

'We're not fighting a war on drugs. That was lost years ago.'

BEN DAVID, NEW HANOVER COUNTY'S DISTRICT ATTORNEY

A man is held after a roundup of drug suspects in Brunswick County. 'It's a bad guy drug and it is something that a lot of the rich kids crave,' said Ben David, the district attorney for New Hanover County. *StarNews file*



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Law enforcement going after dealers, not users

BY ADAM WAGNER
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The reality of the number of people tied to heroin trafficking – and, more generally, the drug trade – led the criminal justice system to shift its emphasis away from users.

"We're not fighting a war on drugs. That was lost years ago," said Ben David, New Hanover County's district attorney. "We're

fighting a war against drug dealers."

As part of that effort, the district attorney's offices in Brunswick and New Hanover counties are willing to try cases in federal court, where there are stiff penalties and no probation, and to try dealers for trafficking, which, depending on the amount of drugs seized, carries minimum sentences of from five years and 10 months to 23 years and six months on a state level.

Often, prosecutors see an overlap between

gang activity and the heroin trade.

"It's a bad guy drug, and it is something that a lot of the rich kids crave," David said. "It's that rare intersection of high demand with a ready supply. ... It's mixing people with money with people who are desperately poor, and that often leads to other crimes of violence like armed robberies, home invasions and sometimes murder."

Some who have been affected at that deadly intersection of drugs and money feel

harsher punishments for dealers should be on the table, including making dealing a violent offense.

Keith Thompson's daughter, Blaire, died of an overdose in 2004. In 2006, Thompson pushed for a Drug Dealer Liability Act that would have allowed families of overdose victims to sue drug dealers who sold in the area where the overdose occurred. The effort

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stalled in the General Assembly.

Now, Thompspon said, he'd be an advocate for making dealing, even at low levels, a violent offense.

"It's the low-level guy that kills your kid. He gets it from the big guy. It's the low-level guy that sells it to their friend and the friend gets your kid started," Thompson said.

Understanding sentencing for drug crimes can be tricky for someone outside of the criminal justice system.

What is clear, though, is that the Justice Reinvestment Act of 2011 changed the way offenders move through the system. The sentencing reform expanded conditional discharge for first offenses while limiting a judge's ability to revoke probation and a prosecutor's power to try someone as a habitual felon.

It is that last portion that raises the ire of Chris Thomas, an assistant district attorney in Brunswick County.

Under the new sentencing, someone can be arrested three times for possession, all of which are low-level felonies that involve probation. Then, the fourth time someone is arrested for possession, the charge is elevated to what is called a Class E offense, for which the suggested minimum sentence is 20 to 25 months.

Prior to the sentencing reform, habitual felons were tried as Class C offenders, for which the suggested minimum sentence under the new program would be nearly six years in prison.

"As far as I know, we're the only state

that has three strikes and you've got a curfew and we really mean it this time. It makes absolutely no sense to me," said Thomas, who also is an advocate of drug treatment courts.

Not everyone shares Thomas' view of the sentencing, though.

"It has frustrated prosecutors. Of course, defense attorneys love it," said Ola Lewis, a Brunswick County superior court judge.

The relatively light sentencing for drug users does have some effects, David said.

"In order to put violent people away for long sentences, and we do, you let out thieves and you let out drug users ... and they're the ones breaking into your cars and your houses," he said.

Many in the criminal justice system, including David and Thomas, emphasize treatment for drug users.

The Justice Reinvestment Act gave prosecutors an additional tool to accomplish that by expanding conditional discharge for low-level drug offenses to all narcotics. Prior to the 2011 reform, the law applied only to cocaine and marijuana.

Someone accepting the conditional discharge must plead guilty, enter probation for at least a year and complete at least five months of drug education.

"If I had an individual who's charged with possession and is making an effort to help themselves and beat the addiction, we're always going to find another way than saddling them with a felony conviction," Thomas said.

The Justice Reinvestment Act also made it more difficult for judges to revoke probation. Whereas before, judges could revoke probation for failure to

comply with terms of the probation, now they can do so only when a defendant runs away or is convicted of a new crime.

Furthermore, if a criminal violates the terms now, he can be sentenced to 90 day "dips" in county jails, not state penitentiaries. It is only upon committing a third violation that he can be sent to prison again.

"It burdened the counties more because the jails now become temporary prisons, in essence," Lewis said.

One way to avoid burdening taxpayers with prisoners is to try to treat low-level habitual offenders via drug treatment courts, which are active in Brunswick and New Hanover counties.

Carrie Menke, Brunswick County's treatment court coordinator, said drug users who have turned to crime to support their habits often do well in treatment court, while it can exacerbate the habit for a beginning offender.

A sample drug court client, for example, could have six or seven charges, be first arrested before the age of 16, start using drugs and alcohol before the age of 16 and have been to rehab five times.

In 2012 and 2013, Brunswick County's drug treatment court saw a 14 percent recidivism rate. Nationally, Menke said, anything lower than a 20 percent recidivism rate is considered successful.

"What we always hope as judges is that you have an impact on somebody's life in a positive way that makes them want to change," Lewis said.

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