THE CRIMINAL JUSTICE SYSTEM RESPONSE TO OPIOIDS

AMBER WIDGERY
JUNE 2018

EARLY INTERVENTIONS

Naloxone Access Laws

- Prescribers
- Dispensers
- Lay Administrators
- Distribution by Lay Persons
- Possession Without a Prescription

- 3rd Party Prescriptions
- Prescription by Standing Order
- Distribution by Community Organization
- Administration by First Responders etc.
- All 50 states have a naloxone access law.
  - These provisions have often included access to naloxone for law enforcement for purposes of intervention when called to the scene of an overdose.
  - Naloxone can also be a tool for an officer’s personal safety.

Source: DEA Report

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**Good Samaritan/911 Overdose Immunity Laws**

![Map showing states with Good Samaritan laws](image)

40 States and D.C. have a Good Samaritan Law

Updated June 2017
Deflection

“Stopping a citizen from entering the criminal justice system who is at immediate risk of or is at likely future risk of entering the criminal justice system due to behavioral health challenges, and instead deflecting (moving) them into the community human services system.”

Sources: Jac Charlier, TASC

Recent Deflection Enactments

- California SB 843 (2016)
  - LEAD pilot program and made a $15 million appropriation.
- Colorado 2017 Budget
  - LEAD pilot program and co-responder programs. Appropriated $5.2 million.
- Kentucky SB 120 (2017)
  - Authorized Angel Initiative programs.
- New Jersey AB 3744 (2016)
  - Authorized law enforcement assisted addiction and recovery program.
- New Mexico HB 2 (2017)
  - Authorized funding for the study of LEAD in Santa Fe.
Deflection and Diversion

- Deflection is an emerging legislative trend that reroutes individuals with behavioral health needs before arrest or before contact with the justice system.
- Statutory pretrial diversion is well established in 48 states and the District of Columbia and reroutes defendants after arrest, but prior to adjudication or final entry of judgment.

Statutory Pretrial Drug Courts and Diversion Programs
Statutory Pretrial Diversion Database

TREATMENT FOR THE JUSTICE INVOLVED
According to Substance Abuse and Mental Health Services Administration (SAMHSA), the criminal justice system is the single largest source of referral to substance abuse treatment.

States have expanded access to Medication Assisted Treatment (MAT) throughout the criminal justice system.

MAT has been authorized:
- During pretrial release
- As part of diversion
- As part of a probation/parole
- In prisons & jails
- As part of reentry
Recent MAT Diversion Enactments

In recent years, at least 12 states have enacted new laws addressing the use of medication assisted treatment in treatment courts and diversion programs.

- Florida HB 5001 (2016)
- Illinois HB 5594 (2016)
- Indiana SB 464; HB 1304; HB 1448 (2015)
- Michigan HB 5294 (2016)
- Missouri HB 2012 (2016)
- New Jersey SB 2381 (2015)
- Ohio HB 59 (2013)
- Tennessee SB 2653 (2016)
- Virginia HB 30 (2016)
- Wisconsin AB 657 (2016)
- West Virginia HB 2880 (2015)

Increasing Treatment for Incarcerated & Supervised Individuals

The majority of justice-involved referrals to treatment come from probation and parole.
Recent MAT Enactments Affecting Incarcerated & Supervised Individuals

In recent years, at least 10 states have enacted new laws addressing the use of medication assisted treatment correctional facilities and by supervision agencies.

- California SB 843 (2016)
- Florida HB 5001 (2016)
- Indiana SB 464; HB 1304; HB 1448 (2015)
- Kentucky SB 192 (2015)
- Michigan HB 5294 (2016)
- Missouri HB 10 (2015); HB 10 (2013)
- New Jersey SB 2381 (2015)
- Pennsylvania HB 1389 (2016); SB 524 (2015)
- Tennessee HB 1374 (2015)
- West Virginia HB 2880 (2015)

Medication Assisted Treatment: States with Recent Enactments
SENTENCING AND PENALTIES

Scheduling Synthetic Opioids

Updated June 2017
Redefined Offense Elements

- Weight/Amount
- Arkansas -> separated manufacture, deliver & possess with intent
- Kentucky -> added quantity thresholds for trafficking

Reclassified (Categorized) Offenses

- Drug Possession (excluding marijuana)
  - Alaska
  - California
  - Delaware
  - Indiana
  - Maryland
  - Minnesota
  - Mississippi
  - South Dakota
  - Utah
Added Penalty Categories: Colorado

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<th>Felony Class</th>
<th>Sentence Range</th>
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<td>1</td>
<td>Life / Death</td>
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<td>5</td>
<td>1 – 3 years</td>
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<td>6</td>
<td>1 year – 18 months</td>
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<table>
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<th>Sentence Range</th>
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<td>4 - 8 years</td>
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<td>2 - 4 years</td>
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<td>DF4</td>
<td>6 months – 1 year</td>
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Aggravated Range

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<td>4 – 6 years</td>
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<tr>
<td>DF4</td>
<td>1 – 2 years</td>
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Other Offenses of Note

- Drug Delivery Resulting in Death a.k.a. Drug Induced Homicide
  - Just under half the states have a homicide provision specific to overdose
  - Rising overdoses = increasing prosecution under these provisions and other reckless homicide/manslaughter laws

- Trafficking/Distribution
  - Increasing penalties and new offenses for trafficking in opioids or specified opioids like fentanyl
Questions?
Contact us at:
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