

Treatment for Opioid Use Disorder in the Criminal Justice System

“Jails have become a revolving door for individuals struggling with mental health and substance use disorders.”

- National Sheriffs' Associations (October 2018)

A Fundamental Right

In its 1976 decision, *Estelle v. Gamble*, the U.S. Supreme Court established that inadequate medical care for incarcerated individuals could constitute cruel and unusual punishment and thus violate the Eighth Amendment to the U.S. Constitution.

As a result, correctional facilities are required to provide adequate medical services to incarcerated individuals.

Standard of Care

Medication-assisted treatment (MAT) is an evidence-based method of addiction treatment that combines behavioral therapies and medications.

The U.S. Food and Drug Administration (FDA) has approved three medications to treat opioid use disorder (OUD): buprenorphine, methadone, and naltrexone.

Evidence shows that MAT improves clinical outcomes and reduces illicit opioid use, overdose, and death better than either counseling or medication alone.

The current standard of care recommends that practitioners consider and offer FDA-approved medications for the treatment of OUD if medically appropriate.

A Critical Unmet Need

According to a 2017 Bureau of Justice Statistics report:

- Fifty-eight percent of individuals in state prisons and 63 percent of sentenced individuals in jail met the criteria for a substance use disorder.
- Approximately 21 percent of individuals in state prison and sentenced individuals in jail said their most serious current offenses were committed to obtain money for or to obtain illicit substances.
- Approximately 15 percent of individuals in state prison and 14 percent of sentenced individuals in jail who committed violent offenses said they did so to obtain money for or to obtain illicit substances.

Fewer than one percent of U.S. prisons and jails, which house more than two million inmates, allow access to one or more FDA-approved medications for OUD, even though medical societies, addiction experts, and correctional health organizations support the use of such medications.

Only five states — Hawaii, New Jersey, New York, Vermont, and Washington — offer both methadone and buprenorphine to some individuals in one or more prisons or jails.

Only Rhode Island offers all three medications to all individuals in its correctional facilities.

A Massachusetts Department of Public Health study found that individuals released from jail or prison were more likely to suffer a fatal overdose than the rest of the state's adult population.

Similarly, a study in North Carolina concluded that former inmates were more likely to die from an opioid overdose in the first two weeks following release than those in the general population.

Appropriate Treatment Can Improve Criminal Justice Outcomes

Incarcerated individuals who have been treated with MAT while incarcerated are:

- More likely to participate in post-release treatment and remain in treatment longer;
- Less likely to be re-arrested; and
- Less likely to die in prison during the first four weeks of incarceration than those who are detoxified, or required to undergo complete withdrawal from all opioids, in jail.

MAT among justice-involved individuals has been found to reduce criminal activity, recidivism rates, probation revocations, and re-incarceration rates.

A 2016 study conducted with adults with a history of OUD on probation or parole found that treatment with extended-release naltrexone reduced relapse rates over the 6 month treatment period.

Drug Courts

Drug courts are problem-solving courts that provide an alternative to traditional incarceration by combining treatment with supervision for people with substance use disorders.

Drug courts reduce crime as much as 45 percent more than other sentencing options.

Studies have shown benefits of drug courts ranging up to \$27 for every dollar spent.

Denial of MAT for people with OUD in drug courts nearly guarantees that those individuals will fail drug court programs.

Some federal grants have even prohibited state drug courts that have received funding from denying eligible individuals access to FDA-approved medications for the treatment of substance use disorders.

Efforts to Expand Access

Some states are taking action to improve access to MAT for inmates.

- Massachusetts lawmakers passed a bill in 2018 creating a pilot program to offer methadone, buprenorphine, and naltrexone to inmates housed in five counties.
- Lawmakers in Kentucky and Colorado have passed laws to appropriate funding for MAT programs in correctional facilities.
- Pennsylvania's Department of Corrections offers naltrexone to individuals with OUD at all of its correctional facilities. In 2019, it established a pilot program to offer injectible buprenorphine to inmates with OUD.

On July 19, 2019, the Department of Justice Office of the Attorney General (DOJ) took three major actions towards the implementation of the First Step Act of 2018.

- The DOJ authorized the release of 3,100 federal inmates from the Bureau of Prisons custody, in accordance with the increase in good conduct time under the Act.
- The DOJ fully funded the First Step Act with \$75 million from the 2019 budget.
- The DOJ published The First Step Act of 2018: Risk and Needs Assessment Systems, which details the risk assessment policies that the federal Bureau of Prisons will deploy in its facilities.

The First Step Act also requires the Director of the Administrative Office of the United States Courts to submit a report and implement plans to expand access to MAT for individuals on supervised release.

Recent legal developments may further encourage jails and prisons to provide treatment consistent with the standard of care for individuals with substance use disorders.

To learn more about litigation related to the administration of MAT in prisons, visit CUSP's MAT in Criminal Justice Settings Litigation Tracker.

“[The] revolving door in the criminal justice system highlights our failures when it comes to rehabilitation.”

- U.S. Sen. Rob Portman (June 17, 2015)