



Pretrial Services for People With Opioid Use Disorder

A NACo Opioid Solutions Strategy Brief

“Individuals with mental and substance use disorders who are currently or formerly involved with the criminal justice system ... are a part of every community, and as for all community members with behavioral health needs, individualized, integrated, comprehensive, coordinated, and continuous service is the standard of care.”

— U.S. Substance Abuse and Mental Health Services Administration²

What are pretrial services for people with opioid use disorder (OUD)?

People living with substance use and mental health disorders are at greater risk of criminal justice involvement. In 2019, more than 1.5 million people were arrested for drug-related offenses, more than any other category of crime.¹ Arrest and incarceration are detrimental to long-term recovery, making the pre-trial period an important opportunity to engage people with OUD in evidence-based care.²

Pretrial services typically consist of assessments and decisions concerning bail, release and community supervision in anticipation of future court appearances.^{3,4} These processes provide important opportunities to engage local health care and social services providers and link defendants and their families to the care that they need.⁴ Effective pretrial connection with evidence-based care begins with universal screening by a qualified clinician who can diagnose behavioral health disorders, determine each person’s level of need and build an individualized treatment plan.⁵

Pretrial services can connect people with OUD to evidence-based services under a variety of pretrial conditions, including pretrial detention, community supervision in lieu of detention, treatment in lieu of prosecution, probation before judgement, presentencing and as part of community corrections programs.^{2,6}

What evidence supports pretrial services for people with OUD?

There is great need for effective, evidence-based care among justice-involved persons. The majority of incarcerated people meet the criteria for substance use disorder,^{7,8} about half are living with a mental health disorder and nearly one-third are living with a serious mental illness.⁹

The resources that pretrial services can connect participants to, such as housing, employment services and continuity of care for substance use and mental health disorders, contribute to reduced recidivism.¹⁰⁻¹² Connecting community members with mental health and substance use treatment services through pretrial services or as pretrial diversion predicts lower rates of rearrest among youth and adults^{10,13,14} without increased risk to public safety.¹⁵

Strong scientific evidence supports the provision of these mental health and substance use-related services to people with OUD during the pretrial phase:

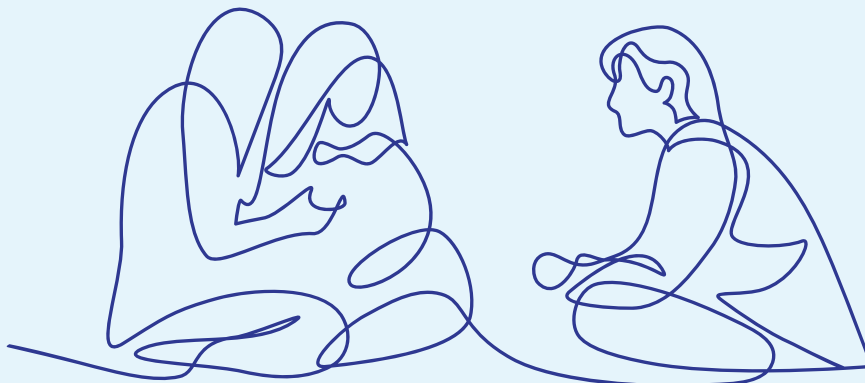
- **Medication for OUD (MOUD):** access to all three FDA-approved medications for OUD in both community and correctional settings,^{16,17} which is often more cost effective when offered with patient navigation.¹⁸
- **Assertive Community Treatment (ACT):** integrated, community-based treatment offered by a multidisciplinary team with high staff-to-client ratios and 24/7 case management and patient navigation services.^{2,19}
- **Critical Time Intervention:** a time-limited intervention to facilitate community integration and continuity of care during periods of transition.^{2,20}
- **Supported Employment:** providing training and employment matching in workplaces that value the skills and abilities offered by persons with behavioral health disorders.^{2,21}
- **Permanent Supportive Housing:** providing permanent housing with professional or peer supports that allow persons with substance use and mental health disorders to live independently and receive treatment and recovery supports in the community.^{2,22-23}
- **Guaranteed Income Programs:** temporary guaranteed income reduces recidivism and increases the likelihood of finding long-term employment.²⁴

Most substance use treatment providers that receive a high volume of clients from the justice system, including through pretrial practices, offer few of these evidence-based recovery support services. Primary care, mental health care, HIV testing, family counseling, employment support and housing support are among the least available services.²⁵



What are best practices for pretrial services for people with OUD?

- Take steps to align all pre-trial services with National Association of Pretrial Services Agencies (NAPSA) standards.⁴
- Establish evidence-based protocols for identifying persons who would benefit from supportive pretrial services, including universal substance use disorder² and mental health screening.²⁶
- Do not use standardized criminal risk assessment tools. The Pretrial Justice Institute and the National Center for State Courts warn that these do not effectively predict pretrial risk or success and can perpetuate racial bias.^{27,28}
- Link eligible persons with supports and services as soon as possible to ensure immediate access to community-based care upon pretrial release.²⁹
- Coordinate drug courts, mental health courts and other pretrial services to ensure all offer low barrier access to the same forms evidence-based care.³⁰
- Partner with service providers who are familiar with the processes and challenges unique to the criminal justice system. Provide training and education for service providers who are new to service provision within the criminal justice system.^{2,31}
- Develop telehealth partnerships with qualified providers to improve service delivery to justice-involved persons if local resources and practitioners are limited.³²
- Consider establishing a local ordinance or other arrangement with criminal justice stakeholders to reduce or eliminate costs to justice-involved persons (including program fees, court processing fees and other fines or penalties) and expunge criminal records for those who are ultimately released, as these likely reduce the success of pretrial diversion programs.³³



These and many other model programs are described online at the Brandeis Opioid Resource Connector.



What are some examples of successful pretrial services for people with OUD?

Fulton County, Ga. has implemented several pretrial services and protocols designed to reduce the number of persons with severe behavioral health concerns in the criminal justice system. The county has adopted a standardized jail-based screening protocol using validated, gender specific tools to identify persons in need of further clinical assessment. In 2019, Fulton County Pretrial Services created and staffed its own mental health unit. In addition, the public defender's office employs social workers to coordinate an alternative sentencing program and provide connections to substance use treatment and other evidence-based services as soon as possible after arrest.³⁴

Hennepin County, Minn. has operated a pretrial diversion program since 1971. The program aims to divert first time offenders away from the criminal justice system and to social and behavioral health services. In 2016, 86% of the 861 adult diversion participants were referred by the Hennepin District Attorney for felony drug or property crimes. Of these, 71% completed the program and had their charges dismissed.³⁵⁻³⁷ The program includes individualized components such as assessments for substance use disorder, community service and other interventions.

In 2015, the Board of County Commissioners in Bernalillo County, N.M. voted to join Stepping Up, a national initiative to reduce incarceration among people with behavioral health disorders.^{38,39} With technical assistance from Stepping Up, Bernalillo County has implemented several pretrial services as well as services designed to reduce involvement with the criminal justice system, including a peer-led crisis response program; a behavioral health campus with integrated stabilization, treatment and aftercare; and pretrial linkage to behavioral health services through the jail with intensive pre- and post-release case management.^{34,40}

ADDITIONAL RESOURCES:

Please visit the Opioid Solutions Center for a curated list of resources, technical assistance opportunities and the sources referenced in this brief.

