

## The response of state courts to the opioid crisis

Deborah Taylor Tate

### TAKEAWAYS

**The state court justice system is the largest source of referrals** to treatment for substance use disorder in the United States and is thus well-situated to develop innovative ways of addressing the opioid epidemic.

**Substance use disorder affects every part of the court system, not just criminal justice**, including referrals to foster care.

**Addiction to other substances and mental health issues** must also be considered in any strategies to address the opioid crisis.



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*The following three articles address how human services programs can support successful treatment and recovery for individuals with opioid use disorder. Deborah Taylor Tate details how the justice system can lead the way in addressing the opioid crisis; Kimberly Hall describes Ohio's response; and Barbara Ramlow outlines Kentucky's Targeted Assessment Program.*

**The state court justice system is now the largest source of** treatment referrals for substance use disorder in the United States. These courts are in a position to play a crucial role in addressing the opioid epidemic. Addiction to illegal and legally obtained opioids is not solely a criminal justice issue, but affects every part of the court system. This includes referrals to foster care for children whose parents cannot safely care for them in their homes due to substance abuse. Many people are arrested for crimes related to their substance use disorder, filling jails over capacity, especially in depressed and rural areas. Over three-quarters of those held in jails are not convicted of a crime; some have been recently arrested and will be released on bail, while others cannot afford bail and must remain in jail until their case comes to trial.<sup>1</sup> Jails also house individuals who are waiting for a treatment slot to become available after being sentenced by a judge in drug court to probation contingent on completion of a residential treatment program.<sup>2</sup>

Incarcerated women with substance use disorder face heightened challenges. Research suggests that the majority of women in county jails have substance use disorders, making them candidates for treatment; many also have mental health issues.<sup>3</sup> However, there are fewer treatment beds available for women than for men. This problem has been exacerbated by the dramatic rise in female incarceration in recent decades—the incarceration rate for women in county jails has increased more than 800 percent since 1980.<sup>4</sup> As a result, when women wait in jail for a residential treatment slot, the wait time is often much longer than that for men.

If courts can devise new strategies for handling cases related to substance use disorder and mental health issues, it may be possible for people who need treatment services to receive them without first having to be incarcerated.

### The National Judicial Opioid Task Force

The need for the justice system to take a proactive approach to substance use disorder led the Conference of Chief Justices and the Conference of State Court Administrators to form the National Judicial Opioid Task Force in 2017. Since then, the Task Force has developed a Resource Center that includes tools and other resources to assist courts (and other entities) in addressing the opioid crisis.<sup>5</sup> These resources include some specific to particular populations, such as American Indians and Alaska Natives who have cases in tribal courts rather than state courts. In November 2019, the Task Force released a final report detailing recommendations, tools, best practices, and examples of successful programs.<sup>6</sup> The report found that:

- There is a lack of access to and education about the use of quality, evidence-based treatment for opioid use disorder, including medication assisted treatment that combines medication with counseling and behavioral therapies;
- The devastating effects of the opioid epidemic are most clearly seen in cases involving children and families;
- Although the opioid crisis is a national issue, state and local governments bear much of the burden, so it is necessary for Congress and federal agencies to recognize state courts as essential partners in the response to the opioid crisis; and
- State courts must design programs and resources that will provide an effective response to future addiction crises, not just the current opioid crisis.

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### Examples of promising state programs and responses to the epidemic

Within the state court justice system, there are many examples of promising approaches to the opioid epidemic; a few of these are detailed below.

#### The power of judges as “conveners”

Individual judges, in their role as community leaders, have taken the initiative to convene emergency summits and to create state, regional, and local opioid task forces. These groups of stakeholders study the problems in their communities and craft targeted responses, utilizing all available resources.

#### The Sequential Intercept Model

The Sequential Intercept Model is a strategic planning tool that helps communities better understand the gaps and resources they have in helping those with mental illness or substance use disorders who are in the criminal justice system. The model identifies six key points during the criminal justice system process at which services can be provided: when a person seeks community services, encounters law enforcement, is detained and appears at initial court hearings, is in jail or at court, reenters the community after incarceration, or is on probation and parole. Judicial involvement at all of these points, not only when cases come to court, could help prevent issues from escalating and promote recovery.

#### Pretrial reform

Criminal justice reforms can help address the opioid crisis. For example, pretrial risk assessment tools could help get people into needed treatment rather than putting them in jail.

#### Faith and justice initiatives

Some states are combining faith-based and judicial approaches to the opioid crisis. For example, the Tennessee Faith & Justice Alliance trains congregants on issues related to substance use disorder and provides information on treatment options. To be considered a “recovery congregation,” faith-based organizations must meet the following six criteria:

provide spiritual and pastoral support to congregants; view substance use disorder as a treatable disease rather than a moral issue; embrace and support people in recovery; provide visible outreach in their community; share recovery information; and host recovery support groups.

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Several states have developed or expanded family treatment drug courts in response to increasing numbers of parents with opioid use disorders whose children are in foster care.

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### Specialty courts

Traditional drug courts in many states have revised their operations and procedures in response to the opioid crisis, in part by ensuring access to all forms of medication assisted treatment. In addition, several states have developed or expanded family treatment drug courts in response to increasing numbers of parents with opioid use disorders whose children are in foster care because the parents are unable to properly care for them.

Examples of new specialty courts include:

- **Opioid Intervention Court** in Buffalo, New York; following an arrest, defendants are evaluated by medical professionals and the District Attorney to determine program eligibility. If they are deemed eligible, they are taken immediately through detox, and then begin residential or outpatient treatment. Program participants have strict curfews, and must appear in court each day for at least 30 days. After program completion, defendants are transitioned to traditional drug court programs.
- **Safe Baby Court** in Tennessee, a specialized rural court program for parents of infants and toddlers up to age 3. The program coordinates community resources, services, and long-term support, with a goal of connecting families with young children to their communities and providing a strong foundation for infant mental health.

### Reducing the risk of overdose death during and after incarceration

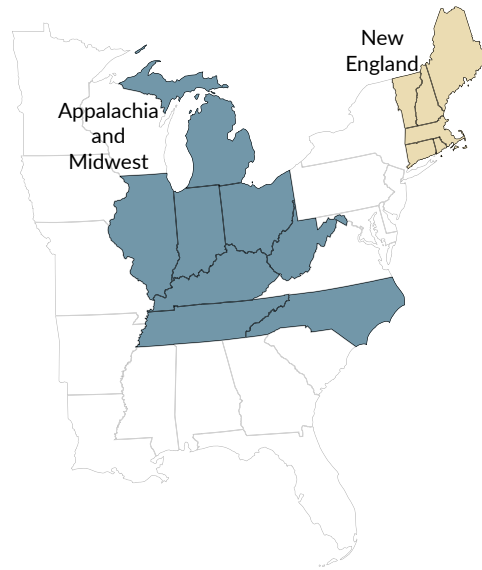
Examples of programs designed to reduce the risk of overdose death during a jail or prison sentence and after reentry include:

- **Medication Assisted Treatment Reentry Initiative** in Massachusetts, which provides both pre-release treatment and post-release referral for inmates with opioid or other substance use disorder, with the goal of providing comprehensive reentry services. Participants also receive Naltrexone, a medication that blocks the effects of opioids, including pain relief or feelings of well-being.
- **Access to Treatment for Inmates** in Rhode Island is an innovative statewide initiative that offers medication assisted treatment to every inmate in the system.

### Regional Judicial Opioid Initiatives

The Conference of Chief Justices and Conference of State Court Administrators have created and supported two cross-border collaborations in areas hardest hit by the opioid epidemic. These are judicially led initiatives among groups of states that are similarly affected by the opioid crisis. States share information about the reach of the crisis, data, and successful programs and practices. As shown here, the two groups are:

- **Appalachia and the Midwest**, including Illinois, Indiana, Kentucky, Michigan, North Carolina, Tennessee, Ohio, and West Virginia; and
- **New England**, including Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.



## Continuing efforts

While the justice system has already taken many actions to help address the opioid crisis, more remains to be done. The final report of the National Judicial Opioid Task Force, released in November 2019 and described above, contains recommendations and resources for continued judicial efforts across the country. Most importantly, it is clear that the current crisis is not just an opioid problem, but includes addiction to other substances and mental health issues. The Task Force is thus expanding its focus to a broader addiction and mental health approach. ■

*Deborah Taylor Tate is Director of the Tennessee Administrative Office of the Courts and Co-Chair of the National Judicial Opioid Task Force.*

<sup>1</sup>W. Sawyer and P. Wagner, *Mass Incarceration: The Whole Pie 2019*, Prison Policy Initiative, 2019. Available at: <https://www.prisonpolicy.org/reports/pie2019.html>

<sup>2</sup>A. Wadhvani, “One Unexpected Effect of Tennessee’s Opioid Crisis? Longer Jail Stays for Women,” *The Tennessean*, Oct. 21, 2017.

<sup>3</sup>C. A. McNeely, S. Hutson, T. L. Sturdivant, J. M. Jabson, and B. S. Isabell, “Expanding Contraceptive Access for Women with Substance Use Disorders: Partnerships Between Public Health Departments and County Jails,” *Journal of Public Health Management and Practice* 25, No. 3 (2019): 229–237; S. Fazel and J. Danesh, J (2002) “Serious Mental Disorder in 23000 Prisoners: A Systematic Review of 62 Surveys.” *Lancet* 359, No. 9306 (2002): 545–550.

<sup>4</sup>McNeely, Hutson, Sturdivant, Jabson, and Isabell, “Expanding Contraceptive Access for Women with Substance Use Disorders.”

<sup>5</sup>National Judicial Opioid Task Force, Tools and Resources for Courts. Accessed April 30, 2020 at <https://www.ncsc.org/~media/Files/PDF/Topics/Opioids-and-the-Courts/NJOTF%20Resources/NJOTFToolsandResources111819.ashx>

<sup>6</sup>National Judicial Opioid Task Force, Convening, Collaborating, Connecting: Courts as Leaders in the Crisis of Addiction. Available at [https://www.ncsc.org/~media/Files/PDF/Topics/Opioids-and-the-Courts/NJOTF\\_Final\\_Report\\_111819.ashx](https://www.ncsc.org/~media/Files/PDF/Topics/Opioids-and-the-Courts/NJOTF_Final_Report_111819.ashx)