

“It's jail, Doc, we don't do Suboxone.”

MOUD advocacy in Indiana's Jails

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Disclosure Information

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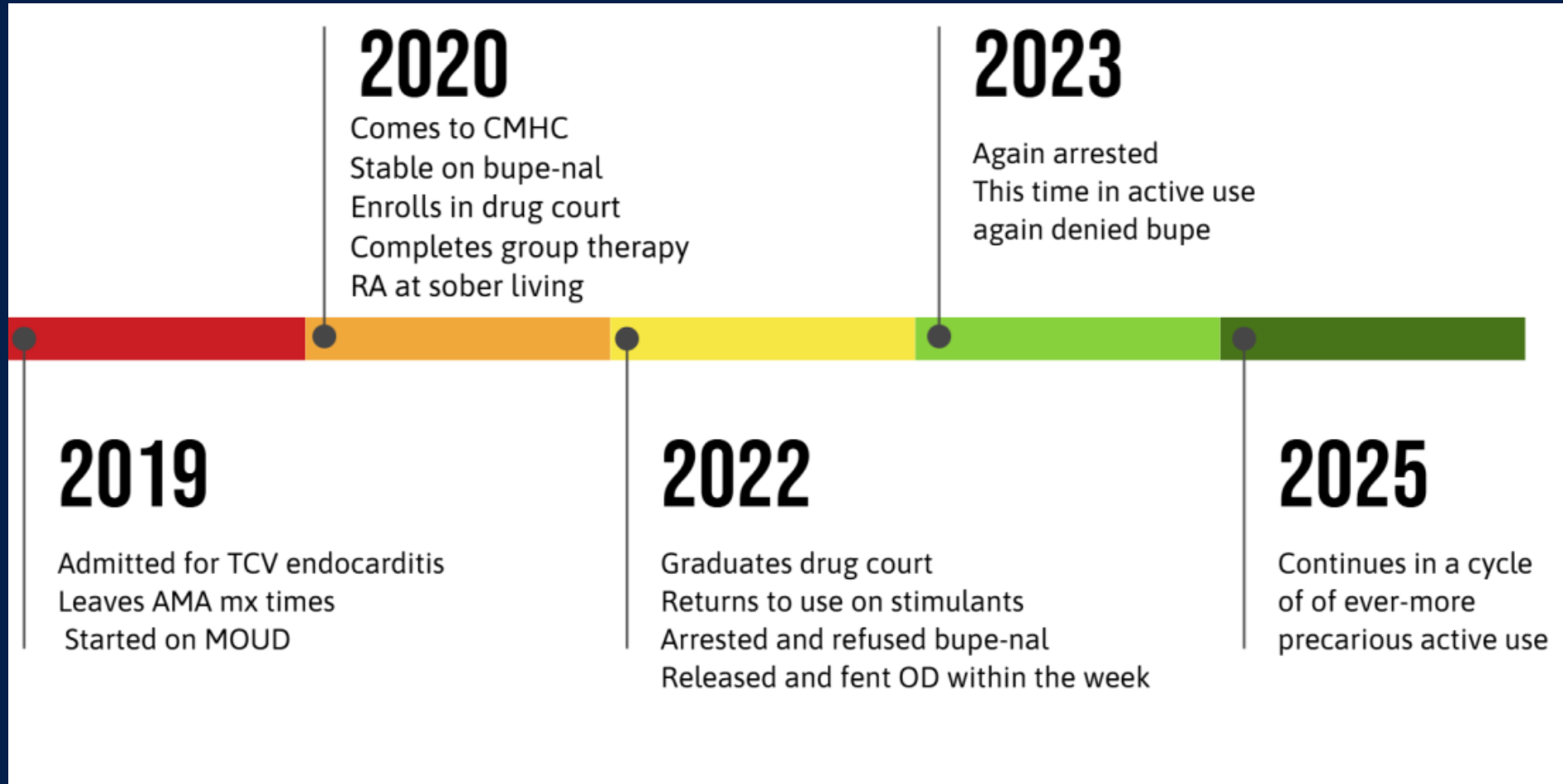
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Learning Objectives

- ☀ Summarize the benefits of providing Medications for Opioid Use Disorder in carceral settings
- ☀ Identify legal principles and recent case law relevant to patients with opioid use disorder at risk for incarceration
- ☀ Identify advocacy strategies to improve access to medications for opioid use disorder

HM's Story



A review of the science

Benefits

- **Treats withdrawal & craving**
- **Reduces overdose & deaths**
- **Improves recovery outcomes**
- **Increases connection to care**
- **Decreases reincarceration**
- **Decreases HIV/HCV infection**
- **Reaches hard to reach populations**
- **Decreases disparities in OUD treatment access**
- **Addresses stigma**



Risks

- **Diversion*****
- **Costs/logistics**
- **Medication complications**

A review of the science

Table 1 Selected outcomes associated with MOUD in carceral settings

OUTCOME	Treatment	Location/Setting	Statistical Value	Citation
Health Outcomes				
Reduced opioid use	Methadone		OR=0.22 [0.15–0.32]	Moore et al. 2018*
	Naltrexone	Jail	OR=0.08 [0.01–0.48]	Lee et al. 2015
Opioid Use	Naltrexone	Jail	OR=3.5 [1.4–8.5]	Lee et al. 2015
	Methadone (vs. counseling)	Prison	OR=4.68 [1.77–12.43]	Gordon et al., 2008
	Methadone (vs. counseling and transfer)	Prison	OR=2.46 [0.95–6.37]	Gordon et al., 2008
	Naltrexone (1 month)	Jail	OR=1.20 [0.48–2.94]	Farabee et al., 2020
	Naltrexone (3 months)	Jail	OR=1.12 [0.37–2.81]	Farabee et al., 2020
	Naltrexone (6 months)	Jail	OR=1.15 [0.33–3.93]	Farabee et al., 2020
	Naltrexone (12 months)	Jail	OR=0.47 [0.16–1.35]	Farabee et al., 2020
Reduced injection use			OR=0.26 [0.12–0.56]	Moore et al. 2018*
Community treatment retention	Methadone		OR=8.69 [2.46–30.75]	Moore et al. 2018*
	Methadone	Prison	HR=2.04 [1.48–2.80]	Rich et al., 2015
Fatal Overdose Risk	Methadone / Buprenorphine	Jail	aHR=0.20 [0.08–0.46]	Lim et al., 2023
All-Cause Mortality	Methadone / Buprenorphine	Jail	aHR=0.22 [0.11–0.42]	Lim et al., 2023
Criminal Justice Outcomes				
Arrest	Methadone	Jail	OR=0.50 [0.35–0.72]	Evans et al., 2019
	Buprenorphine	Jail	OR=0.49 [0.33–0.75]	Evans et al., 2019
	Naltrexone	Jail	OR=1.44 [0.63–3.35]	Farabee et al., 2020
Re-incarceration / Recidivism	Methadone		OR=0.93 [0.51–1.68]	Moore et al. 2018*
	Buprenorphine	Jail	HR=0.71 [0.56–0.89]	Evans et al., 2022b
	Methadone	Jail	HR=1.16 [0.8–1.68]	McMillan & Lackey 2008
Desistance			N/A	National Academy of Sciences

* Systematic review or meta-analysis



Overdose is the 3rd leading cause of death in US jails (1)



People released have 40-129x risk of overdose death (2)



Overdose is leading cause of death in people recently released (3)

Overdose and MOUD in the criminal justice system

Nearly 50% of overdose deaths occur in people with legal system involvement (4)



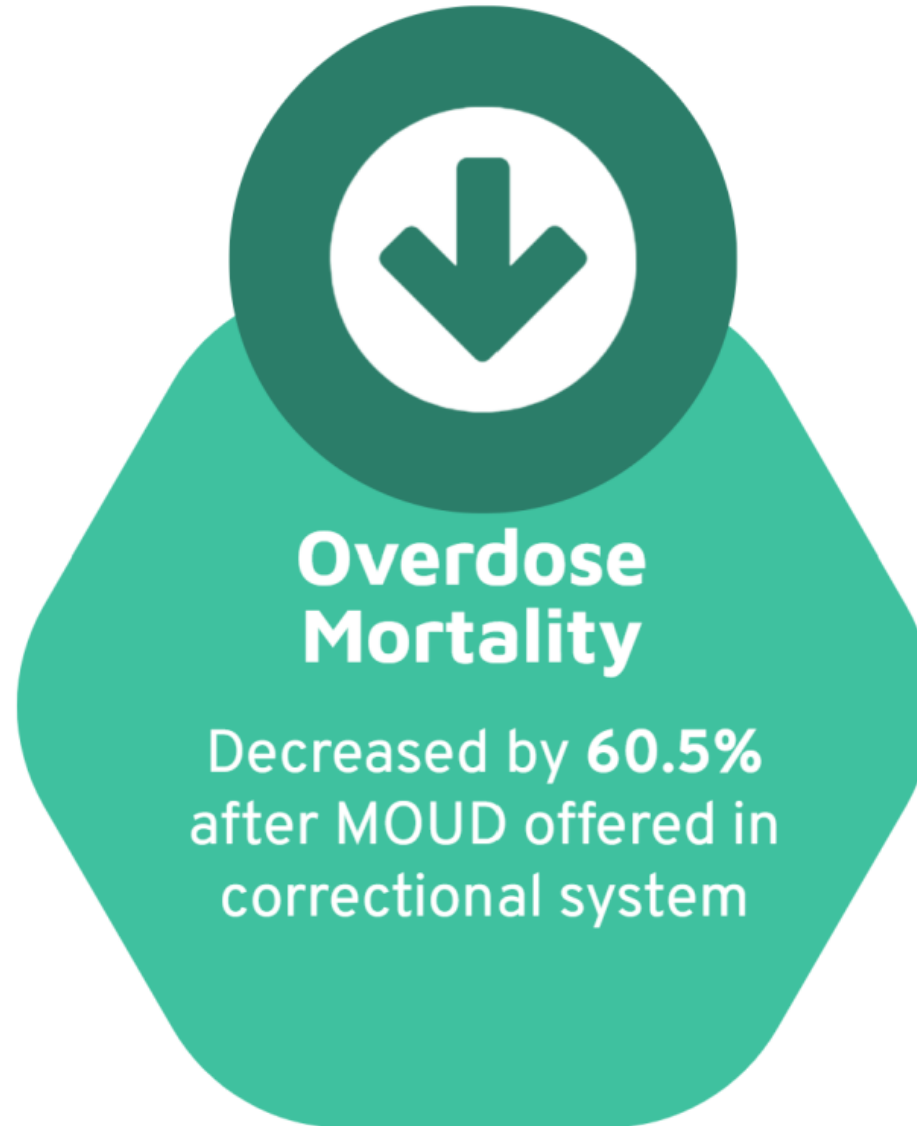
MOUD in jails/prisons decreases post-release overdose death rates (5)



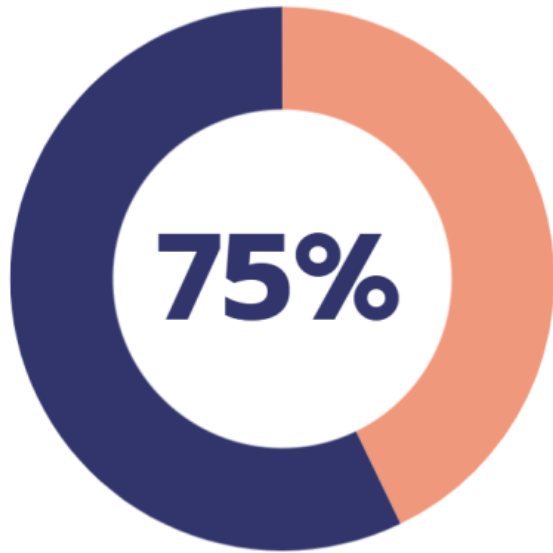
Even short disruptions in MOUD access leads to increased mortality (6)



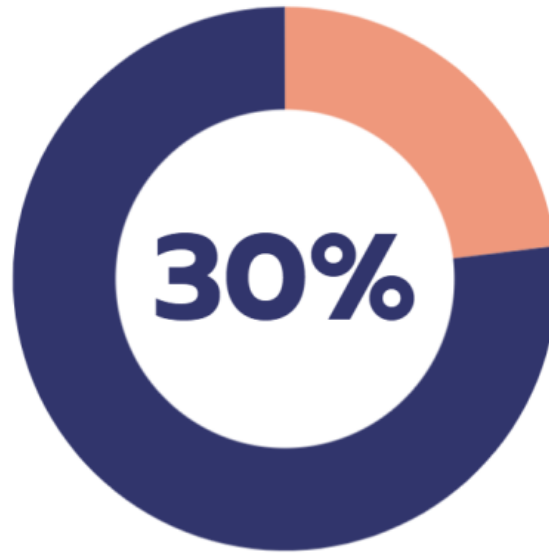
The overdose data



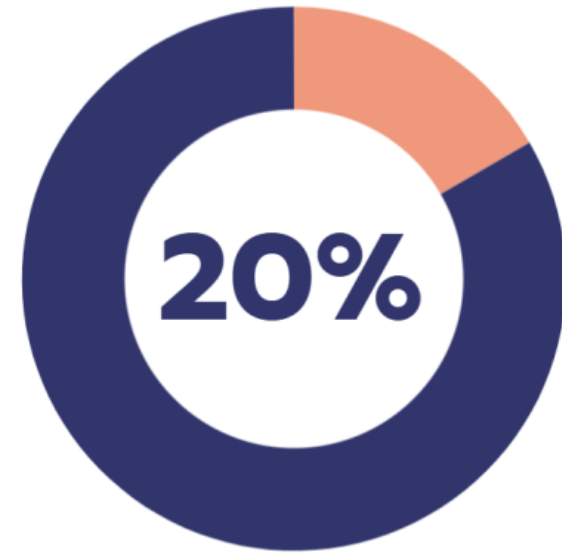
Opioid use and Criminal Justice



People who use opioids
report some legal
system involvement



People with OUD have
encountered legal
system in the past year



Incarcerated individuals
with OUD



MOUD access in jails and prisons

Less than 10 percent of people with OUD receive MOUD during incarceration

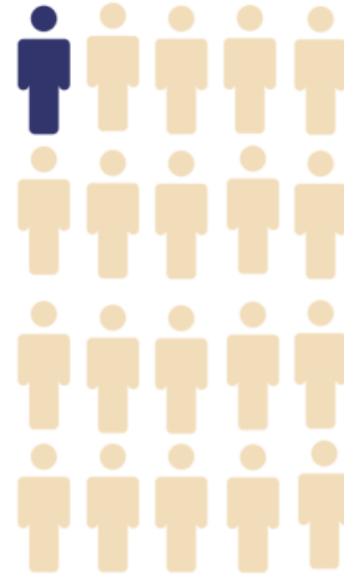


Fox, A. (2015)



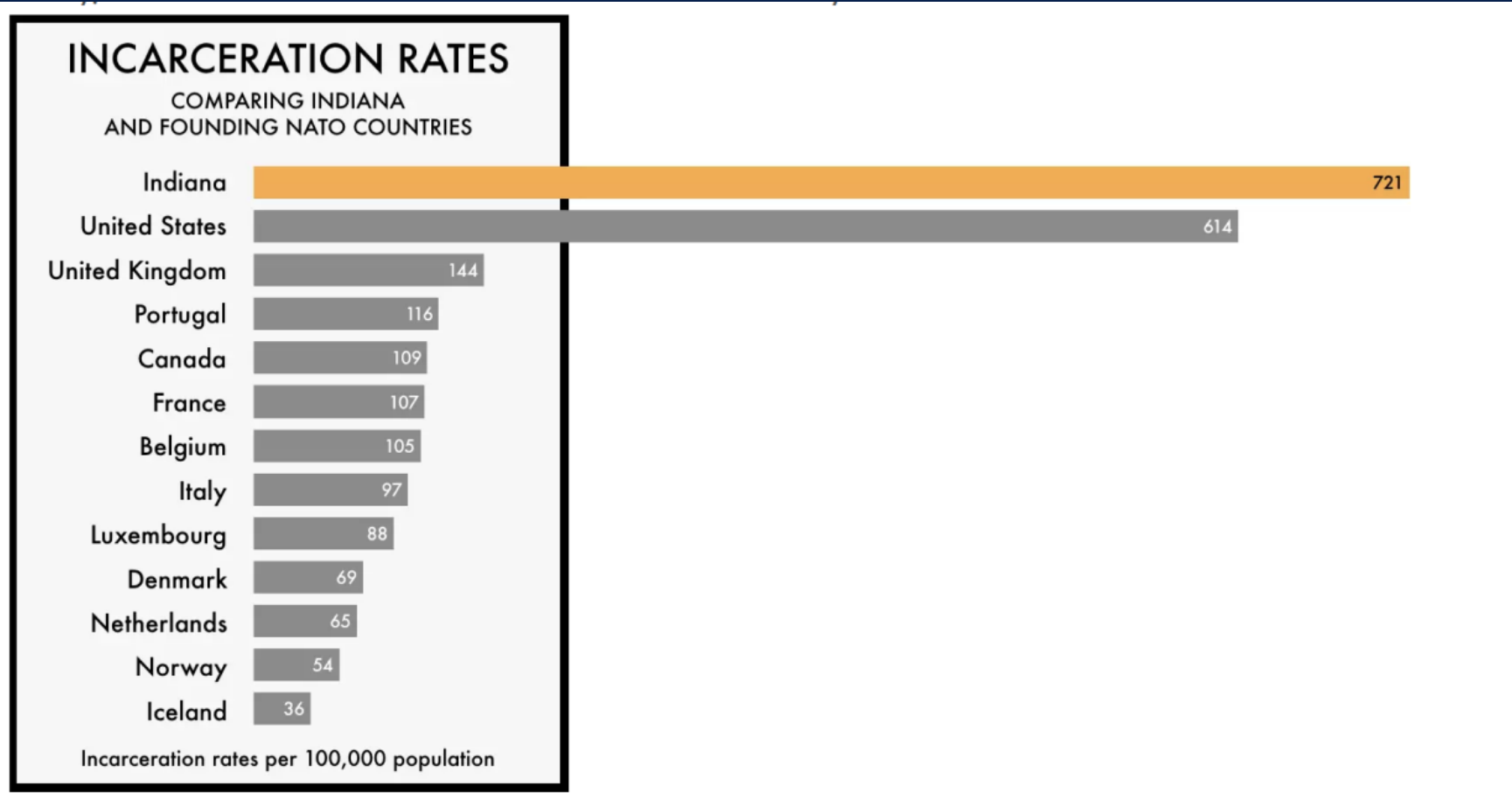
MOUD access in jails and prisons

Less than 5 percent released without MOUD connect to MOUD in the community



Krawczyk N, (2024)

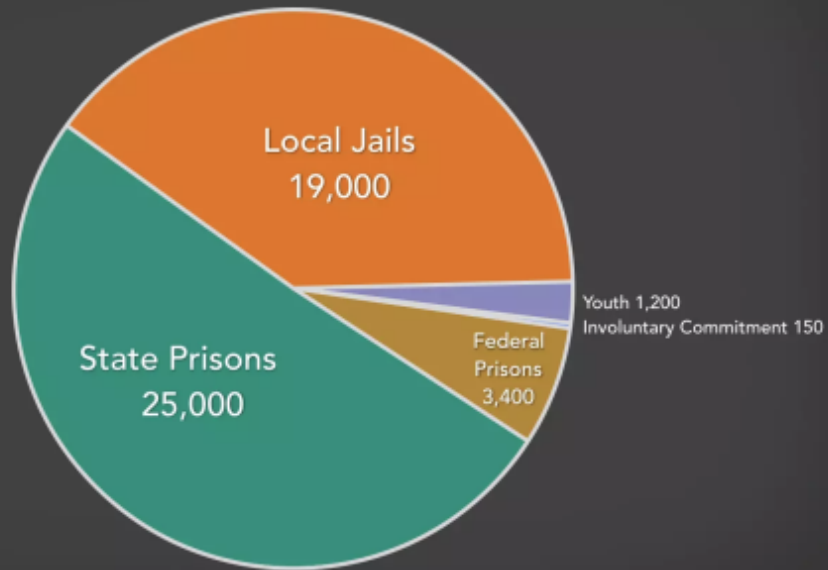
A review of the scope



A review of the scope

How many Indiana residents are locked up and where?

49,000 of Indiana's residents are locked up in various kinds of facilities

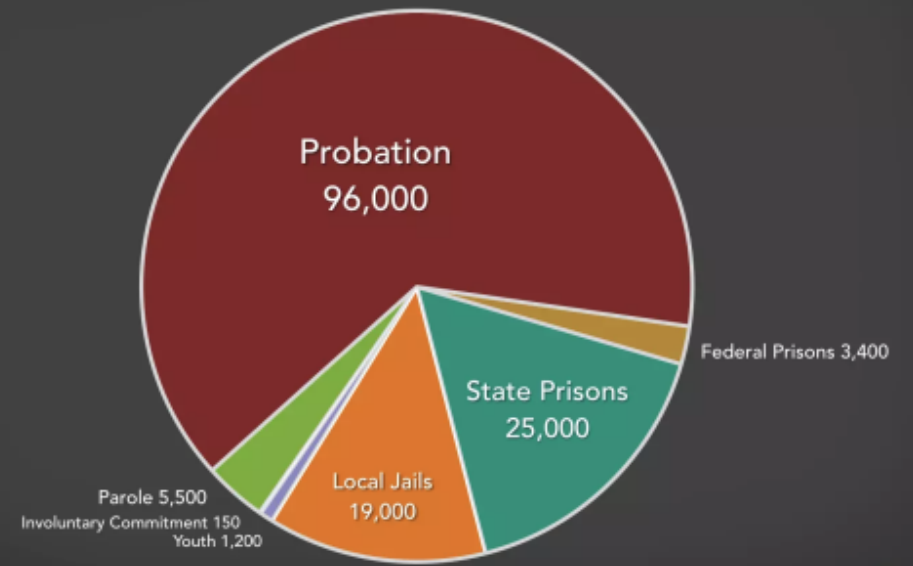


PRISON
POLICY INITIATIVE

Details may not add to total due to rounding.
Sources and data notes: See www.prisonpolicy.org/reports/correctionalcontrol2023.html

How many people are in Indiana's criminal legal system?

150,000 Indiana residents are behind bars or under community supervision.



PRISON
POLICY INITIATIVE

Details may not add to total due to rounding.
Sources and data notes: See www.prisonpolicy.org/reports/correctionalcontrol2023.html

Disparities

Past-month illicit drug use

2013 National Survey on Drug Use and Health



Drug-related arrests per 100,000 residents of each race

2013 FBI Uniform Crime Reports / US Census Bureau

WHITE 332



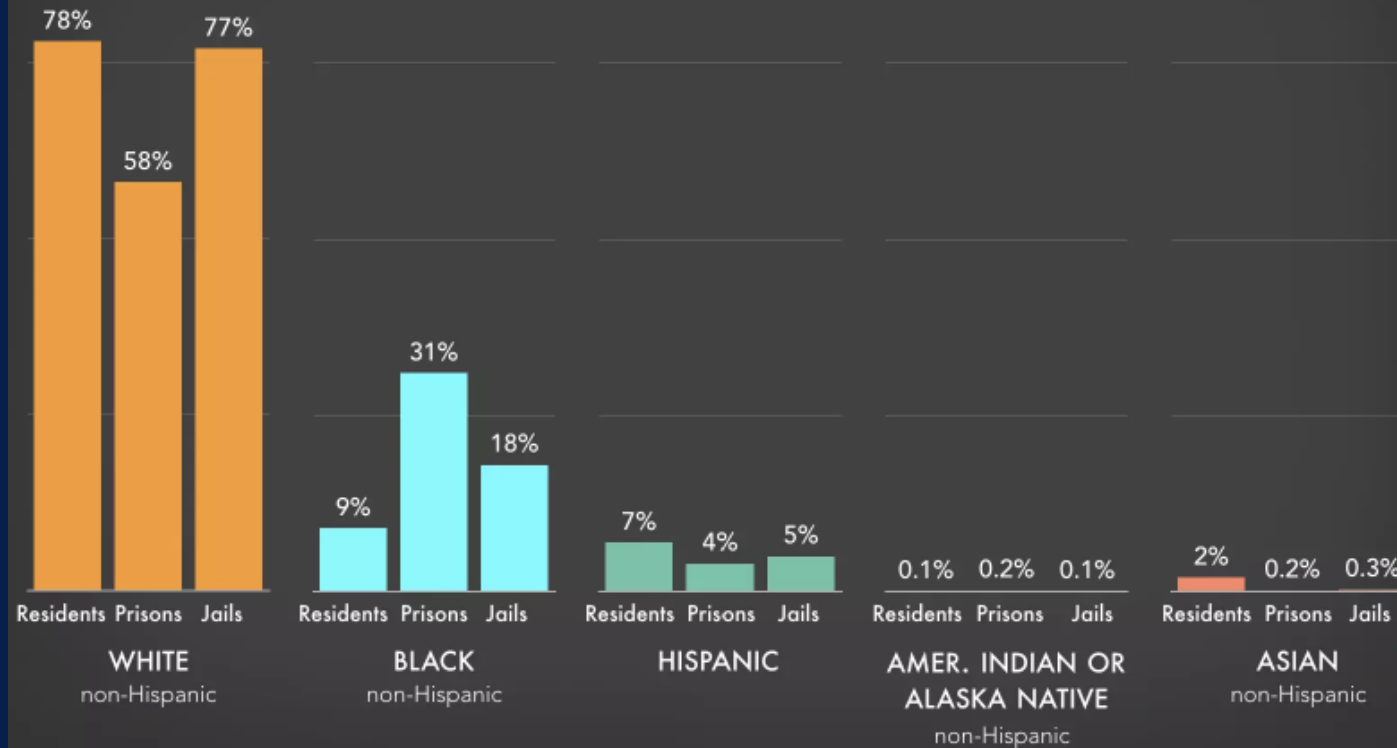
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A review of the scope

Comparing Indiana's resident and incarcerated populations

Percentage of state residents, by race or ethnicity, compared to the percentage of people in the state's prisons in 2021 and in local jails in 2019, by race or ethnicity. Compared to the total state population, Black people are overrepresented in the incarcerated population, while white and Hispanic people are underrepresented.



Source: Bureau of Justice Statistics and U.S. Census Bureau data. For sourcing details and dataset, including race definitions and categories not displayed above, see: www.prisonpolicy.org/data/race_bystate_2021.xlsx.

PRISON
POLICY INITIATIVE

State of MOUD in Indiana jails

☀ Study goals

- ☀ Assess access to buprenorphine for patients with OUD in Indiana's jails
- ☀ Collate any jail-imposed buprenorphine restrictions or protocols relevant to community prescribers

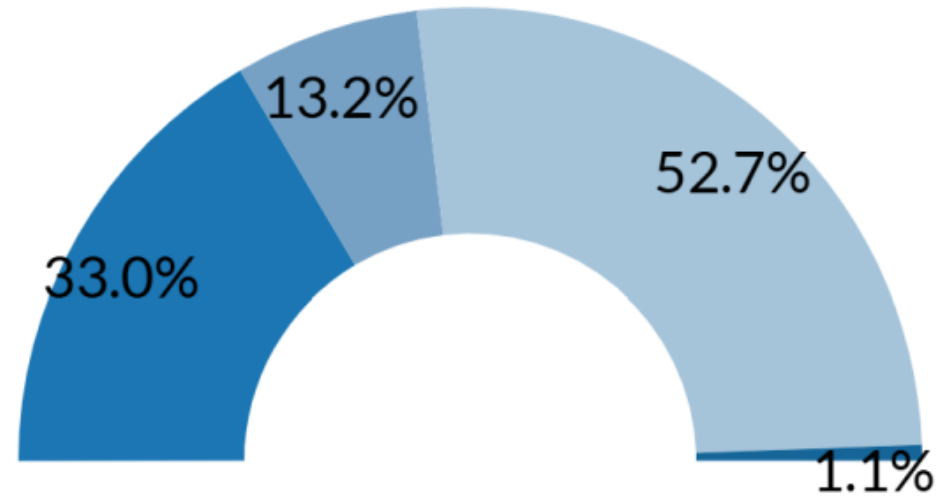
☀ Methods

- ☀ We contacted each of Indiana's 91 county jails* by phone and asked
 - ☀ If a patient would be allowed to continue buprenorphine
 - ☀ What limitations/protocols are in place
 - ☀ We collated collected information [here](https://docs.google.com/spreadsheets/d/1Ek62RPsMfQo-ZiXhS-WYBR7S2EvF2dgdtQ_pJRUISxU/edit?gid=0#gid=0)**

**https://docs.google.com/spreadsheets/d/1Ek62RPsMfQo-ZiXhS-WYBR7S2EvF2dgdtQ_pJRUISxU/edit?gid=0#gid=0

*<https://prisonhandbook.com/1671/indiana-county-jails>

Buprenorphine Access Indiana County Jails



- No Buprenorphine (33%)
- In Pregnancy Only (13.2%)
- Limited Access (52.7%)
- Full Access (1.1%)

State of MOUD in Indiana jails

Conclusions

- ☀️ Access to buprenorphine in Indiana's jails is severely limited
- ☀️ Even in jails that report allowing it, access is severely limited by protocols
- ☀️ ONE jail in Indiana reported providing MOUD for patients using illicit opioids at jail intake
- ☀️ There are many small areas of grass-roots support for MOUD

State of MOUD in Indiana jails

- ☀️ Treatment gap for Indiana's incarcerated population
 - ☀️ Exposes jails to federal lawsuits
 - ☀️ failure to provide MOUD
- ☀️ Represents an immense opportunity to
 - ☀️ Improve access to life-saving treatment
 - ☀️ Decrease overdose rates
 - ☀️ Address racial and economic disparities in OUD treatment access
 - ☀️ Connect many disparate nodes of advocacy and MOUD support

Review of the Legal Landscape

Amelia Caramadre, JD, MPH

KAPLAN & GRADY



Criminalization of Addiction

- ~65% of US prison population has active SUD (1)
- 20% under influence of substances at the time of 'crime' (2)
- Incarcerated people up to 129x more likely to die from overdose 2 weeks after release vs general population (3)
- Mass incarceration & the overdose disproportionately impact BIPOC (4)
- Ensuring access to MOUD in carceral settings can reduce overdose and recidivism

SUD is a Disability under the Americans with Disabilities Act

Pesce v. Coppinger, 2018, D.MA

-Pt on methadone x2 years, had to serve a short sentence where they wouldn't continue rx; ACLU filed suit under the ADA and Eighth Amendment to stop the forced w/d

-Court ordered methadone to be continued as **OD is a disability**, he would be likely to succeed on his ADA and 8A claims, and he **"will be irreparably harmed if denied methadone treatment while incarcerated."**

Smith v. Aroostook County, 2019, D.ME (aff'd 1st circ)

-Same outcome as *Pesce*, but with bupe

-Take aways: OUD receives protections of ADA, forced withdrawal can cause irreparable harm, and MOUD is medically necessary

The Department of Justice and the Americans with Disabilities Act

- DOJ has filed multiple lawsuits/settlements/letters of interest across the US
- In 2022, DOJ issued a guidance making clear that the **ADA applies to people with SUDs**
 - People with SUDs cannot be *discriminated against*

“The ADA guarantees that people with disabilities have the **same opportunities as everyone else** to enjoy employment opportunities, **participate in state and local government programs, and purchase goods and services**. For example, the ADA protects people with disabilities from **discrimination by social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors’ offices, and skilled nursing facilities; homeless shelters; and schools, colleges, and universities.**”

What does that mean?

Carceral

- 📖 can't deny continuation of MOUD
- 📖 can't force one MOUD over another

Healthcare

- 📖 can't refuse treatment/admission for SUD hx/MOUD status (think SNFs)
- 📖 can't force abstinence before accessing rehab services

Court Systems

- 📖 can't base legal outcomes on medication status
- 📖 can't punish/reward for medication
- 📖 can't force one MOUD over another

Employment

- 📖 can't deny employment due to MOUD

Child Welfare

- 📖 can't prohibit MOUD as condition of child custody or visitation

Housing

- 📖 Can't deny public housing due to MOUD

Exception to the exception: people in active use

- **Exception:**

ADA protections **do not apply** if an individual is in **active use** or if they pose a danger to others

- **Exception to the exception:**

They are protected, even if in active use, **if seeking health services to which they are otherwise entitled**

entitled to such services.” There is little evidence that the “covered entity” acted to deny Mr. Taylor access to MOUD “on the basis of” his illegal drug use—and it would be entirely illogical to refuse to treat opioid use disorder in patients who *use opioids*. Further, § 12210(c) expressly

Case 2:23-cv-00475 Document 239 Filed 06/13/24 Page 27 of 30 PageID #: 5874

provides that health services and drug rehabilitation services, which would include the MOUD Mr. Taylor sought, cannot be denied based on current illegal drug use. Thus, the Court must reject DCR’s argument that it is entitled to summary judgment on the basis that Mr. Taylor is excluded from ADA protection because of his illegal drug use.

Taylor v. Wexford et al. (SDWA/c) 2024

Recent/Ongoing Cases

Injunction/Damages

- ☀ Taylor v. Wexford, et. al., S.D.W.V. (2024)
 - ☀ Denied MOUD continuation upon incarceration, withdrawal, OD upon release

Death Cases

- ☀ Mannion . Cumberland County/Armor Health
 - ☀ D.ME
 - ☀ Jail had MOUD program, Mannion begged for MOUD, jail took no action, fatal overdose
- ☀ Littrell v. Winnebago Cty/Univ. of IL
 - ☀ N.D.III
 - ☀ Entered jail in w/d from MOUD, vomited for two days straight, was “too sick” to be evaluated, died

What can providers do?

Speak up; document everything; and teach your staff how to!

For patients at risk of incarceration:

- Prepare template letter (ask me for a template!)
 - This is my pt
 - Dx of SUD/ODD
 - MOUD is medically necessary & denial will result in harm
 - Include the rx
- **Advise pt to submit sick call and grievance – exhaust admin remedies**
- Document everything in medical chart
 - All communications & efforts
 - All responses (or lack of) from jail

(Check out Legal Action Center's Resources!)

SNFs/Rehabs

- Prepare letters- denying admission for SUD dx/MOUD is violation of federal law
- Educate hospital staff to recognize illegal discrimination against patients

- **Consult attorney**
- **Report to DOJ- locally to your civil rights division; nationally to disability rights section**

When to submit a complaint to the DOJ?

- SNFs deny admission to patients because of MOUD or hx of SUD
- PTs fired, custody denied, housing denied because of MOUD rx
- Jail/prison denies treatment for OUD
- ED turns patient away/fails to offer treatment after OD
- Discriminated against in a commercial location or in a public place

Not sure if you should submit a complaint, or to where (national vs local)? Reach out!

Case Study: St. Joseph Co. Jail

Brooke Marshall, MSW, LCSW, LCAC

Oaklawn Community Behavioral Health Center

South Bend, Indiana



Case Study: St. Joseph Co. Jail

- ☀ 2015: No buprenorphine at all
- ☀ 2019: +MOUD grant w/local for-profit OTP provider
 - ☀ Most people are started on methadone
- ☀ 2021 Buprenorphine allowed in jail
- ☀ 2023 Navigating new jail medical provider
 - ☀ It takes constant attention and collaboration and a lot of patience

Take aways from St. Joseph Co. jail

MOUD Uptake: Barriers and Facilitators



Institutional



Programmatic



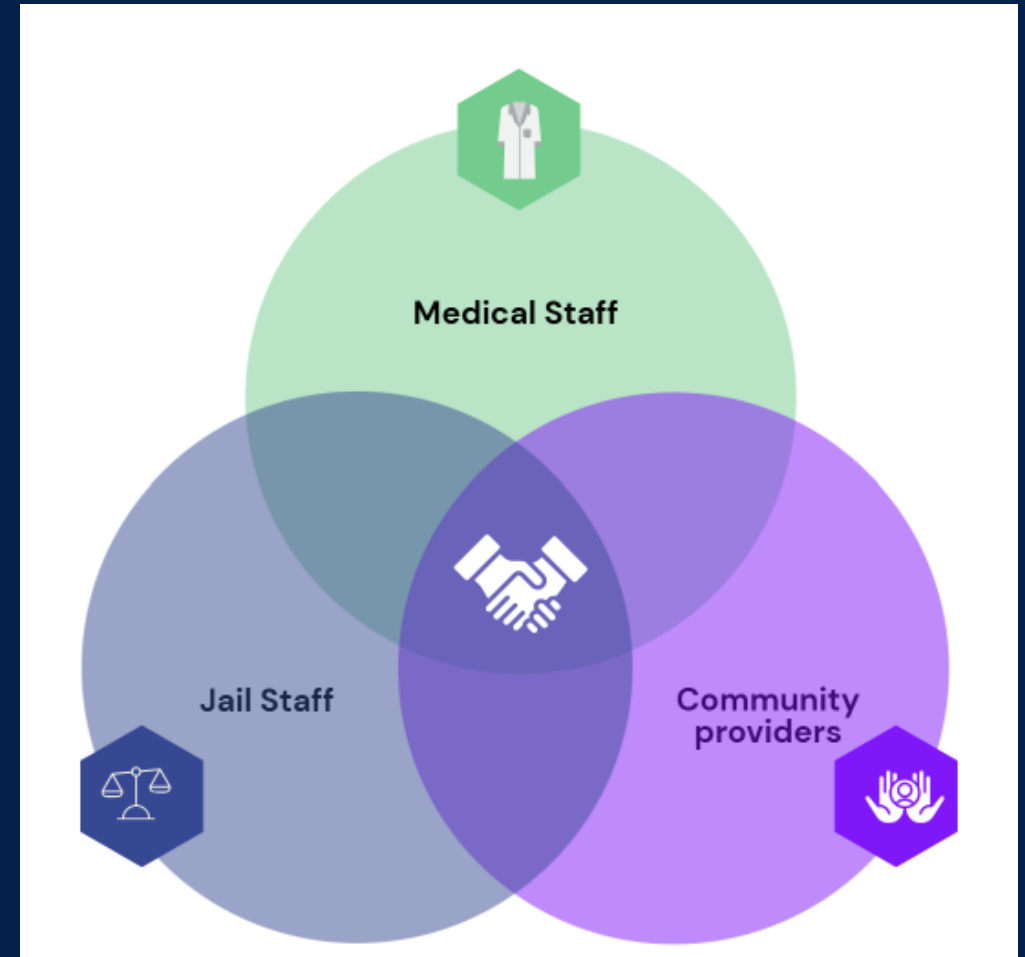
Attitudinal



Systemic

Take aways from St. Joseph Co. jail

- ☀ Had to build trust and mutual respect
- ☀ Making real change is all about the relationships
 - ☀ Sherif, Warden or Jail Commander is likely the decider
 - ☀ Medical staff only work within the limits set out by jail leadership



Take aways from St. Joseph Co. jail

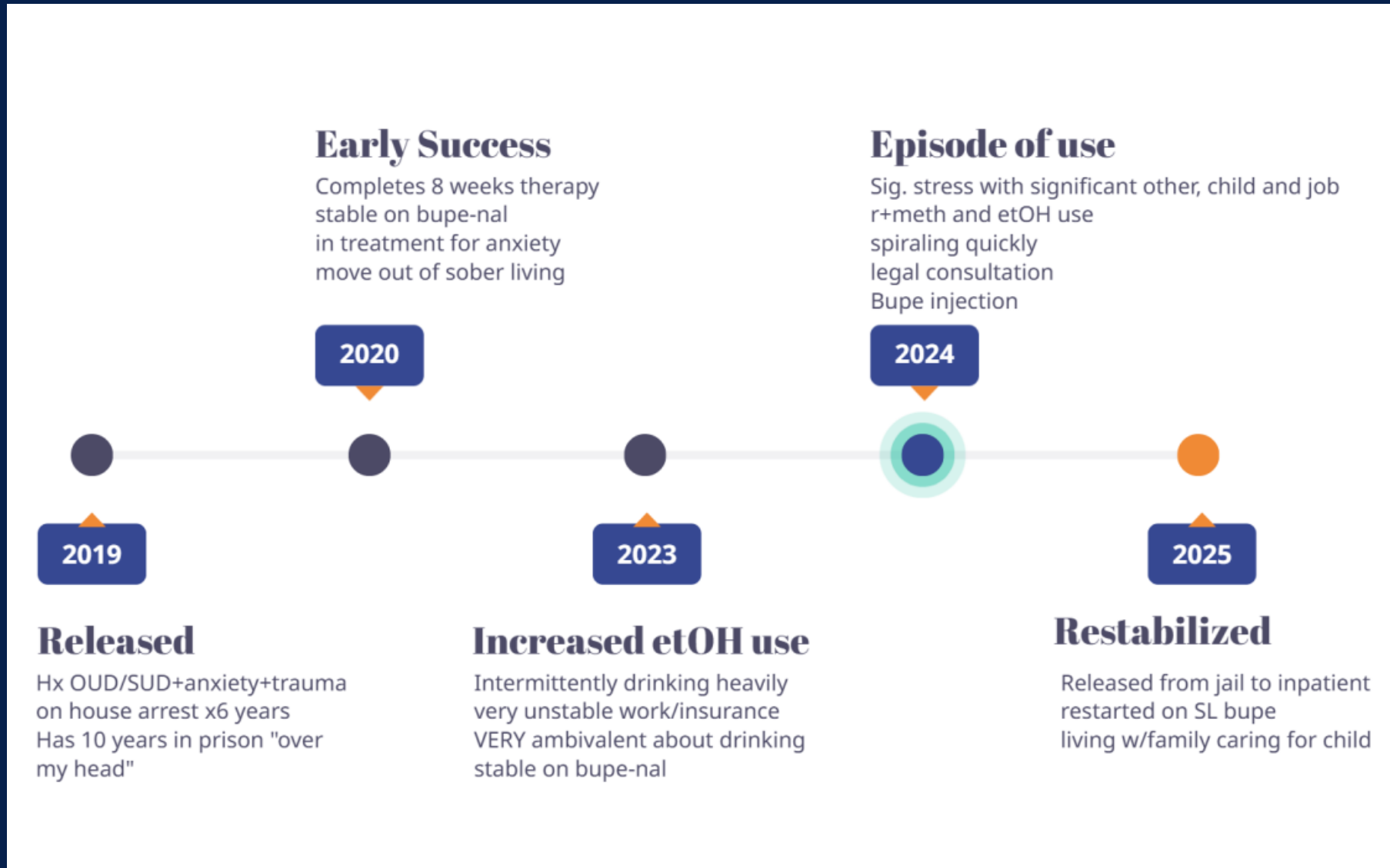
 WHAT WORKED	 WHAT DID NOT WORK
Specific storytelling	Lecturing and shaming
Highlighting successes	Threatening lawsuits
Humanizing our long-term patients	All or nothing mentality
Focusing safety/risks of overdose	Overreliance on science/data
BEING HELPFUL and AVILABLE	Avoiding logistics/financials

What NOT to do is just as important

There is a lot that we can do

- ☀️ Provided direct contact information to jail staff
 - ☀️ Navigating the phone tree at our offices is a real barrier
 - ☀️ Offering to help and taking risks
- ☀️ Started urgent MOUD access program
 - ☀️ Since 3/2024 have seen 90+ patients in urgent access
 - ☀️ About 50% are newly released from custody
 - ☀️ Built on important work recovery support specialists were doing
- ☀️ Providing feedback to policy makers and funding sources

Case Study



Lessons Learned

- ☀ We must make room for patients doing it their way
- ☀ It pays to network
 - ☀ Pro-bono attorney was willing to help
- ☀ Long-acting injectable buprenorphine is an important tool if you know ahead of time about impending incarceration
- ☀ Judges seem willing to accept incarceration alternatives
 - ☀ Helps to have attorney
- ☀ Coordination between probation officer, attorney, inpatient units and MOUD programs is vital
 - ☀ This will require providers to move outside of our comfort zone sometimes
- ☀ Jails are hard because of WIDE variation in policies and protocols and often short stays/high throughput and difficult communications

Socialization for Scarcity

“Scarcity for ourselves? No. Scarcity for our mom? No. For our own kids? No. We’re socialized for scarcity for other people, and they’re usually black or brown or poor. So then we start cutting corners.

Don’t have doctors and nurses be the ones saying, ‘it’s not reasonable, not feasible, not cost-effective, not sustainable.’ I think we should be the ones objecting to this failure of imagination.”

Paul Farmer

Physician-Anthropologist



Thoughts and Questions

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