COURT RESPONSES TO THE OPIOID EPIDEMIC: HAPPENING NOW

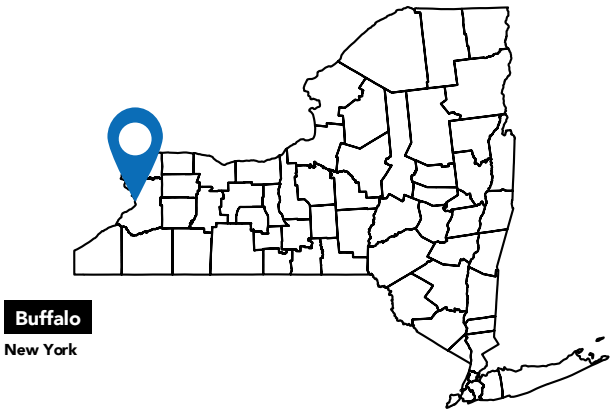
Heroin, prescription pain relievers, and synthetic opioids like fentanyl have contributed to a national epidemic. More than 70,200 Americans died from drug overdose in 2017, and more than two-thirds of these deaths involved opioids. Overdose deaths have increased by double-digit percentages each year since 2014.

This epidemic poses special challenges for the justice system. Opioid-related arrests have spiked. Police, probation officers, and court staff are being trained to administer overdose reversal medication. Jails are overseeing the detoxification of incarcerated opioid users. In the face of these pressures, justice officials across the country are working to develop new, more effective responses to opioid-related crime.

For decades, drug courts have been the leading model serving court-involved individuals with opioid use disorders, and they continue to play a central and irreplaceable role in combating the opioid crisis. Drug courts alone, however, are not enough. New justice system approaches are needed to prevent overdose deaths through immediate access to evidence-based treatment—including medication-assisted treatment—and wraparound supports.
This document provides a snapshot of some of the strategies being used by courts and justice system practitioners around the country to prevent overdose deaths and save lives.

OPIOID INTERVENTION COURTS

1. BUFFALO OPIOID INTERVENTION COURT



Overdose deaths in the state of New York have been steadily climbing for seven consecutive years and exceed the national average, in large part due to the arrival of illicit fentanyl. In response, New York's Unified Court System, a pioneer in the treatment court field for decades, developed the country's first opioid intervention court in Buffalo in 2016.

Created with the explicit goal of saving lives, the Buffalo Opioid Court relies on day-of-arrest intervention, evidence-based treatment, daily judicial supervision, and wrap-around services to prevent overdose death. Prior to arraignment, court staff go to the jail and interview defendants, using a brief survey developed by the court, to identify those at risk of opioid overdose. Those at risk for overdose receive a brief bio-psycho-social screening, which is administered immediately following arraignment by an onsite team of treatment professionals and case coordinators. Based on the results, each consenting individual is transported to an appropriate treatment provider, where most begin medication-assisted treatment with buprenorphine, methadone, or naltrexone. The process of initial interview, arraignment, bio-psycho-social screening, and transfer to treatment is completed within 24 hours of arrest.

Once connected with a treatment provider, the participant receives a comprehensive clinical assessment and an individualized treatment plan. Opioid intervention court staff provide daily case management for

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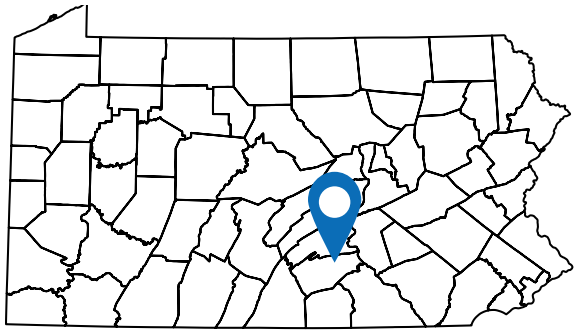
participants, including helping with transportation, doing curfew checks, and linking participants with a primary medical doctor and a range of recovery support services. Participants must return to the opioid court every business day for 90 days for progress check-ins with the opioid court judge.

The court randomly tests participants for drugs at check-in hearings. However, the court does not sanction participants for positive drug tests—this information is used to make adjustments to the participant's treatment plan, such as increasing treatment intensity or changing medications, and to help the court recognize when a participant is in danger. Graduated sanctions, ranging from non-jail sanctions up to a maximum of several days in jail, are reserved for behaviors such as tampering with a drug test, refusing to engage in treatment or take medication, failing to attend court hearings, or absconding from the program.

While a defendant is participating in the Buffalo Opioid Court, the prosecutor's office suspends prosecution of the case. The prosecutor and the defense attorney may investigate the case during this period, interview witnesses, engage in discovery, and negotiate a plea agreement to be entered after the 90-day program ends. After completing the program, many participants enter into a plea agreement and are diverted to a formal drug court, mental health court, or veterans treatment court for longer-term treatment and supervision. Others have their cases dismissed or, in serious felony cases, may be indicted and prosecuted in the traditional manner.

The program is currently undergoing a federally-funded evaluation, which will be used to make modifications to the model and will inform the design of future opioid intervention courts around the country. In addition, New York State is in the process of building opioid intervention courts in each of the state's thirteen judicial districts.

2. CUMBERLAND COUNTY OPIOID INTERVENTION COURT



Carlisle
Pennsylvania

In 2017, there were 5,559 opioid-related deaths in the state of Pennsylvania—a number far exceeding the national average. Cumberland County has been hit especially hard. While overdose deaths in most counties increased by an already-troubling 37 percent, Cumberland County's rose by 61 percent. This precipitous increase in opioid-related deaths was accompanied by a rapid growth in arrests, court caseloads, and prison population. Of those who died by overdose in Cumberland County in 2017, 36 percent had recent justice involvement.

The Cumberland County Opioid Intervention Court was developed in response to this crisis. The second of its kind in the country, Cumberland County's program was modeled after Buffalo's program. Participants are screened after arraignment but can also apply at any time before sentencing. The program is open to individuals facing a broad range of misdemeanor or felony charges (excluding violent crimes) who have a substantiated opioid use disorder. Any information gleaned from Opioid Intervention Court's initial screening process cannot be used against the participant in any future proceedings.

The program is 3-4 months long and begins with 30 consecutive weekday court appearances. During this first phase, participants are expected to comply with their recommended level of care, curfew, and drug testing and treatment group obligations. These requirements are gradually reduced as the participant continues to engage and make progress in treatment. The length of time spent in the program also depends on how long it takes the prosecutor and defense counsel to resolve the case.

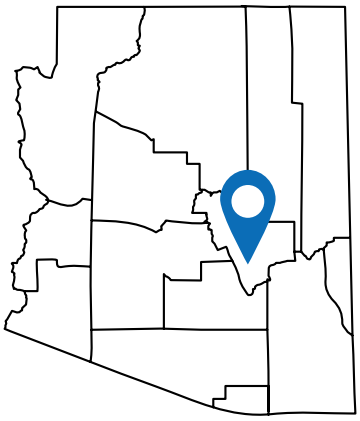
The program contracts with a local recovery organization to provide three certified peer recovery

specialists, a hallmark of the Buffalo model as well. The recovery specialists help participants develop their treatment plans, comply with court obligations, and access MAT and other treatment services. They also play a supportive case management role, assisting participants with housing and transportation needs where possible.

Although shorter than a traditional drug court program, Cumberland County's Opioid Intervention Court includes some familiar drug court components. The program is led by a judge, requires randomized drug testing (three times per week), and uses incentives and sanctions. For example, participants who are noncompliant with their curfew, home plan, or treatment schedule, can face sanctions up to and including jail time. Upon program completion, a non-custodial sentence is common but not guaranteed. Participants with more serious charges can go on to participate in Cumberland County's drug/DUI court or mental health court.

Since opening the Opioid Intervention Court, Cumberland County has seen a 40 percent reduction in overdose deaths, a 12 percent drop in the number of overdose death among justice-involved individuals, and no reported overdose deaths among program graduates.

3. GILA COUNTY OPIATE TREATMENT COURT



Globe
Arizona

Between 2012 and 2016, the number of opioid-related deaths in Arizona tripled. In 2017, Arizona's Governor declared a public health emergency, calling for a statewide effort to reduce overdose deaths. Under the declaration, the state was required to enhance the collection of all opioid-related data, review opioid prescribing practices, expand naloxone access and training for law enforcement, first responders, and community members, and report back on additional needs and response activities. One of the many responses to the declaration was the development of the Opiate Treatment Court in Gila County, Arizona.

The Opiate Treatment Court combines elements of the Buffalo Opioid Court model and a traditional drug court. Potential participants are flagged by pretrial services after arrest and screened using a modified version of the Buffalo tool. Eligibility is limited to high-risk/high-need individuals who have an opioid use disorder and are interested in receiving medication-assisted treatment (MAT). Participants are transported to a medically-supervised detoxification, where they meet with a doctor to discuss MAT options and remain for 30 days. At the end of this period, participants begin enter the Opiate Treatment Court.

The Opiate Treatment Court has reduced the arrest-to-treatment period to 7-10 days, down from 6-9 months under the traditional approach. Court officials describe this approach as adhering to a "medical model" that prioritizes treatment over daily court appearances. The program benefits from Arizona's Medicaid expansion, which has further helped the court link participants to life-saving medications like buprenorphine, methadone, naltrexone, and naloxone. The program is built around four structured treatment phases, inpatient and outpatient treatment options, and the use of peer recovery support specialists. Total program length is typically 12-18 months.

4. BROWN COUNTY OPIATE TREATMENT COURT

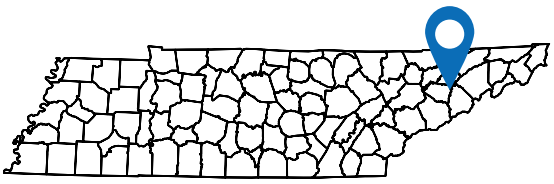
Green Bay
Wisconsin

Wisconsin has seen a spike in synthetic opioid-related deaths, which climbed from 56 in 2012 to in 466 in 2017. In total, there were 926 overdose fatalities in 2017, and many of these individuals had interacted with the criminal justice system. In response, Brown County created its first "Heroin Court." Since the court's inception, the program reports a 90 percent reduction in police contacts and jail placements among this population, and 35 of the 72 participants have graduated from the program.

Brown County's Heroin Court took inspiration from Buffalo but is structured like a parallel drug court track for those with opioid use disorders. Focused on preventing overdose and providing stabilization through the immediate provision of medication-assisted treatment (by an on-staff physician), the track accepts a lower-risk population than drug courts typically serve. The model incorporates most standard drug court practices—including frequent court and community supervision, drug testing, treatment phases, and case management. However, participants are transitioned to community re-entry and probation earlier than in drug court, typically after 3-4 months.

The program relies on formalized community partnerships with MAT providers, inpatient and intensive outpatient treatment, and recovery housing. Staff assist participants with transportation and employment needs. Participants and program staff—including the judge—receive Naloxone training and take-home kits. At present, the program is working to implement pretrial services, in hopes of expediting both the assessment process and access to medication-assisted treatment following arrest.

5. RECOVERY ORIENTED COMPLIANCE STRATEGY



Dandridge
Tennessee

In 2017, Tennessee had one of the highest opioid prescribing rates in the country, at around 94 prescriptions per 100 people. Over-prescription, however, is only part of the problem. More than half of Tennessee's drug-poisoning deaths in 2017 involved synthetic opioids like fentanyl that were not obtained by prescription. Increasingly, new restrictions on prescribing have pushed people with opioid use disorders toward illegal markets and, eventually, justice system involvement.

To address the opioid crisis, Tennessee's fourth Judicial District developed the "Recovery-Oriented Compliance Strategy" (TN ROCS Docket). The TN ROCS docket is a long-term recovery strategy that incorporates aspects of the rapid response approach pioneered in Buffalo. The program uses a hybrid pre-plea/post-plea approach. Individuals are screened before arraignment and some enter the program pre-plea, but they can also opt in at later points in the legal process, including post-plea. Participants agree to adhere to a behavioral health treatment plan as a condition of pre-disposition release or post-disposition supervision. Post-plea participants have their cases expedited to facilitate rapid engagement with treatment. Key to this expedited process is the program's "criminal justice liaison," who handles the initial screening and clinical assessment at the jail, coordinates release from custody, and initiates treatment planning.

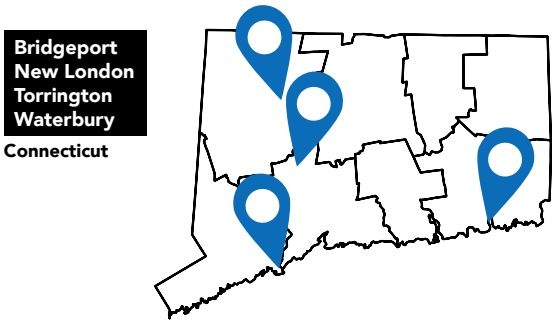
For the first 90 days of program, participants attend court weekly to discuss their progress, with input from probation, the criminal justice liaison, and other program staff. As participants progress, the frequency

of court appearances is reduced to monthly. Most participants are connected to the program for two years or more, while those requiring a higher level of structure or accountability may transition from the TN ROCS 90-day triage or stabilization stage to a recovery court, a residential drug recovery court or, in some cases, a correctional facility.

The TN ROCS docket places special emphasis on supporting pregnant women with opioid use disorders. For the population, the program's goal is threefold: prevent overdose, reduce the chances of neonatal abstinence syndrome, and promote custody retention. Pregnant women often face additional layers of stigma and shame around their drug use, and these factors can put them at high risk for isolation and abuse. On this front, TN ROCS employs certified peer recovery specialists to help foster a recovery community built around safety and mutual support. The program also partners with a long-term recovery home—a log cabin situated in the Appalachians foothills of White Pine, Tennessee—that gives priority to women. Initially purchased through local donations, "the cabin" is voluntary housing for women seeking a safe and stable environment as they move through pregnancy, treatment, and recovery. The cabin houses new participants, infants, and program alumni. It is staffed by a house administrator and provides access to an array of resources to foster personal and family health long after involvement with the criminal justice system.

DIVERSION PROGRAMS

1. TREATMENT PATHWAY PROGRAM



Connecticut experienced a massive spike in opioid-related deaths, rising from roughly 200 to 1000 between 2012 and 2017. The state's rate of 27.7 overdose deaths per 100,000 persons was twice the national rate. Like most of the country, Connecticut's sharp increase in overdose deaths is mainly attributable to the arrival of fentanyl. Fatal overdoses involving synthetic opioids jumped from 79 to 686 during that period. Over half of those who died by overdose in 2016 had a Connecticut department of corrections number, underscoring the need for a coordinated response involving the justice system.

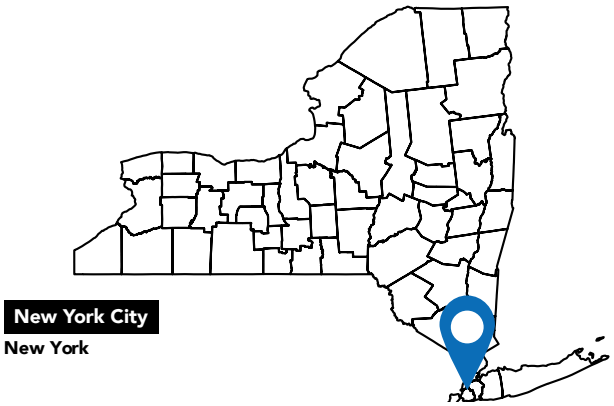
In 2018, Connecticut assembled a task force to study the feasibility of implementing an opioid court like the one in Buffalo. The report concluded that the opioid crisis "should be treated foremost as a public health problem and that tethering treatment too much to the court process may be counterproductive." Instead of developing an opioid court, the task force recommended taking the Connecticut Judicial Branch's "Treatment Pathway Program" statewide and enhancing its medication-assisted treatment and supportive services components. The task force determined that expanding the Treatment Pathway Program would be a more cost-effective and scalable strategy, as it relies less on court resources. The report noted that, based on local needs and resources, this approach would reach more people and serve to "eliminate the practice of incarcerating people because they are sick."

Operating since 2015, the Treatment Pathway Program redirects individuals charged with non-violent drug or drug-related crimes toward treatment and away from jail or prison. The program is structured around a network of dedicated social workers located at four different courthouses and robust partnerships with treatment agencies, medication-assisted treatment providers, and supportive housing. Certified recovery coaches also play a critical role in participant's treatment journey.

Potential participants are screened by bail staff before their first court appearance and assessed by a clinician housed at the court. A recommendation is then made to the judge, and eligible persons are released and accompanied to their first treatment appointment in the

community. In 75 percent of cases, treatment begins on the day of the first court appearance. Early outcomes look promising. Of the 506 people served, 71 percent of individuals with opioid use disorders who have engaged in medication-assisted treatment have completed the program. Sixty-eight percent of these individuals have not been rearrested. At the time of writing, no overdose deaths were reported among program participants.

2. OVERDOSE AVOIDANCE AND RECOVERY PROGRAM



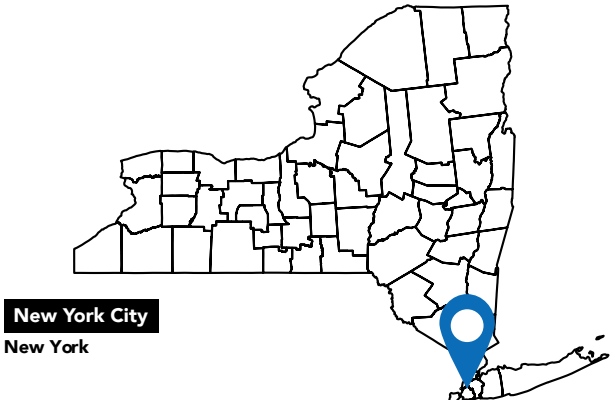
Diversion programs focused on preventing overdose and reducing court involvement have also emerged throughout New York State. These strategies vary in structure and length, but are generally short-term, pre-plea tracks that handle lower-level cases like drug possession or property offences. Compared to the Buffalo model and other opioid intervention courts, these diversion programs have narrower eligibility criteria, are shorter in length, have less intensive treatment requirements, and involve less judicial monitoring. The goal of these "lighter touch" diversion programs is to prevent drug-related deaths by connecting low-level offenders (often first-time offenders) with treatment and other services as quickly as possible after arrest.

In the Bronx and Manhattan, the Overdose Avoidance and Recovery (OAR) program is a pre-plea approach that connects defendants at risk of overdose to recovery services. Successful completion of the program results in the dismissal of charges and the sealing of the case. Cases proceed to OAR if charges are deemed eligible by the prosecutor and the defendant consents to be screened for risk of overdose by the program's resource coordinator. If the screening indicates a risk of overdose and the candidate is interested in engaging in OAR, the case is adjourned to the OAR calendar for the following week (possibly longer for those immediately entering inpatient treatment).

When a new participant enters OAR, social workers conduct a comprehensive assessment and develop an individualized recovery plan designed to holistically support the participant's recovery. The aim of each OAR recovery plan is to address the need for immediate stabilization and treatment, while understanding that treatment is only the beginning of recovery. Recovery plans include a key treatment modality, such as medically-supervised detoxification, medication-assisted treatment, inpatient or outpatient treatment, or intensive psychoeducational groups. In addition, recovery plans include "units of meaningful engagement" that each client completes, including linkages to housing services, public benefits, mental health care, and other supports. Participants are expected to make all required court appearances and to make regular check-ins with their social workers.

Participants remain in OAR for an average of 1-3 months. A participant may decide to opt out of OAR at any time, at which point the prosecutor's original plea offer is still available. Notably, participants are allowed to enter the program more than once. Clients who successfully complete the terms of their recovery plan are honored at an OAR graduation ceremony held in the courtroom.

3. HEROIN OVERDOSE PREVENTION AND EDUCATION PROGRAM



The Heroin Overdose Prevention and Education (HOPE) initiative in the Bronx and Staten Island places a similar emphasis on treatment, overdose prevention, harm reduction, and linkage to community-based resources. Eligible participants—defendants with minimal criminal history who are charged with low-level drug possession—begin enrollment by meeting with a peer recovery specialist at a police precinct prior to arraignment. The peer recovery specialist explains HOPE's services, provides a Naloxone kit and overdose prevention education, and encourages the participant to connect with a case manager at a treatment agency upon release. If the participant meets with a case manager within seven days of their arrest, the case is adjourned for 30 days to facilitate continued engagement with treatment. In the Bronx, one of HOPE's key partners is "The Corner," a harm reduction service that provides syringe exchange and naloxone training. Other partners provide assistance with housing, employment, and educational opportunities. Participants who successfully complete the program have their cases dismissed without ever having to attend court. If a participant opts out the program, the case proceeds in the normal course without penalty.

CONCLUSION

Across the country, court-based strategies to prevent overdose death continue to expand and evolve. While the models and practices included this paper vary, they all aim to save the lives of justice-involved individuals at risk of overdose. These programs are working to connect at-risk individuals with more immediate treatment and supportive services and use evidence-based practices to enhance the justice system's response to the opioid epidemic. For more information about Opioid Intervention Courts, please see "The Ten Essential Elements of Opioid Intervention Courts" or contact the Technical Assistance team at the Center for Court Innovation.

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