NEW YORK STATE UNIFIED COURT SYSTEM
OFFICE OF POLICY & PLANNING

Center for Court Innovation

New York State Unified Court System
Essential Elements of Opioid Courts

Heroin and prescription opioid abuse have created a national epidemic. More than 64,000 Americans died from drug overdose in 2016—more than were killed in the Vietnam, Iraq, and Afghanistan wars combined—and more than two-thirds of these deaths involved opioids. In New York alone, there were more than 2,300 opioid overdose deaths in 2016. The Unified Court System has long played a leading role in the battle against substance abuse. Since 1995, the Unified Court System has developed over 140 drug treatment courts across the state, offering court-supervised treatment and supportive services to thousands of justice-involved individuals. In addition, court officers have been trained to save lives by administering naloxone, a drug that reverses the effects of opioid overdose. As a key component of Chief Judge Janet DiFiore's Excellence Initiative, the Office of Policy and Planning developed a statewide strategic plan for drug courts to integrate cutting-edge technologies, expand the use of evidence-based practices, and improve outcomes for drug court participants while enhancing public safety. Now, in the face of the opioid epidemic, the court system is again playing a lead role by pioneering opioid courts. This promising new court model saves lives, supports families, and strengthens communities by linking those impacted by opioid use disorder to immediate treatment.

New York's First Opioid Court

In 2016, the Unified Court System launched an opioid court in Buffalo, the first of its kind in the country. The opioid court provides immediate intervention, treatment, and supervision for defendants who are at risk of an opioid overdose. The Court Outreach Unit: Referral and Treatment Services Program (C.O.U.R.T.S.), which houses all of Buffalo's treatment courts, developed and manages the opioid court.

Prior to arraignment, C.O.U.R.T.S. staff go to the holding facility and screen all defendants for risk of an opioid overdose using a specialized screening tool developed by the court. Individuals at risk for overdose are flagged for referral to the opioid court. Immediately following arraignment, an onsite team of treatment professionals and case coordinators administer a brief biopsychosocial screening to each defendant, using questions from the Universal Case Management System. The biopsychosocial screening results are used to identify the most appropriate treatment provider for each defendant based on his/her history of drug use, medical needs, physical limitations, place of residence, and other factors. The defendant is immediately transported to one of several local treatment providers, where most begin medication-assisted treatment with buprenorphine,[1] naltrexone, or methadone.[2] The entire process of overdose screening, arraignment, biopsychosocial screening, and transfer to a treatment provider occurs within 24 hrs. of arrest.

Once connected with a treatment provider, the participant receives a comprehensive clinical assessment. The treatment provider then develops an individualized treatment plan for each participant based on their unique needs. University of Buffalo staff provide daily case management for participants, including helping with transportation, doing curfew checks, and linking participants to a range of recovery support services and a primary medical doctor. Participants must report to the opioid court every business day for 90 days for progress check-ins with the judge—unless they are participating in residential treatment—and the court tests participants for drugs at every appearance.

While a defendant is participating in the opioid court, the Erie County District Attorney suspends prosecution of the case. The prosecutor and defense attorney may investigate the case during this period 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 drug court or mental health court for longer-term treatment and supervision.[3] If a plea agreement is not reached, the case is dismissed, or the case is ineligible for diversion, the individual has still been linked with immediate treatment and offered an opportunity to pursue additional treatment outside the court setting.

Essential Elements of Opioid Courts

To combat the opioid crisis across the state, the Unified Court System's Office of Policy and Planning is working in partnership with the Office of Alcoholism and Substance Abuse to expand the opioid court model to every judicial district in the state by creating educational resources, conducting development support, and providing funding guidance. Each opioid court will have to adjust to local resources and challenges. Nonetheless, all opioid courts should strive to incorporate the following recommended practices, which are rooted in decades of research related to therapeutic courts, substance use disorders, and behavior change.

1. Immediate screening and assessment

Opioid courts use a specialized overdose screening tool to identify defendants who are at high risk of overdose death.[4] Appropriate staff from the court, pretrial services, or partner agencies use the tool to screen defendants as early as possible. Ideally, this is done before arraignment. Defendants at high risk for overdose are flagged for the opioid court and immediately receive a biopsychosocial screening,[5] which is used to route them to an appropriate treatment provider.

2. Broad legal eligibility criteria

Opioid courts should accept the broadest range of charges possible, including felony and misdemeanor charges.[6] The opioid crisis has affected communities across the state and people from all walks of life, leading to an array of criminal activity that includes drug possession offenses, disorderly conduct, property crimes, identify theft, and more. To achieve maximum impact, opioid courts should be open to as many participants as possible. Note, however, that courts operating with federal grant funding are not permitted to use grant funds to serve violent offenders.[7] Courts considering inclusion of domestic violence or family offense cases should create protocols to ensure victim safety and coordinate with domestic violence courts.

3. Universal access and transfer of identified cases

Eligible individuals should have access to an opioid court regardless of where they are arrested or the court in which their charges are filed. Court administrators should work to develop transfer protocols that facilitate the transfer of cases to the opioid court, including cases originating in town and village courts.[8]

4. Suspension of prosecution during stabilization

Prosecutors should agree to suspend prosecution of the case during a defendant's participation in an opioid court.[9] Suspension of prosecution enables the court and the defendant to focus on the immediate need for stabilization through detoxification and treatment. The prosecution of the case is resumed if the participant fails to comply with the terms of the program or after the participant completes the program.

5. Rapid engagement in evidence-based treatment

The treatment provider uses a comprehensive clinical assessment to generate an individualized treatment plan for each participant.[10] To develop a more complete picture of the participant's needs, the treatment provider should also assess for mental health, trauma, and other issues.[11] Treatment, which typically includes medication, commences without delay.[12] All treatment should be evidence-based.[13]

6. Utilize recovery advocates and family support navigators

Opioid courts partner with recovery advocates, usually specially-trained peers, to help engage participants in the program, provide them with additional support, and connect them with recovery support services.[14] Recovery advocates can significantly improve treatment retention and success.[15] Family support navigators serve families impacted by substance use disorders.[16]

7. Frequent judicial supervision

Opioid courts require participants to return to court frequently for supervision and monitoring.[17] During court hearings, the opioid court judge utilizes evidence-based techniques, such as motivational interviewing,[18] to engage participants in strengths-based conversation about their progress. In addition, participants are drug tested at each court appearance, as well as randomly by the treatment provider, probation department, or other qualified agency.

8. Intensive case management

Case managers employed by the opioid court or a partner agency help to ensure that participants have necessary support systems during the critical stabilization period.[19] Case managers act as liaisons between the court, supervision, and service providers.[20] In addition, they help to coordinate the ordering and timing of services.[21]

9. Opportunities for continuing care

Opioid courts offer individuals at high risk for overdose death an opportunity to receive immediate treatment. This model can be extremely effective at stabilizing individuals with severe opioid use disorders and saving lives. Given the relatively short length of the program, however, participants typically will need continuing care after they leave the opioid court.[22] Participants are therefore offered continuing care planning during the program. In many cases, this will involve referral to drug court or mental health court for longer-term treatment and supervision.[23]

10. Performance evaluation and program improvements

Opioid courts should collect data around clearly defined performance measures, such as: number of participants; length of time from arrest to screening, assessment, program entry, and treatment inception; number of participants utilizing medication-assisted treatment and other treatment modalities; frequency of drug testing and test results; frequency of court check-in hearings; number of contacts between participants and peer recovery advocates; and other measures. Courts should analyze this data on a regular basis to identify service gaps and make program improvements.[24]

Resource Needs for Opioid Courts

The opioid court model holds great promise for saving lives. By rapidly connecting participants to evidence-based treatment and employing intensive judicial supervision, opioid courts incorporate effective practices honed through decades of research in the treatment court and behavioral health fields. Nonetheless, the opioid court model is resource intensive. Its emphasis on immediate screening and assessment, clinical and supportive services, medication-assisted treatment, frequent court hearings, and intensive case management places significant demands on the resources of courts and community-based partners.

Legal and operational support for the development of opioid courts will be provided primarily by the *UCS Office of Policy and Planning*. This will include drafting opioid court educational materials, supporting community engagement and mapping of treatment and other resources, facilitating interagency communication, identifying appropriate screening and assessment tools, promoting evidence-based treatment and supervision practices, and developing indicators to measure opioid court performance.

Opioid courts may also utilize the training and technical assistance services provided by federally-funded organizations like the *Center for Court Innovation* and the *National Drug Court Institute*. These organizations can help train opioid court teams in evidence-based practices and offer support for opioid court planning, implementation, and enhancement.

Citations

1 The buprenorphine provider maintains a mobile medical unit funded by the NY Office of Alcoholism and Substance Abuse in front of the courthouse every morning, where opioid court participants, and others, can receive medication and other medical services.

2 For more information about medication-assisted treatment, see *Medication-Assisted Treatment in Drug Courts: Recommended Strategies*, New York, NY: Center for Court Innovation, 2015, https://www.courtinnovation.org/sites/default/files/documents/Medication-Assisted%20Treatment%20in%20Drug%20Courts.pdf

3 Participants transition directly into phase 2 of the drug court program, having completed the stabilization phase in the opioid court.

4 Research on overdose risk is still emerging, and there are no validated overdose screening tools that are broadly used in the justice system. Until such validated tools are available, opioid courts should see *Assessing Risk for Overdose: Key Questions for Intake*, Waltham, MA: Brandeis University, 2017, https://www.pdmpassist.org/pdf/PDMP_admin/assessing_overdose_risk_intake_20170217.pdf

5 The Buffalo opioid court uses questions from the biopsychosocial screening tool that is included in the Universal Case Management System. The purpose of the screening is to better understand the participant's background (e.g., residence, family structure, drug use history, medical/mental health challenges, etc.) and select a treatment provider that is convenient for the participant and equipped to meet the participant's needs.

6 The primary eligibility criteria for opioid court should be the defendant's clinical needs rather than crime charged. Opioid courts should strive to accept as many clinically-appropriate participants as possible.

7 "Violent offender," for purposes of exclusion from federally-funded courts, is defined in 34 U.S.C. § 10613 and includes a person who:

(1) is charged with or convicted of an offense that is punishable by a term of imprisonment exceeding one year, during the course of which offense or conduct–

(A) the person carried, possessed, or used a firearm or dangerous weapon; or

(B) there occurred the death of or serious bodily injury to any person; or

(C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or

(2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

8 New York Criminal Procedure Law authorizes drug courts to accept cases from other local criminal courts within the jurisdiction. NY Crim. Proc. Law § 170.15[4] provides that drug courts can accept misdemeanor cases pending in other courts within the county. NY Crim. Proc. Law § 180.20[3] provides that the same drug courts can accept pre-indictment felonies pending in local criminal courts within the county.

9 New York Criminal Procedure Law permits judicial diversion without a guilty plea when the parties and the court consent, or under exceptional circumstances when the entry of a plea of guilty is likely to result in severe collateral consequences. N.Y. Crim. Proc. Law § 216.05 (McKinney 2017).

10 Hundreds of clinical assessment tools are available, many of them validated. The most widely used is the Addiction Severity Index, available at: http://adai.washington.edu/instruments/pdf/addiction_severity_index_baseline_followup_4.pdf. A database of clinical assessment tools is maintained by the Alcohol and Drug Abuse Institute at the University of Washington, available at: http://lib.adai.washington.edu/instruments/. The Substance Abuse and Mental Health Services Administration has also issued a compilation of clinical assessment tools, available at: https://www.ncbi.nlm.nih.gov/books/NBK64140/. Opioid courts should work closely with treatment providers and qualified medical professionals to ensure that an appropriate clinical assessment tool is being used to develop individualized treatment plans for program participants.

11 A person's history of trauma, mental illness, and other factors can both contribute to their substance abuse and present a barrier to successful treatment. It is critically important that these issues are identified and addressed during treatment. More information about the role of trauma in substance abuse and recovery can be found in Norma Finkelstein, PhD., et al., *Enhancing Substance Abuse Recovery Through Integrated Trauma Treatment, Sarasota, FL*: The National Trauma Consortium, 2004, https://www.samhsa.gov/sites/default/files/wcdvs-article.pdf, and from the web site of the National Institute on Drug Abuse, available at: https://www.drugabuse.gov/publications/drugfacts/comorbidity-substance-use-disorders-other-mental-illnesses.

12 Research on New York State drug courts indicates that immediacy of treatment referral is a critical factor that increases the likelihood of program success. *See* Michael Rempel, et al., *Conclusions: The New York State Adult Drug Court Evaluation*, New York, NY: Center for Court Innovation, 2003, http://www.courtinnovation.org/sites/default/files/cci-d6-legacy-files/pdf/drug_court_eval_conc.pdf.

13 Evidence-based practices are those for which there is sufficient evidence, established through rigorous research studies, to conclude that the practice is effective. Information about evidence-based approaches to substance abuse treatment can be found on the web site of the National Institute on Drug Abuse, available at: https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/evidence-based-approaches-to-drug-addiction-treatment. Additional resources can be found on the web site of the Substance Abuse and Mental Health Services Administration, available at: https://www.samhsa.gov/ebp-web-guide/substance-abuse-treatment.

14 For a detailed description of one successful peer support program, *see Peer Support Toolkit*, Philadelphia, PA: City of Philadelphia Department of Behavioral Health and Intellectual Disability Services, 2017, https://dbhids.org/wp-content/uploads/1970/01/PCCI_Peer-Support-Toolkit.pdf.

15 *Evidence for Peer Support*, Alexandria, VA: Mental Health America (2018), http://www.mentalhealthamerica.net/sites/default/files/Evidence%20for%20Peer%20Support%20May%202018.pdf.

16 OASAS has established new services to support persons in need of substance abuse treatment, including Peer Engagement Specialists and Family Support Navigators. https://oasas.ny.gov/RegionalServices/index.cfm

17 The Buffalo opioid court requires participants to appear in court every business day, at least at the beginning of the program. Some participants are permitted to appear less frequently after achieving stabilization and testing clean. A substantial body of research establishes that better outcomes are achieved when status hearings are held frequently. See Carey, S.M., Mackin, J.R., & Finigan, M.W, "What Works? The Ten Key Components of Drug Court: Research-Based Best Practices," *Drug Court Review* Vol. VIII, Issue 1 (2012): 6, https://www.ndci.org/wp-content/uploads/DCR_best-practices-in-drug-courts.pdf.

18 A presentation about motivational interviewing techniques for treatment court judges is available at http://www.nadcpconference.org/wp-content/uploads/2017/06/E-16.pdf.

19 Case management has been shown to increase treatment retention in both inpatient and outpatient settings. *See* Harvey A. Siegal, et al., "The Role of Case Management in Retaining Clients in Substance Abuse Treatment: An Exploratory Analysis," *Journal of Drug Issues* Vol. 27, No. 4 (1997): 821, https://doi.org/10.1177/002204269702700410. The National Drug Court Institute has published a detailed guide to drug court case management. Randy Monchick, Anna Scheyett, Jane Pfeifer, *Drug Court Case Management: Role, Function, and Utility*, Alexandria, VA: National Drug Court Institute, 2006, http://www.ndci.org/sites/default/files/ndci/Mono7.CaseManagement.pdf.

20 Center for Substance Abuse Treatment, *Comprehensive Case Management for Substance Abuse Treatment*. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 1998. (Treatment Improvement Protocol (TIP) Series, No. 27.) Available from: https://www.ncbi.nlm.nih.gov/books/NBK64863/

21 Critical Time Intervention (CTI) case management is a time-limited evidence-based practice that mobilizes support for society's most vulnerable individuals during periods of transition. https://www.criticaltime.org/cti-model/

22 Discharge planning and aftercare can be instrumental in helping identify needs and providing important linkages to post-release services and resources, as well as facilitating social supports and coping strategies to buffer the stresses of transitioning into the community. *Substance Abuse Treatment For Adults in the Criminal Justice System*, Rockville, MD: Substance Abuse and Mental Health Services Administration, Treatment Improvement Protocol [TIP] Series 44, 2014, https://store.samhsa.gov/shin/content/SMA13-4056/SMA13-4056.pdf.

23 Many opioid court participants are eligible to enter a formal drug court or mental health court after completing the program. Others have their cases resolved and then need to be linked with community-based treatment and other wrap-around services. A small number may ultimately be sentenced to jail or prison and will need in-custody services to the extent they are available. *See also* Steven L. Proctor and Philip L. Herschman, "The Continuing Care Model of Substance Use Treatment: What Works, and When Is Enough, 'Enough?'" *Psychiatry Journal* Vol. 2014, http://dx.doi.org/10.1155/2014/692423.

24 For more information, see Carey, S.M., Mackin, J.R., & Finigan, M.W, "What Works? The Ten Key Components of Drug Court: Research-Based Best Practices," *Drug Court Review* Vol. VIII, Issue 1 (2012): 6, https://www.ndci.org/wp-content/uploads/DCR_best-practices-in-drug-courts.pdf.