of which is known as Narcan), which serves as an antidote as it can reverse (or at least reduce) the impact of an opioid overdose.

The impact of the opioid crisis. As the 2017 International City/County Management Association (ICMA) report stated, "The opioid addiction crisis is affecting communities of all sizes," and each report indicates that overdose deaths have for almost every region more than quadrupled over the last few years. Nor is the impact of this drug use targeted to certain populations or income levels. As a Columbia University Mailman School of Public Health report noted on September 26, 2017, the epidemic is "not confined to affluent young white residents," but "affects all neighborhoods, races, ages, and socioeconomic backgrounds." Nor, the report notes, is it limited to youth, as the age of impact varies, such that, in 2016, the median age of overdose was reported to be 37. The point is that many of us are impacted, even beyond the dramatic increase in overdose deaths. Families are devastated, and it is reported that tens of thousands more children are in foster care nationwide – which reports are backed up by reports of increases in each community.

The impact in neighborhoods and the role of code enforcement. Local governments have been responding, and the "front line" starts with those who respond to emergency calls, including fire stations and emergency medical services providers, as Joe Lawlor reported in an April 1, 2017 article in the Portland (Maine) Press-Herald. But there are longer-term actions that can also be put in place. Vacant or poorly maintained property can, as in past decades, still serve as the sites for drug abuse, as multiple reports verify. For example, the (Delaware) News Journal reported, in an online story dated July 17, 2017, that vacant properties can serve as a site for drug deals. The Florida Regional Community Policing Institute, in a February 2013 presentation, noted the reality that abandoned properties can foster illegal behavior – with narcotics use, sale and manufacture topping the list. Indeed, they cite an Austin, Texas report that unsecured vacant buildings had more than three times the number of calls to police for drug violations, twice the number of calls about violence, and nearly twice the number of calls about theft. The April 2017 article in the Portland Press-Herald similarly reported that "a bountiful supply of cheap rental housing," especially when they aren't maintained, "enables the drug problem to fester . . ." As the Washington State Municipal Research and Services Center reports, such illegal drug use, can reduce safety for community residents, housing values and the overall quality of life.

Especially where vacant or dilapidated housing has an impact on allowing drug use, local code enforcement can address community needs, in hand in hand coordination with police, other emergency responders, and health and human services agencies. Some recent and some reports from years past show how this can work. A 1998 report in Crime Prevention Studies, Volume 9, page 261, entitled "A Co-Production Model of Code Enforcement and Nuisance Abatement" studied code enforcement efforts in Baltimore, Maryland, and concluded at that time that code enforcement efforts to enforce building code, nuisance and safety laws can be effective in supporting communities against the impact of illegal drug use. The report concluded this was possible when code enforcement staff used a cooperative strategy, in coordination with other agencies or community groups.

Indeed, more recent reports show that such code enforcement efforts can be the critical element in eliminating a drug use site from a vacant or nuisance property within a community – even as the impetus establishing the ability to respond may have, in many cases, been established more than a decade ago. The Washington State Municipal Research and Services Center's 2015 report on Drug Nuisances indicates that in 1988, the State of Washington enacted Chapter 7.43 of the Washington Revised Code, which authorized local code enforcement officials to seek closure of a building or unit within a building for one year upon a finding that a "drug nuisance" exists, which Washington Revised Code §7.43.010(1) defines as a building or unit used for manufacturing, delivery or storage of any controlled substance, including heroin or opioids. And that 1988 law requires the court, upon such a finding, to order closure of the building or unit. While building closures may be an extreme step, the 2015 report indicates that the threat of such an order, combined with expedited procedures established by Washington Revised Code §7.43.050, has assisted in gaining cooperation from the property owners – and stopping the illegal drug use. Indeed, a 2015 report from Snohomish County, Washington emphasizes how these laws have been relevant today in addressing more than 200 nuisance properties – almost all of which have been home to illegal drug use.

Even as laws from prior decades can provide a means to address illegal drug use, the effort doesn't stop simply by eliminating drug use at a specific location. The Snohomish County report indicates that as such properties are closed, addicted persons living there are, with the assistance of health and human services agencies, enrolled in detox programs and placed in more secure housing.

Nuisance laws can also assist in stopping illegal drug activity at specific sites within a neighborhood. For example, the City of Columbus, Ohio's Ordinance §4701.10 empowers code enforcement officials to serve a Notice of Violation, requiring correction and compliance within a "reasonable time," for any building code violation, but Ordinance §4704(f) also defines a "public nuisance" as any building in which a

felony violation or pattern of criminal gang activity has occurred. Using a similar state law in Florida, Florida Statute § 823.05, the City of Jacksonville reports that it will order property to be maintained in compliance with applicable building codes – or drug activity to cease – subject to enforcement of the abatement order by court, which can include issuance of an injunction under Florida Statute § 60.05 and 06.

Even where a nuisance law may not specify drug use or distribution as a public nuisance, the day to day activities involved, which may include noise, excessive occupancy, or illegal activity in plain sight, may all establish a nuisance under local laws protecting "quiet enjoyment," or even common-law nuisance, as reported in the 1998 Crime Prevention Studies article, Vol. 9, page 261. Similarly, municipalities and counties can also, as reported by the Florida Regional Community Policing Institute in 2013, enforce a lack of building maintenance against a property owner or resident, and citations and the possibility of court orders requiring abatement of such violations can lead to correction or closure of the property. As an August 15, 1994 article by Dan Tracy in the Orlando Sentinel noted, such efforts by code enforcement inspectors can play a critical role as they coordinate with police and emergency responders. Such code enforcement efforts can, in some cases, resolve longer-term neighborhood issues when a specific property is the location of illegal drug activity. And in extreme cases raising health and safety concerns, demolition can, as a more recent 2013 online report by WALB News from Charlotte, North Carolina indicates, eliminate the blight altogether.

The basic purpose of code enforcement is to solve problems, and as part of that, protect the quality of life enjoyed by residents in our cities and counties. Police, emergency responders, and public health agencies are all directly impacted by the opioid crisis, and are all too often called upon to respond immediately to emergencies, often – and increasingly – including opioid overdoses. In addressing longer term efforts, enforcement offices can, in some cases using laws put in place decades ago, take direct steps against a vacant or dilapidated property hosting the drug activity in the first place and then offer treatment and resources to addicts and other affected persons. ML

