

# The Opioid Crisis and the Criminal Justice System: A Call to Action

National Association of Women Judges

2018 Midyear Meeting

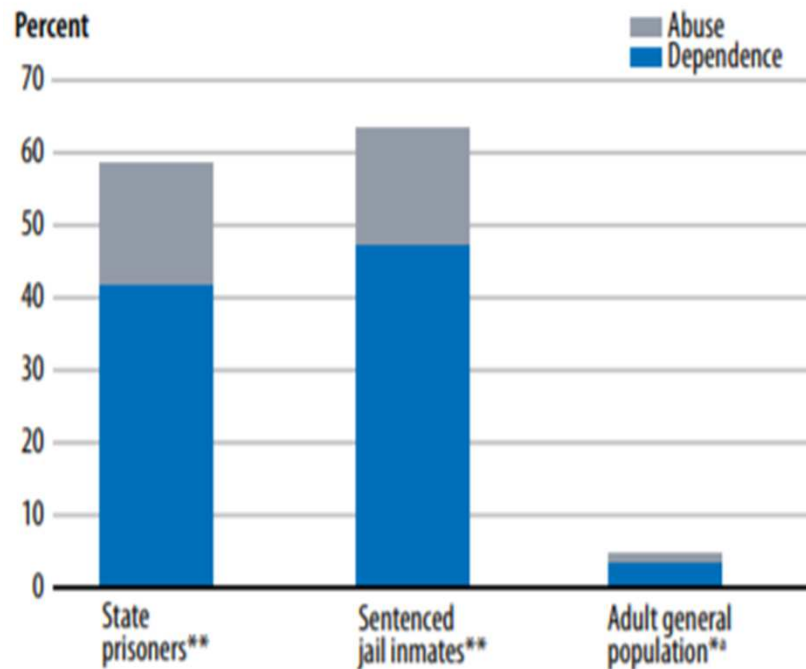
Fiona Doherty

## The National Picture

- In June 2017, DOJ Bureau of Justice Statistics issued a special report on rates of drug dependence and abuse by state prisoners
  - The findings come from data BJS collected through the 2007 and 2008-2009 National Inmate Surveys (the latest year of BJS data on drug use among the incarcerated population)

# BJS Big Picture Findings

**Inmates and adult general population who met the criteria for drug dependence or abuse, 2007-2009**



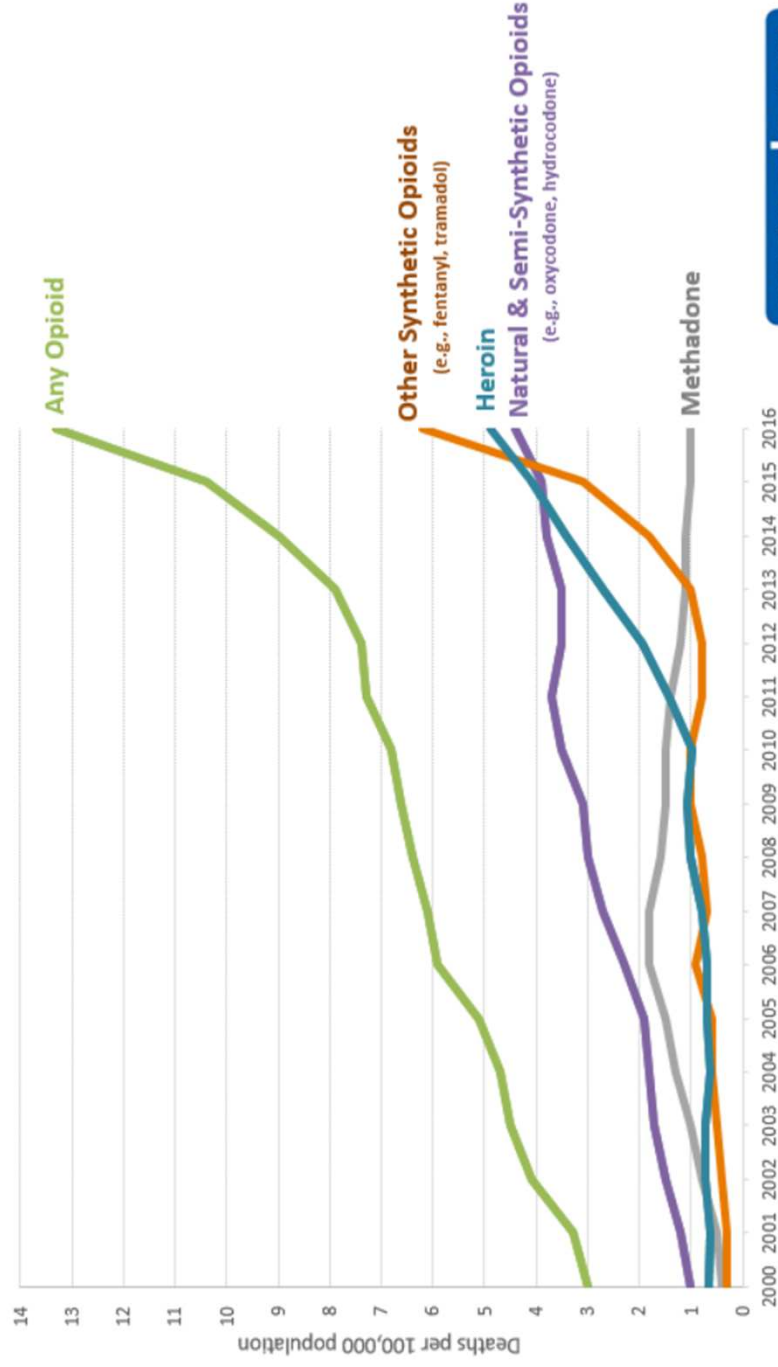
- 58% of state prisoners and 63% of sentenced jail inmates met the DSM IV criteria for drug dependence or abuse – as compared to 5% of the general adult population
  - Dependence criteria include patterns of compulsive drug use that lead to significant impairment/distress within 12-month period
  - Abuse includes the harmful consequences of repeated drug use, such as drug-related legal problems
- Higher for women: 69% of women in state prisons and 72% in local jails (sentenced)

## BJS: 2007-2009 Rates by Drug Type (Regular Use)

| 2007-2009 Data | State Prisoners Regularly Used: | Sentenced Jail Inmates Regularly Used: |
|----------------|---------------------------------|--|
| Heroin/Opioids | 16.6%                           | 18.9%                                  |
| Cocaine/Crack  | 34.2%                           | 38.5%                                  |
| Marijuana      | 62.7%                           | 64.4%                                  |
| Stimulants     | 23.4%                           | 23.9%                                  |
| Hallucinogens  | 21.7%                           | 22.5%                                  |

“Regular Use” defined as using drug at least once a week for at least a month.

## Overdose Deaths Involving Opioids, by Type of Opioid, United States, 2000 -2016

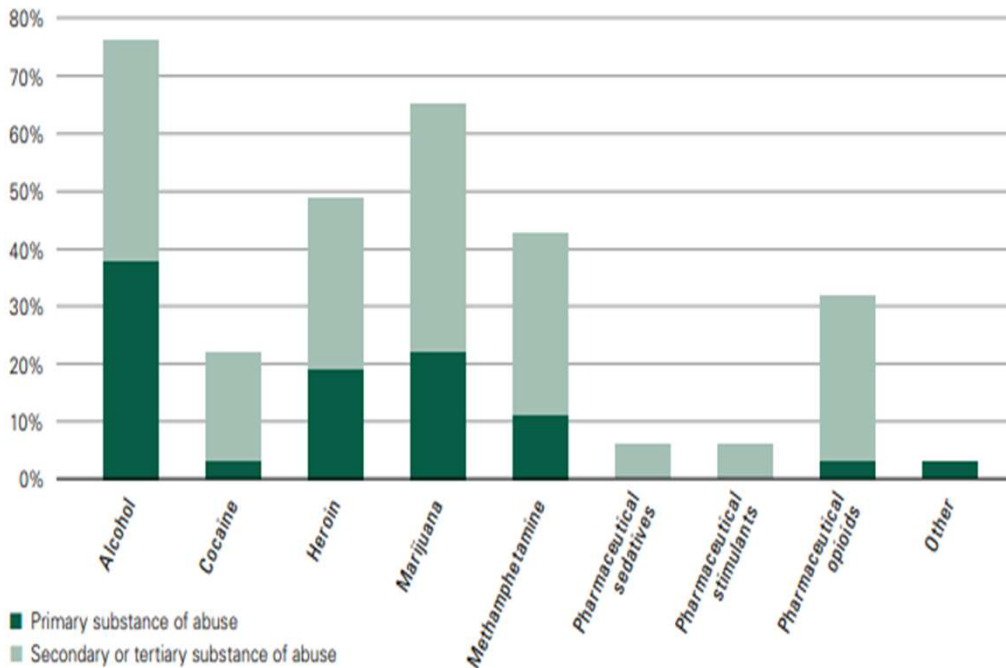


SOURCE: CDC/NCHS, National Vital Statistics System, Mortality. CDC WONDER, Atlanta, GA: US Department of Health and Human Services, CDC, 2017. <https://wonder.cdc.gov/>

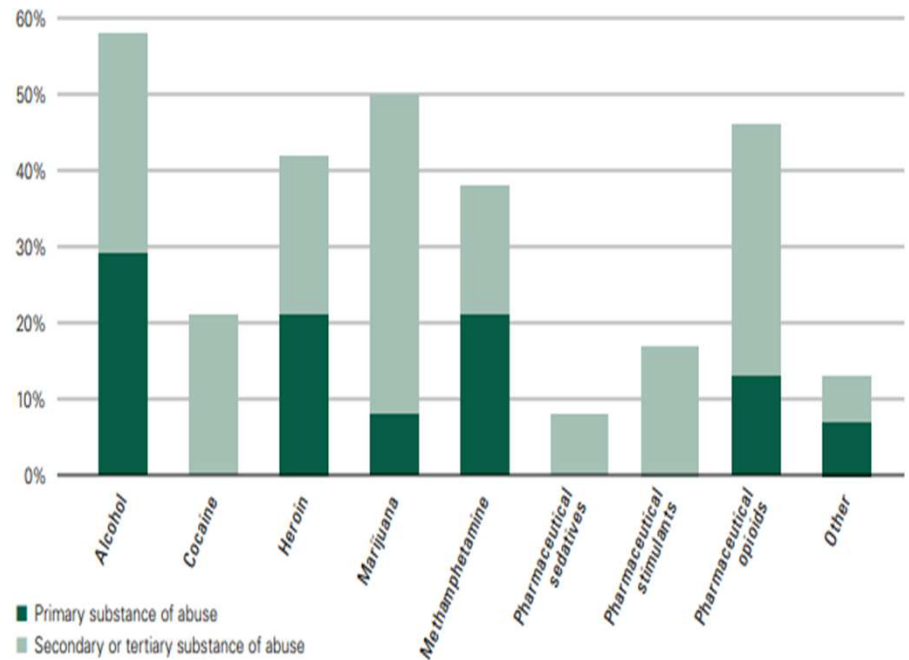


## Adult Drug Courts - Substances of Abuse (2014 Survey Results)

**Figure 8. Substances of Abuse Among Adults in Urban Drug Courts**



**Figure 9. Substances of Abuse Among Adults in Suburban Drug Courts**



Marlowe, D.B., Hardin, C.D., & Fox, C.L. (2016). *Painting the current picture: A national report on drug courts and other problem solving courts in the United States*. Alexandria, VA: National Drug Court Institute.

# Evolution of Drug Courts

Response to Addiction Crises

# The State Drug Court Movement

## **Huge Growth, but Limited Reach**

- First Drug Court - 1989 in Miami
- Now present in every state – with at least 1200 in 2012, growing to at least 2000 in 2015
- Inspired many other types of problem-solving courts (like veterans courts)
- Such courts reach only a small percentage of state criminal defendants with substance abuse disorders

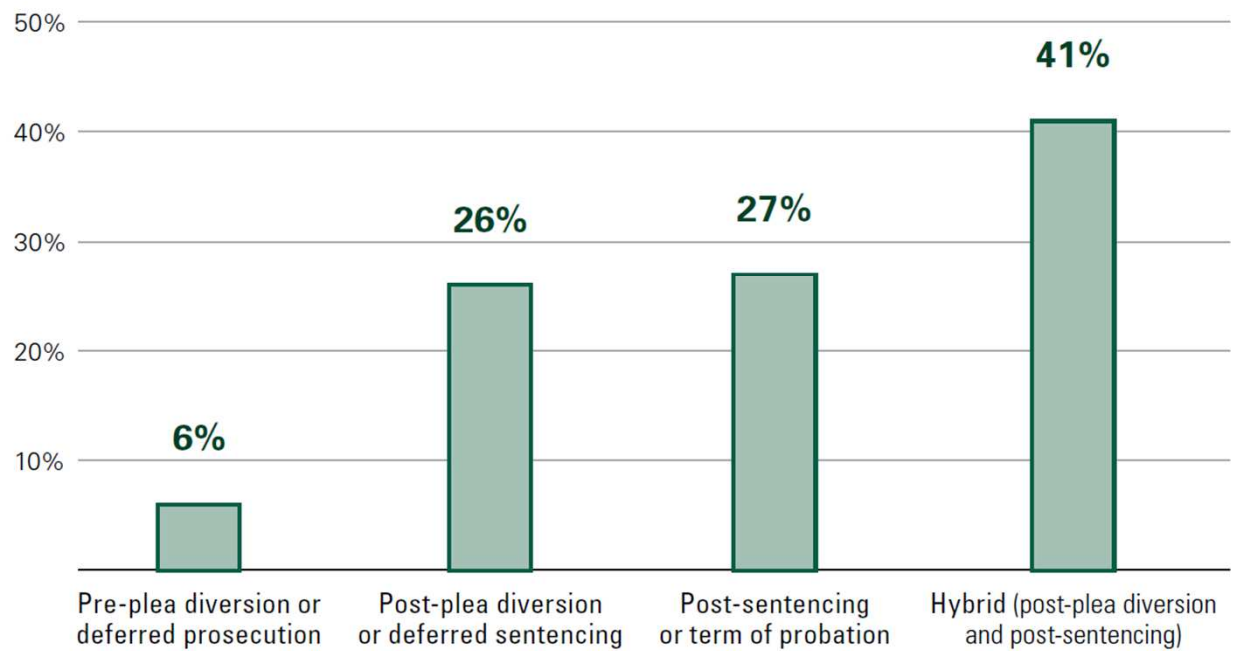
## **Standard Features**

- Specialized docket (12-24 months)
- Judge as leader of “treatment team”
- Weekly or bi-weekly court meetings; randomized drug testing
- Exclusion of defendants accused/convicted of violent offenses; or offenses deemed too serious
- To promote engagement, use of graduated sanctions and incentives



# Shift from Diversion Model to Alternative-to-Incarceration Model

**Figure 5. Dispositional Models in Adult Drug Courts**



Marlowe, D.B., Hardin, C.D., & Fox, C.L. (2016). Painting the current picture: A national report on drug courts and other problem solving courts in the United States. Alexandria, VA: National Drug Court Institute, available at <https://www.ndci.org/wp-content/uploads/2016/05/Painting-the-Current-Picture-2016.pdf>

## Points of Debate and Controversy

- Guilty Plea or VOP as Price of Entry
- Graduation Rates
- Longer Prison Sentences for Failure
- Scope of Rules or Conditions Imposed through Drug Court Contracts
- Reduced Process Protections
- Externalizing Risk of Error onto Defendants

# Orienting Principles

- Tight and targeted conditions
- Avoiding accountability traps
- Expanded use of incentives (research supports 4:1 ratio)
- Moving away from user-funded models
- Allowing MAT, as the medically-accepted standard of care