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# DRUG POLICY

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## DIVERTED OPPORTUNITIES: GAPS IN DRUG TREATMENT FOR JUSTICE SYSTEM-INVOLVED POPULATIONS IN HARRIS COUNTY, TEXAS

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## Executive Summary

Criminal justice jurisdictions across the United States are increasingly implementing diversion programs for individuals charged with drug offenses. These programs differ in specifics, but they all share a similar goal: to send those charged with drug offenses to treatment instead of jail or prison.

The growing popularity of diversion programs has increased demand for drug treatment services. To date, much of the discussion surrounding these programs has focused on the necessary work of demonstrating their value to criminal justice stakeholders. Often absent from such discussions is an assessment of whether the surrounding community has the capacity to handle the increased demand for services that diversion programs create.

The purpose of this study is to gain a better understanding of the justice system's ability to connect people with drug treatment services by focusing on recent efforts in Harris County, Texas, which has historically had the highest rates of drug arrests and prosecutions in the state. In 2016, the county created the Reintegration Impact Court, which diverts most nonviolent defendants facing drug charges from incarceration to secure residential facilities or community-based treatment in an effort to reduce the racial disparities in and the rate of incarceration for drug offenses. These features make the county ideal for a case study of the effectiveness of the diversion process.

Using a survey of community drug treatment providers, qualitative interviews with community providers and state and county officials, and a review of relevant public documents, we provide a comprehensive understanding of the resources made available to those charged with drug offenses through the court diversion process, the challenges in offering these resources, and the interactions between the criminal justice and drug treatment systems.

### *Findings: Gaps in Care*

Through this project, we identified several gaps in community care in Harris County. These gaps exist for all indigent, uninsured county residents with substance use disorders (SUDs), but are particularly pronounced for justice system-involved individuals.

#### Residential Treatment

Survey data and follow-up interviews with treatment providers and county officials highlight a sizable gap between the need and availability of residential treatment. Only 29% of survey respondents said their facility offers residential treatment. During interviews, several respondents commented on the frequency with which there are no available beds for indigent and uninsured justice system-involved populations.

## Gaps in Drug Treatment for Justice System-Involved Populations in Harris County, Texas

Research suggests that treatment outcomes are at least partially dependent on treatment setting. While people with less severe SUDs can benefit from outpatient settings, matching patients who have more severe SUDs with more intensive care is critical to improving treatment outcomes. The inability to match an individual with the appropriate setting is likely to limit the effectiveness of the treatment component of diversion efforts.

### Medication-Assisted Treatment (MAT)

While roughly 57% of community providers surveyed offer MAT directly or coordinate with MAT providers, these services are not frequently utilized by the justice system-involved population.

Interview respondents identified stigma and funding as the two biggest barriers to MAT access, both for justice system-involved clients and for opioid users generally. Perceptions of MAT continue to evolve, and while respondents noted greater acceptance for MAT today than in the past, skepticism toward it remains an obstacle to securing needed funding and connecting justice system-involved individuals with these services.

Funding remains a significant barrier to receiving care, despite recent federal and state opioid response efforts that have increased MAT availability. A problem frequently cited by interview respondents, for example, is that state reimbursement rates for MAT providers are too low to be economically viable, often not covering the full cost of service provision. This limits the number of providers willing to accept state-funded clients, and among providers that do accept these clients, it limits the number they are able to serve.

Other limitations in MAT and MAT-related services include the lack of detoxification services; the underutilization of MAT, especially extended-release naltrexone, to treat alcohol use; the absence of the therapeutic component of MAT in most state-funded treatment settings; continued stigma against MAT among some treatment providers; and a lack of physicians in the area willing to prescribe buprenorphine to patients.

### Treatment for Individuals with Co-occurring Mental Health and Substance Use Disorders

Co-occurring mental health and substance use disorders are common among justice system-involved populations, with an estimated 50% to 85% of adults who frequently cycle through local jails and emergency departments having dual diagnoses. Findings from this project suggest Harris County lacks the resources to respond to the needs of these clients. Sixty-nine percent of providers surveyed reported treating co-occurring disorders, but of this 69%, only 26% (a total of 10 facilities surveyed) provide medications for psychiatric disorders. This suggests a gap between the number of providers who say they treat co-occurring disorders and those that have the complete resources to do so.

Consistent with survey findings, follow-up interviews highlight the lack of integrated services for mental health and substance use. Several respondents noted that most drug treatment professionals are not trained to address mental illness, and that many mental health providers are unwilling to address addiction. Other challenges to integrated care include separation of state funds for mental health and substance use services and low

reimbursement rates for providers in both service areas. Treatment for justice system-involved individuals is often complicated by the lack of continuity of care between correctional and community settings.

#### Ensuring Standards of Care

The Harris County courts and probation department are largely unable to monitor outcomes for clients that receive court-mandated services from community providers. The county has memoranda of understanding with several providers, but because the majority of these agreements are not paid contracts, most providers are not required to deliver outcome data to the county.

Several interview respondents felt that justice system-involved clients need more guidance in selecting appropriate treatment. The data collection process for this project also suggested difficulty navigating the field of options to find available, affordable, and appropriate drug treatment.

It is well-documented that the drug treatment field as a whole is not held accountable for providing evidence-based care. By requiring participation in drug treatment as a condition for diversion from incarceration, the justice system assumes some responsibility for the quality of these alternative services, making the lack of accountability especially problematic.

#### *Limitations of the Justice System's Role in Drug Treatment*

Harris County has made a concerted effort to improve its handling of individuals charged with drug offenses. Despite improvements, challenges remain in the county's ability to effectively connect people charged with drug offenses to drug treatment and other services. Insufficient community resources are a significant factor in explaining these limitations, a problem that affects treatment availability for all indigent and uninsured populations, and one that the county is largely dependent on the state to help solve.

More fundamentally, while the county should be commended for its efforts to reduce incarceration of individuals charged with drug offenses, findings from this project are consistent with prior research that suggests the justice system generally is not designed to meet the needs of a large segment of the diverted population, many of whom do not present a direct threat to public safety but do have many unaddressed social, psychological, and physical needs.

#### *Recommendations*

We recommend that drug use among individuals arrested for nonviolent drug offenses be treated primarily as a public health issue. Such an approach would significantly reduce the role of the criminal justice system in addressing the needs of people who use drugs, as reliance on this system ultimately conflicts with public health goals and results in resource expenditures that would be better spent on building an affordable and comprehensive treatment services model within the community.

## Gaps in Drug Treatment for Justice System-Involved Populations in Harris County, Texas

This shift, already taking place in some U.S. cities, would involve reducing legal oversight of people arrested for and charged with drug offenses. It would also require greater emphasis on providing access to a full continuum of substance use care that includes harm reduction measures, peer support services, sober living options, and low-barrier MAT programs, as well as services in related areas of need, such as physical and mental health care, housing, and employment. While reducing drug use would remain a policy goal, individuals would not face legal sanctions for continuing drug use so long as they were not risking harm to others as a result of that use.

The criminal justice reforms that would most effectively begin the shift toward treating drug use as a public health issue would be for: 1) the state of Texas to reduce the penalty for possession of less than one gram of a controlled substance from a state jail felony to a misdemeanor, and 2) Harris County (and other localities) to divert those found in possession of drugs from the legal system prior to arrest and court involvement.

While we believe strongly that these reforms are needed to address the inherent shortcomings of using the justice system to respond to drug use, we also recognize that current political realities at both the state and local levels severely diminish the prospects for adoption.

Given such realities, the following recommendations are more moderate measures that state and local officials can take to improve their handling of individuals charged with drug offenses. Several of these recommendations are also geared toward changes in the broader drug treatment infrastructure that are needed to improve service provision for justice system-involved individuals and that would also lead to better outcomes for the general population.

### *Criminal Justice Policy Recommendations for the State of Texas*

- Recommendation 1: Incentivize probation departments to reduce the population under supervision.
- Recommendation 2: Ensure access to all three types of medication-assisted treatment for justice system-involved individuals.
- Recommendation 3: Eliminate legally mandated drug education classes and driver's license suspensions as penalties for drug offenses.
- Recommendation 4: Create a process for automatic record expungement for diverted drug offenses.

### *Criminal Justice Policy Recommendations for Harris County*

- Recommendation 5: Urge state officials to make needed policy changes.
- Recommendation 6: Reduce the focus on drug use in diversion programs.
- Recommendation 7: Continue reducing barriers to compliance with probation and diversion requirements.

## Gaps in Drug Treatment for Justice System-Involved Populations in Harris County, Texas

### *Drug Treatment Policy Recommendations for the State of Texas*

- Recommendation 8: Increase the state budget for drug treatment.
- Recommendation 9: Increase funding for integrated mental health and substance use treatment.
- Recommendation 10: Increase funding for medication-assisted treatment for alcohol misuse.
- Recommendation 11: Increase funding for detox services.

### *Drug Treatment Policy Recommendations for Harris County*

- Recommendation 12: Advocate for increased community drug treatment resources.
- Recommendation 13: Coordinate local health systems to improve access to harm reduction services.
- Recommendation 14: Increase public outreach and data collection related to drug use trends and services.

## Introduction

Nearly 50 years have passed since President Richard Nixon declared a war on drugs in June 1971, paving the way for the United States to become a world leader in mass incarceration.<sup>1</sup> Despite dramatic increases in the size and scope of drug enforcement, at an estimated overall cost of more than \$1 trillion to American taxpayers, drug use rates have remained relatively stable since the late 1970s.<sup>2</sup> On the other hand, drug overdose rates are now at an all-time high, and the drug war's contribution to the enormous growth in the U.S. prison and jail populations has disproportionately impacted communities of color.

As it becomes increasingly acceptable, if not popular, to criticize the drug war as an unsustainable, unjust, and ineffective policy experiment, many elected officials now endorse, in general terms, policies that scale down the war on drugs. Numerous examples of substantive policy changes at the federal, state, and local levels of government indicate a sincere effort to enact needed reforms to the criminal justice system. And yet, drug enforcement continues largely unabated. In 2018, there were 1.65 million arrests for drug possession in the U.S, a 5% increase from 2016 that averages out to a drug arrest every 20 seconds.<sup>3</sup>

There are many challenges to reforming drug laws, one of which is that despite a broad consensus that current policies are problematic, there is little agreement on how to fix them. With the exception of cannabis, many elected officials and policymakers are reluctant to embrace paradigmatic reforms, such as across-the-board decriminalization of drug possession for personal use. Criminal justice and law enforcement agencies may agree that jails and prisons are undesirable places to house those charged with drug offenses, but they still believe the legal system has a role to play in connecting people arrested for drug offenses, many of whom have unaddressed substance use disorders (SUDs), with needed treatment services. This has resulted in increasing support for treatment as an alternative to incarceration for individuals charged with drug offenses.<sup>4</sup>

The growing popularity of diversion programs has increased demand for community-based drug treatment services. The scope of any diversion program must be tailored to both the demands of the justice system and the underlying treatment infrastructure of the community it serves. To date, much of the discussion surrounding these programs has focused on the necessary work of demonstrating their value to criminal justice stakeholders. Often absent from such discussions is an assessment of whether the surrounding community has the capacity to handle the increased demand for services that diversion programs create.

The purpose of this study is to gain a better understanding of the justice system's ability to connect people with drug treatment services by focusing on recent efforts in Harris County, Texas. Through a survey of drug treatment providers and interviews with community providers and public officials, we provide a comprehensive understanding of the resources made available to people arrested for drug possession through the court diversion process. The section below provides background information on Harris County's



criminal justice system and drug diversion efforts, followed by a discussion of methods and findings. We conclude with recommendations for Harris County and the state of Texas that would improve drug treatment service provision for justice system-involved populations and the greater community.

## **Background: Drugs and Criminal Justice in Harris County, Texas**

Harris County, Texas, the state's largest county, is home to over four million residents and includes Houston, the fourth-largest city in the country and one of the most diverse.<sup>5</sup> The county, like the state as a whole, has a history of zealous drug enforcement policies and racial disparities in the justice system.<sup>6</sup> In recent years, the county's leadership has taken steps to address these issues, but challenges remain.

A substantial portion of the county's law enforcement and criminal justice resources are devoted to processing drug possession offenses. In 2017 and 2018, Harris County filed over 500 felony drug possession charges each month on average, accounting for about 20% of all felony charges filed.<sup>7</sup> A forthcoming report identifies possession of less than one gram of a controlled substance (PCS<1G) to be the most common charge overall in Harris County.<sup>8</sup> District clerk data show marked racial disproportionality in PCS<1G charges.<sup>9</sup> In 2017, nearly 47% of defendants charged with PCS<1G were African American, despite African Americans making up less than 20% of the general population in Harris County.<sup>10</sup> Socioeconomic disparities exist as well; of those charged with PCS<1G in 2017, nearly 75% were indigent and required appointed counsel.<sup>11</sup>

Harris County's prosecution of a high volume of drug possession cases costs significant public resources. The hundreds of inmates facing drug possession charges on any given day<sup>12</sup> contribute to the Harris County Jail's near-constant struggles with overcrowding.<sup>13</sup> The costs of operating and maintaining such a large jail are evident in Harris County's budget. For FY2019-20, Harris County budgeted nearly as much for detention and its associated medical costs (\$290.2 million) as it did for all county services and infrastructure systems (\$300.1 million).<sup>14</sup> Racial disparities exist at this point in the criminal justice continuum as well; African Americans regularly account for approximately 50% of the jail population.<sup>15</sup>

Racial disparities and jail overcrowding are not unique to Harris County's justice system. These problems exist in jurisdictions across the U.S. and in 2015, the MacArthur Foundation launched its Safety and Justice Challenge, soliciting proposals and distributing funds to aid localities in identifying and addressing the drivers of excessive and racially disparate incarceration.<sup>16</sup>

After successfully applying for and receiving a planning grant in 2015, Harris County was awarded a second grant in April 2016 for the implementation of programs designed to reduce the size of the jail population and racial disparities in the justice system.<sup>17</sup> Reducing the high volume of people charged with low-level drug possession offenses serving time in county jail was considered the most effective way to achieve both of these goals. To that

end, Harris County officials formed a new court, known as the Reintegration Impact Court (RIC), to handle PCS<1G cases and to emphasize alternatives to incarceration for those charged with low-level drug offenses.<sup>18</sup>

### *Harris County's Reintegration Impact Court*

At its inception in October 2016, RIC operated as a centralized court to which all PCS<1G cases were initially sent, and it has since expanded to accept individuals charged with certain other offenses.<sup>19</sup> It is intended to streamline the processing of people charged with drug offenses by allowing them to bypass the county's 22 other courts. RIC is similar in function to traditional drug courts, which are specialty courts designed to reduce the use of correctional settings for those charged with drug offenses by connecting them with treatment services. Harris County's probation department, officially known as the Community Supervision & Corrections Department, plays a substantial role in the court's operation and conducts risk and needs assessments of RIC participants, oversees participants' progress while on diversion, and provides drug treatment services directly to RIC participants deemed too high-risk to receive such services in the community.<sup>20</sup>

RIC officials estimate that about 15% of eligible defendants opt out of RIC and have their cases heard in one of the county's traditional criminal courts, a decision that alters how the case is processed but does not necessarily preclude the defendant from receiving treatment as an alternative to incarceration.<sup>21</sup> In addition to the defendants who opt out of RIC, about 20% of defendants who stay in RIC opt out of diversion and take an offer of jail time or time served. Defendants who are not released from jail quickly and who have already spent time in jail awaiting the disposition of their case may be especially likely to decline diversion opportunities, choosing to take the drug conviction and time served instead of agreeing to comply with the additional supervisory and treatment requirements of diversion.<sup>22</sup>

For individuals who choose to participate in diversion, there are two avenues through which this can occur. Pre-trial interventions (PTIs) are used for people with limited criminal history; people with prior misdemeanor convictions qualify for a PTI but those with prior felony convictions do not. All drug possession offenses (except cannabis) are felony offenses, so people with prior drug possession convictions are likely excluded from the PTI option, although county officials have said they are increasingly open to offering PTIs to people with prior felonies, depending on the context of those offenses. People given PTIs typically sign contracts for one year, during which they are expected to comply with various requirements, such as participating in drug treatment and submitting to drug screens. During interviews, county officials stated that people who do well while on PTI can have their case dismissed before the year is up and that people who are not successful during the 12-month period can have it extended.

The one-year time period for PTIs makes them more appealing to potential participants than the other diversion option, which is deferred adjudication. Deferred adjudication is for defendants who have a more extensive criminal history that typically includes prior felonies. When RIC first started, all deferred adjudications were three-year contracts, but county officials stated that they began offering more two-year deferred adjudications in 2018 because they recognized that three years of court oversight could discourage people from choosing diversion, possibly making them more likely to take jail time and the felony conviction in order to be done with legal involvement more quickly.

Through the PTI and deferred adjudication processes, RIC has increased the number of individuals facing drug charges that are placed on community supervision rather than serving time in a local or state jail facility. As a result, more individuals charged with drug offenses are now funneled into community-based drug treatment. RIC's emphasis on connecting this population with community services implies that the court's effectiveness depends to a considerable extent on the resources available in the community, making it crucial to understand and address challenges that treatment providers may encounter in serving clients.

### RIC's Impact on Due Process

The high rate of drug prosecutions in the U.S. has placed an unmanageable burden on court systems across the country in recent decades.<sup>23</sup> In many jurisdictions, the rising number of prosecutions coincides with an increase in the number of plea bargains, ultimately resulting in fewer jury trials.<sup>24</sup> Jury trials are an integral component of the United States' judicial system. According to the National Judicial College, they are a pillar of the American Constitution and a vital part of a democratic society,<sup>25</sup> and as such, the frequency of jury trials is often used to gauge the health of a court system.<sup>26</sup>

Limited capacity to support jury trials has been an issue in the Harris County justice system for at least 15 years, with one judge stating in 2004 that, "the system would collapse if every case that was filed in the criminal justice system were to be set for trial."<sup>27</sup> According to Harris County Office of Court Administration data, in 2018, 1,828 of 1,830 felony drug possession convictions in Harris County District Courts came from guilty pleas, meaning only two defendants were convicted at trial that year.<sup>28</sup> A court system that discourages defendants from exercising their constitutional right to due process risks its legitimacy as a government institution. Harris County must take steps to ensure that all defendants are allowed to exercise their constitutional rights, with particular focus on the high rate of guilty pleas in felony drug possession cases.

The preservation of due process must also feature in the development of diversion programs. In Harris County, one of the aims in establishing RIC was to streamline the system of processing defendants with certain drug charges, and much of the focus on RIC centers on outcome measures—specifically the court's ability to decrease the amount of time those charged with drug offenses are held in confinement and the disproportionate

rate of minority confinement. While the court's effort to streamline the processing of defendants may increase efficiencies in the legal system, many of its rules make it vulnerable to legal challenge.

Indeed, diversion programs in other states have been scrutinized for violating defendants' rights. Last year, for example, attorneys from the Civil Rights Corps filed suit against Maricopa County, Arizona, over the county's new marijuana diversion program.<sup>29</sup> Amongst other allegations, the lawsuit alleges that the marijuana diversion program was being administered unfairly and that defendants able to pay the program's steep fees were given preferential treatment.<sup>30</sup>

So far, RIC has not faced any challenges on due process grounds, but there are features of the court that are concerning from an administration of justice point of view. For example, RIC requires program participants to surrender their right to contest the criminal charges against them in order to access treatment. Defendants who wish to contest the charges against them are transferred out of RIC to another one of Harris County's District Courts. According to defense attorneys who have practiced in RIC, the transfer to another District Court often necessitates an attorney change for indigent defendants receiving appointed counsel, leaving their new counsel working on an expedited trial timeline. This process leaves RIC potentially vulnerable to legal challenges over due process concerns.

## Methods

Individuals mandated to drug treatment in lieu of incarceration in Harris County, regardless of whether their case is processed through RIC or a traditional criminal court, receive services through one of two avenues: directly from the county through the Community Supervision & Corrections Department (CSCD; i.e., probation) or from community providers. Whether an individual receives services from CSCD or is referred to a community provider depends on their indigent status and an initial risk assessment, explained in further detail below. We conducted interviews with county officials to gain a better understanding of the in-house treatment services provided by CSCD; however, the primary focus of this project was the services offered by community providers and the relationships between those providers and the county justice system.

We identified community-based facilities that serve justice system-involved individuals by using the list of providers that CSCD gives to clients referred to community treatment.<sup>31</sup> We supplemented this list with the Substance Abuse and Mental Health Services Administration's nationwide survey of drug treatment facilities, which identifies providers that treat justice system-involved individuals. We also conducted initial interviews with key stakeholders knowledgeable about providers that serve this population. We distributed a web-based survey via email between May and June of 2018 to points of contact at 98 unique community treatment facilities, offering \$50 Amazon gift cards to those who completed the survey.<sup>32</sup> Respondents were asked about a range of topics, including type of treatment setting, services offered, clinical/therapeutic approaches used, types of licensed

staff available, types of payments accepted, and whether medications are used to treat opioid use. We received responses representing 49 facilities, for a response rate of 50% (see the survey appendix: <http://bit.ly/2KW06XM>).<sup>33</sup>

After survey responses were collected and analyzed, we conducted open-ended follow-up interviews with 41 community treatment providers, nonprofit care coordinators, state health services representatives, and county court and probation officials.<sup>34</sup> Respondents from the treatment community were asked about such topics as the clients they serve, the services they offer, challenges to providing services, and interactions with the county justice system. Respondents from courts and probation were asked about the services offered by the county, the process of referring people to drug treatment, the perceived effectiveness of this process, and challenges of connecting justice system-involved clients to needed services. Survey and interview responses were supplemented with reviews of relevant state and local government documents.

The section below presents an overview of services offered by Harris County. The following sections discuss the findings from the survey and interviews as they relate to challenges in service provision for the county. A full description of survey results is provided in the appendix.

## **Harris County Probation’s Treatment Services for Moderate- and High-Risk Populations**

Every person who is diverted from jail through RIC or one of Harris County’s standard criminal courts undergoes a clinical assessment to determine treatment needs, as well as a criminogenic risk assessment to determine the likelihood that they will be arrested for a future offense.<sup>35</sup> The Texas Risk Assessment System (T-RAS) “offers assessment tools that are predictive of recidivism for different offender populations being supervised in the community.”<sup>36</sup> Individuals who are clinically evaluated as needing drug treatment and assessed by the T-RAS as having a moderate or high risk of future arrest are provided treatment services at secure facilities managed by the county.<sup>37</sup>

The Harris County probation department oversees two residential treatment programs. The Harris County Residential Substance Abuse Treatment Center (HCRTC) has 420 beds and serves men and women who have serious SUDs as well as a moderate to high risk of future arrest. The Dual Diagnosis Residential Program (DDRP) has 100 beds and focuses on individuals who have both SUDs and mental health issues, in addition to criminogenic risk factors.<sup>38</sup>

Historically, the HCRTC and DDRP have been used as alternatives to incarceration for individuals convicted of drug or drug-related offenses in order to address underlying issues—substance use, mental illness, and thinking and behavior patterns—that increase the likelihood of reoffending if neglected. Evidence suggests these programs are more effective than a state jail setting at reducing recidivism rates for this population.<sup>39</sup> With the county’s increased emphasis on diversion, the HCRTC and DDRP are now also used to provide

treatment for individuals who are diverted instead of convicted for drug offenses, but who are still assessed as posing too high a risk of rearrest to be treated in a community setting. According to probation officials, 10% of RIC clients are referred to one of probation's secure residential programs. People on deferred adjudication, who typically have a more extensive criminal history, are more likely to be treated at one of the county's residential programs than people on pre-trial intervention.<sup>40</sup>

County officials stressed that the diverted population receiving treatment at one of the county's residential facilities (HCRTC or DDRP) tend to have a more extensive criminal history and more severe SUDs, and may have previously been terminated from or denied treatment at community programs. During interviews, some community providers noted difficulties in ensuring the appropriate level of care for "high-risk" populations<sup>41</sup> in non-secure settings, which is one reason for refusing some clients; as one example, some providers do not take individuals with a history of aggravated assault.

Both the HCRTC and DDRP have long waitlists. The HCRTC program has an average waitlist of 100 to 200 clients, with wait times ranging from 21 to 70 days. The DDRP program has a shorter waitlist, averaging between 70 and 95 clients, but a significantly longer average wait time of 150 days. Individuals on the waitlist wait in jail for a bed to become available, even if they are participating in jail diversion. According to Harris County officials, this is because this population has been assessed as too high risk (as determined by the T-RAS) to wait for treatment in the community. County requests to the state for funding to reduce waitlist sizes and average wait times have not been met; however, CSCD has recently increased the bed capacity for the DDRP from 60 to 100 beds in order to reduce the waitlist for that facility.<sup>42</sup>

## **Community-Based Drug Treatment for Low and Low-Moderate Risk Populations**

### *Determining the Level of Treatment Need*

Justice system-involved individuals diverted from jail who are assessed as having a low or low-moderate risk for future arrest and are identified as having a SUD are referred to community providers for drug treatment services.<sup>43</sup> Individuals may be referred to a supportive outpatient program, an intensive outpatient program, or, in cases of more severe SUDs, a residential facility.<sup>44</sup>

A client's level of treatment need is determined by the probation department's clinical assessment, but the majority of providers we spoke with reported that they also perform their own needs assessments. Several of these providers said that based on their assessments, many justice system-involved clients need more intensive services than what is recommended by the probation department. One provider who oversees a large supportive outpatient program estimated "that 60 to 70 percent of those who are standard outpatient need intensive [services]."<sup>45</sup> Consistent with this observation, county officials reported that a good portion of referrals to more intensive treatment settings, whether

intensive outpatient or residential, occur after diversion participants have failed to complete a supportive outpatient program.

Criminal justice officials we spoke with said they refer defendants to supportive outpatient programs when possible to keep mandated requirements and treatment costs low. All county officials interviewed for this project noted a lack of affordable treatment slots in the community for both outpatient and residential services, suggesting availability also may be a factor in determining a client's treatment setting. Another factor may be that requiring residential treatment can deter defendants from participating in diversion. Several county officials noted instances in which a person who is mandated to attend a residential program after failing to complete an outpatient program will opt to take the conviction and jail time instead, especially if the court is requiring the treatment to occur at one of the probation department's lockdown facilities.

Once a determination is made regarding the appropriate treatment setting, clients are given a list of community providers maintained by the probation department.<sup>46</sup> The main requirement to be on the probation department's list is to be state licensed. County officials reported that they maintain memoranda of understanding to enable effective communication between probation officers and providers, but with the exception of a handful of these providers, this relationship does not involve a binding contract for service delivery.<sup>47</sup>

### **Gaps in Community-Based Treatment Services**

The following sections highlight critical gaps in drug treatment services for justice system-involved clients that were identified using survey and interview data. These gaps include a shortage of residential treatment beds, underutilization of medication-assisted treatment, and lack of integrated drug treatment and mental health services. Multiple factors contribute to these shortcomings, but one issue underlying all of them is the lack of adequate funding and planning to make community-based treatment accessible for justice system-involved populations.

#### *Residential Treatment*

Survey data and follow-up interviews with treatment providers and county officials highlight a sizable gap between the need and availability of residential treatment. According to interview respondents, there has been a significant increase in demand for residential treatment over the last three years.<sup>48</sup> Only 29% of survey respondents (representing 14 facilities) said their facility offers residential treatment. Of these, 64% (nine respondents) reported a total bed capacity of 26 or more, but only two respondents said their facility had at least that number of beds available at the time of the survey.

Justice system-involved clients are more likely to be uninsured than the general population, making public funding critical to their care.<sup>49</sup> Fifty percent of facilities reported receiving state funding and/or Medicaid for residential services, and 29% that do not accept these payments said they offer services at no cost for clients who cannot afford

to pay. The county also has paid contracts with a handful of providers for residential care for justice system-involved clients. This suggests there are residential treatment options available for indigent and uninsured clients, but several interview respondents commented on how often there are no available beds for this population, a problem that can be attributed primarily to a lack of funding rather than physical availability. One respondent explained that “a lot of providers have more capacity than what they use because they only use the capacity that is funded. A residential facility may have capacity for 100 clients but only has funding for 50.” This results in underutilized community resources.

County officials we spoke with emphasized their use of caution when mandating diversion clients to residential treatment because it is the most intensive and least available treatment setting. When a client does need residential treatment and no beds are immediately available, the court must decide what to do with that person in the interim. One county respondent stressed that for people sent to residential treatment, “it is important to do a direct handoff between courts, jail, and the provider because there are a million things that could go wrong and make the person not show up.” RIC employs recovery coaches to keep defendants engaged while waiting for treatment, and the Houston Recovery Center (a sobering facility) allows people waiting for a bed to stay overnight. County officials interviewed for this project did not provide estimates for how many diverted defendants are mandated to residential treatment or the average wait times for services, but they emphasized that most clients are sent to a residential facility only after failing to complete outpatient programs. These officials further stated that the county does its best to find temporary accommodations other than jail for defendants waiting for a community bed.

Research suggests that treatment outcomes are at least partially dependent on treatment setting. While people with less severe SUDs can benefit from outpatient settings, matching patients who have more severe SUDs with more intensive care is critical to improving treatment outcomes.<sup>50</sup> The inability to match an individual with the appropriate setting is likely to limit the effectiveness of the treatment component of diversion efforts. When no beds are available for justice system-involved clients who need residential care, the courts may have to choose between managing the client’s wait time for a bed and sending them to a less intensive treatment setting instead. Also problematic, clients who are not ready or willing to undergo residential treatment may then face a felony conviction and jail time. These consequences may be appropriate if the offense in question involved harm to others; they are less appropriate if drug possession was the primary violation.

### *Medication-Assisted Treatment (MAT)*

Survey respondents were also asked whether their facilities provide MAT, which is considered the most effective treatment for opioid use (See Figure 2 for definitions).<sup>51</sup> Just 14% of those surveyed reported that they offer at least one of the three FDA-approved<sup>52</sup> medications to treat opioid addiction (See Figure 1). Forty-three percent do not provide MAT services directly, primarily because they are not licensed to do so or do not have the necessary staff, but said they accept clients who are on MAT and coordinate with external MAT providers. Sixteen percent of those surveyed said they treat opioid use but do not allow clients to be on MAT, and 24% said they do not treat patients for opioid use.<sup>53</sup>



A total of 14 respondents said their facilities have treated or are willing to treat justice system-involved clients with MAT, either directly or through coordination with MAT providers. When asked to estimate the number of justice system-involved clients currently receiving MAT, 13 of the 14 respondents estimated having between zero and 10 such clients. Only one respondent provided a higher estimate of 21 to 30 justice system-involved MAT clients, at a facility that offers a single MAT option, naltrexone.<sup>54</sup>

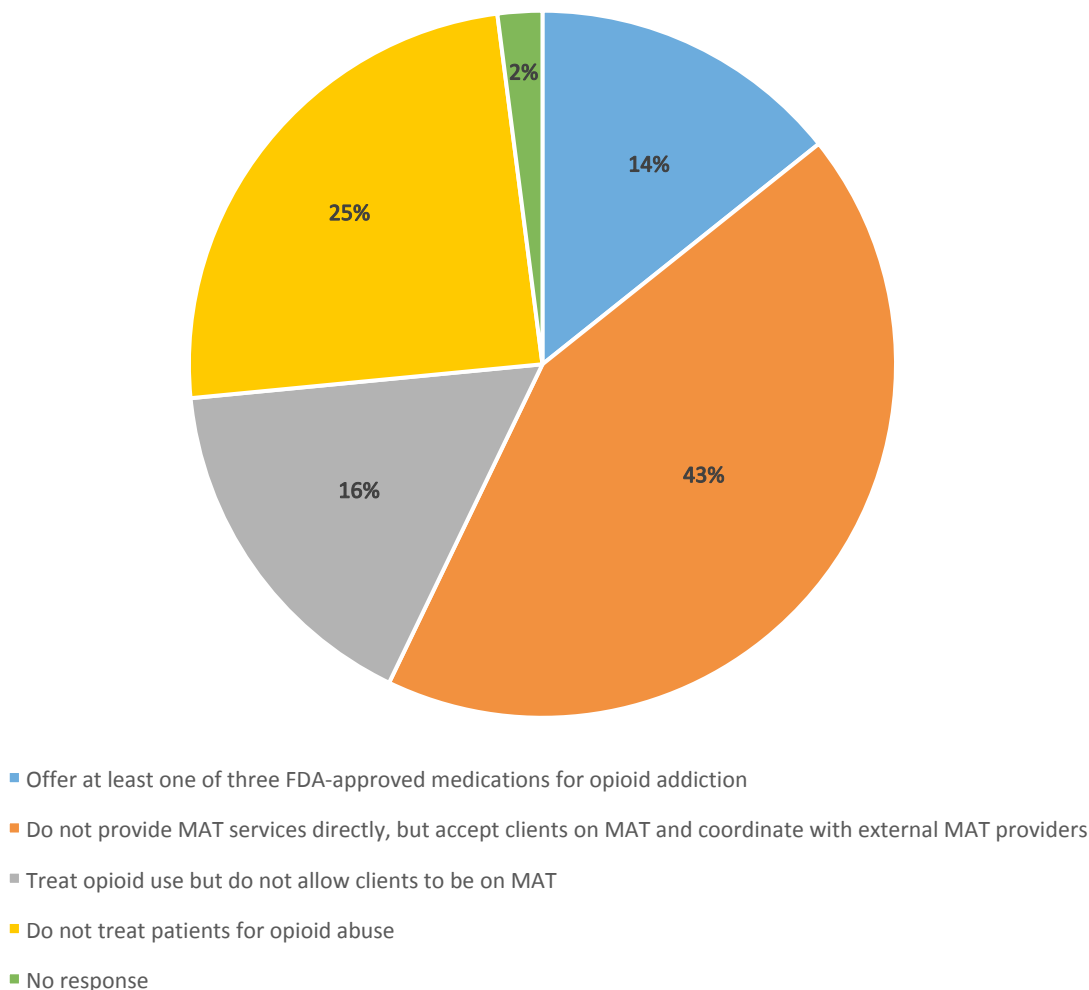
These findings suggest that while roughly 57% of community providers serving justice system-involved clients offer MAT directly or coordinate with MAT providers, these services are not frequently utilized by this population. This may reflect a lack of need for these services. People in Harris County are arrested for cocaine and methamphetamine more frequently than for prescription opioids and heroin.<sup>55</sup> The probation department estimates that only 9% of its clients have a problem with opioids. This information is based on self-reporting, however, so it is possible that clients underreport their drug use behavior. Forty-nine percent of providers who responded to the survey reported prescription opioids as one of the top three drugs for which they treat clients. These results do not distinguish between justice system-involved and non-justice-system-involved clients, but nevertheless suggest that opioids are a drug for which people frequently need treatment.

### *Barriers to MAT: Stigma and Funding*

Interview respondents identified stigma and funding as the two biggest barriers to MAT access, both for justice system-involved clients and for opioid users generally. For its entire existence, MAT has been stigmatized to varying degrees by different groups, including elected officials, treatment providers, and drug users themselves. This stigma has lessened in recent years due to a number of factors, the most visible of which is the opioid epidemic.<sup>56</sup> Several interview respondents reflected on the changing attitudes towards MAT among treatment providers as well as within the criminal justice sphere, which has long been skeptical of MAT. As one interview respondent who works for the county explained, “MAT absolutely has a place. We’ve come to the agreement that whatever makes a client successful and keeps them on the right path...is fine.”

But acceptance of MAT does not necessarily translate into advocacy for its use, which is evident in how infrequently justice system-involved clients are receiving these services. Court and probation officials we spoke with said they support MAT access, but also emphasized that decisions about whether a client should be on MAT should be left to treatment providers. This may be true, but if clients are not referred intentionally to providers that offer MAT or at least coordinate with MAT providers, the chances that those clients will receive MAT decrease. One respondent stated that “MAT providers and ‘abstinence providers’ do not mix. If you have opioid use disorder and go to a provider that doesn’t provide MAT, they’ll still take you,” but likely will not make a referral to a MAT provider.

Figure 1. Harris County Community Treatment Providers: Availability of Medication-Assisted Treatment



Note: N=49

The other major barrier to receiving MAT for justice system-involved opioid users—as well as all uninsured, indigent opioid users—is the ability to pay for it. Federal and state opioid response efforts have increased MAT availability, and there are certain populations, such as pregnant women, that courts and treatment providers are reliably able to get on methadone (the cheapest MAT option). But for other populations, funding remains a significant obstacle. Community providers noted that getting methadone paid for “is an uphill journey.” One county official expressed confidence that people who really want MAT can get on methadone “if they have the gumption to do it.” Yet a methadone provider who takes state-funded and justice system-involved clients noted that while certain populations are given priority, there is a waiting list “about 4-6 weeks long.”<sup>57</sup> This suggests that even clients who have a strong desire to be on MAT may have to wait for treatment if they cannot afford the out-of-pocket costs,<sup>58</sup> and that wait risks continued illicit opioid use.

The waitlist for MAT is primarily due to funding limitations rather than a true absence of treatment availability.<sup>59</sup> State reimbursement rates for providers are too low to be economically viable and often do not cover the full cost of service provision. Because of the low reimbursement rates, many providers will not accept state funding or Medicaid, and those who do can only serve a limited number of uninsured clients at a time, having to reserve the remainder of treatment slots for clients with insurance or who can self-pay. Several interview respondents emphasized that they try to help clients pay for treatment while they wait for state funding, but this places a financial burden on providers who operate with little overhead.

**Figure 2. MAT Definitions**

<p><b>Medication-assisted treatment (MAT):</b> Short- or long-term use of medications to decrease physical cravings for drugs and reestablish normal brain functioning. MAT reduces drug-seeking behaviors, provides users with stability, and helps users engage in behavioral therapy.</p>
<p><b>Methadone:</b> A synthetic opioid that activates the opioid receptors in the brain and reduces withdrawal symptoms and drug cravings. Because it activates the opioid receptors more slowly than heroin and prescription opioids, it does not produce the same euphoria in people who are opioid-dependent. It is administered once per day and is available in pill and liquid form. Methadone is only available at federally certified opioid treatment programs.</p>
<p><b>Buprenorphine:</b> An opioid that binds to the brain’s opioid receptors but does not activate them as strongly as heroin and prescription opioids. It reduces withdrawal symptoms and drug cravings and can be prescribed by federally certified physicians in office settings. Buprenorphine is administered once per day in tablet form or as a film placed under the tongue; an implant formulation that lasts six months and a once-monthly injection were recently approved by the FDA.</p>
<p><b>Naltrexone:</b> A drug that blocks the activation of the opioid receptors. It does not reduce cravings and withdrawal; instead it prevents other opioids from creating pleasurable effects. Full detox is required prior to treatment with naltrexone. The oral form must be taken daily to be effective. A monthly injectable form of naltrexone was approved by the FDA in 2010 and addresses adherence issues. Less research exists on the efficacy of extended-release naltrexone compared to methadone and buprenorphine, but evidence suggests it can be similarly effective if patients are able to overcome the initial hurdle of detox. Naltrexone is also effective for helping to reduce alcohol use.</p>
<p><b>Medical Detoxification:</b> Management of the physical symptoms of withdrawal associated with ceasing drug and/or alcohol use. Detox without medical assistance can be fatal, especially in cases of severe alcohol use, and it is recommended for alcohol users who want to stop or moderate their use. For opioid users, detox is a required precursor to starting oral or extended-release naltrexone, but is not necessary or recommended for users who will be receiving methadone or buprenorphine. Without additional care, detox does little to change long-term drug use.</p>

Source: National Institute on Drug Abuse, Treatment Approaches for Drug Addiction, January 2019.

Indigent, justice system-involved clients receiving treatment at one of the county's lockdown facilities have some access to MAT. According to probation officials, there are clients currently in the county's residential treatment programs that are on methadone or oral naltrexone.<sup>60</sup> The cost of these medications is supplemented by Harris County's public health system, Harris Health. The Texas Department of Criminal Justice, through its Treatment Alternatives to Incarceration Program (TAIP), pays for a portion of treatment provided by probation but does not allow this funding to be used for MAT, which limits the ability of the probation department to offer a full range of MAT services to clients.<sup>61</sup>

Detoxification services, which assist people who are physically withdrawing from drugs or alcohol, are also lacking. Detox is necessary for people with alcohol use disorders who want to reduce or stop their use, and for opioid users who will be receiving naltrexone after detox.<sup>62</sup> Without medical assistance, individuals experience severely unpleasant and sometimes fatal effects from this process; they are also less likely to stop or moderate their substance use and may be forced to seek treatment from the more costly and less therapeutic emergency department. Only 10 providers surveyed (20%) said their facility offers detox. Of these, just five accept Medicaid and only two accept state-funded clients. According to multiple interview respondents with detailed knowledge of community services, there are roughly 31 state-funded detox beds for the entire county.

Other limitations in MAT services identified by interview respondents include the underutilization of MAT, especially extended-release naltrexone, to treat alcohol misuse; the absence of the therapeutic component of MAT in most state-funded treatment settings; continued stigma against MAT among some treatment providers; and a lack of physicians in the area willing to prescribe buprenorphine to patients.

### **Harris County Sheriff's Office Vivitrol Program**

Correctional settings are increasingly recognized as pivotal points of contact to connect opioid users with MAT services. The Harris County Sheriff's Office (HCSO) is currently operating a program in which inmates identified as having a history of opioid use are offered injectable extended-release naltrexone prior to their release. The program was started on a pilot basis in November 2017, and the HCSO has since made it a permanent feature of their drug treatment services due to its success.

During the intake process at the Harris County Jail, inmates are screened for substance misuse. People identified as having a history of opioid misuse are offered counseling and information on oral naltrexone and injectable extended-release naltrexone, known by its brand name as Vivitrol. Inmates who are interested in receiving Vivitrol and are deemed medically eligible (including by having fully detoxed) will receive oral naltrexone while in the jail and will receive their first Vivitrol injection prior to release. After release, individuals are connected with the Texas Clinic to provide follow-up monthly injections, and with the Houston Recovery Center to provide case management and continuing care services.

As of June 2019, the HCSO has had 68 patients receive Vivitrol while in custody and prior to release. So far, only one person has relapsed and reoffended. According to Dariel Newman, HCSO's head nurse of quality improvement, the patient who relapsed returned to heroin use approximately 12 weeks following his release, and the circumstances that contributed to that relapse included "loss of job, [new] homelessness, and inability to follow-through with counseling and subsequent injections following discharge," due to leaving the immediate area.

The low recidivism rate among participants demonstrates the effectiveness of the program and is consistent with findings from other corrections-based MAT programs that have found improved outcomes among participants.<sup>63</sup> Those familiar with the program attribute its success to the motivations of participants for avoiding drug use and to the continuing case management and aftercare services provided by the Texas Clinic and Houston Recovery Center.

Leadership from the top of HCSO has also been critical to getting the program started and to its continuing success. Since taking office in 2017, Harris County Sheriff Ed Gonzalez has called for jail reforms that include increased treatment services for people convicted of drug offenses. The initial Vivitrol pilot program was an opportunity to do just that. Newman stressed that Sheriff Gonzalez's firm support of the program was and continues to be "a game changer" for how HCSO can respond to drug use and other issues. This leadership has also been instrumental in the HCSO's ability to pursue other interventions; for example, in October 2019, officials started offering the overdose-reversal drug naloxone to individuals with a history of opioid use prior to exiting the jail.

Securing long-term funding is critical to continuing and expanding the HCSO's MAT offerings. The HCSO is currently looking to incorporate a second medication, an extended-release formulation of buprenorphine, known by its brand name Sublocade. This addition would expand treatment options for patients and reduce the risks and symptoms associated with the withdrawal process, which is not a necessary precursor to starting Sublocade (as is required for Vivitrol). But Sublocade, like Vivitrol, is expensive. To date, the pharmaceutical company Alkermes has provided Vivitrol for the HCSO program, and the Texas Clinic and Houston Recovery Center have been able to cover the costs of their services with other revenue streams. Further expansion will require additional resources.

The Vivitrol program is an example of how the county can increase access to MAT for justice system-involved populations. Ideally, all justice system-involved individuals with a history of opioid use would have access to this treatment (as well as other forms of MAT), but the HCSO program, with few exceptions, is available only to the jail population. People who are diverted from jail to probation typically do not have access, although the probation department has expressed interest in connecting clients with Vivitrol. Critically, as Newman noted, the Texas Department of Criminal Justice (TDCJ) does not authorize the use of Vivitrol, "so any patient sentenced to state jail or state prison time does not receive a Vivitrol injection due to lack of care continuity with TDCJ Health Services."

### *Treatment for Co-occurring Substance Use and Mental Health Disorders*

Mental health issues are common among people with SUDs. National estimates for 2017 indicate that almost 46% of the adult population with a SUD in the past year also had a mental illness.<sup>64</sup> Co-occurrence of these illnesses is especially prevalent among justice system-involved individuals. Of adults who frequently cycle through local jails and emergency departments, an estimated 50% to 85% have co-occurring SUDs and mental illness.<sup>65</sup> Consistent with this finding, community providers estimated that 60% to 80% of their justice system-involved clients have dual mental health and substance use diagnoses.<sup>66</sup>

Despite the frequency with which these illnesses occur together, findings from this project suggest that the county lacks the resources to respond to the needs of dual diagnosis clients. Sixty-nine percent of providers surveyed reported treating co-occurring disorders, suggesting that the majority of facilities do treat both diagnoses. Of this 69%, however, only 26% (a total of 10 facilities surveyed) provide medications for psychiatric disorders. This indicates a gap between the number of providers who say they treat co-occurring disorders and those who have the full resources to do so. Not all mental health issues require medication, but some do, especially the major psychiatric disorders that are more common among justice system-involved populations.<sup>67</sup> This makes the ability to prescribe medications a critical component of proper care. Providers we spoke with that do not provide medications on-site reported referring clients to mental health clinics such as the Harris Center, which is the state-designated local mental health authority. However, such a referral requires clients to make additional appointments to obtain medications and creates a challenge to ensuring integrated and continuous care.

Our follow-up interviews highlighted the lack of integrated services for mental health and substance use. Interview respondents reported that mental health experts are rarely willing to treat addiction, even though their clinical license typically qualifies them to do so. As one respondent explained, “psychiatrists are the most in tune with the mental health issues but addiction within that field is the red-headed stepchild.” Another stated that “psychiatrists don’t even pretend to treat co-occurring disorders.”

On the substance use side, providers are more likely to be licensed as chemical dependency counselors, a credential that does not allow them to treat mental health disorders. The Texas Health and Human Services Commission (HHSC) does provide funding specifically for treating clients with co-occurring psychiatric and substance use disorders (COPSD), but the agency’s website listed only seven facilities in Harris County with state-funded COPSD counselors in 2019.<sup>68</sup> The state’s COPSD services were described as “insufficient and underfunded” by one interview respondent who explained that, in practice, COPSD services mean that a dual diagnosis client is “getting one session a week with a counselor who may not have master’s level training,” suggesting a possible lack in clinical and education experience and certification. State representatives indicated that COPSD counselors who are not licensed mental health clinicians are supervised by someone who is licensed.

The treatment available for dual diagnosis clients at residential facilities was regarded as especially problematic by interview respondents. A county official noted that “very few do integrated care.” One respondent who helps connect clients with treatment in the county said that while there are some private residential facilities that deal with co-occurring disorders, “we can’t find anybody that actually treats both sides of the equation” who is state-funded. Another respondent explained that, partly due to the state’s low reimbursement rates, most residential providers cannot afford to have the medical staff required to deal with more serious psychiatric disorders. Interview respondents from HHSC agreed that low reimbursement rates are a challenge to having enough providers that can address co-occurring disorders, at both residential and outpatient facilities.

Another obstacle to integrated service delivery is that administration and oversight of these services is poorly integrated. While the two service areas are now overseen by a single state agency, this was not always the case, and there are still separate funding structures for mental health and substance use services. One state representative explained that “because funding has been separate, development of infrastructure and rules to improve policies has been separate, and that is a challenge for integration.” These structurally based silos can, in turn, lead mental health and substance use providers to be “protective” of their resources and the populations they treat.

Providers who do treat co-occurring disorders operate in a “very gray” area, where there is not a straightforward protocol for providing appropriate care. The challenges of treating such complex illnesses are magnified by the fact that years of substance use combined with a sporadic diagnosis and medication history can make it difficult to diagnose clients accurately and provide long-term treatment. This problem can be especially acute for justice system-involved clients, who may have access to treatment and medication in a correctional setting but then lose access once released. One respondent commented that the biggest challenge for justice system-involved dual diagnosis clients is

having access to medication once they’re out [of jail/prison.] It’s not like they have insurance or a job or any of that, so where do they get it? While they are there, county or feds pay for it but when released no one is paying for it.

In addition to the barriers created by poor service integration and inadequate health coverage, treating dual diagnosis clients is challenging for the justice system and community providers for a number of other reasons that extend beyond the purview of these service areas, including a client’s housing and employment status, child care and transportation access, and the client’s desire to engage in an institutionalized treatment plan. The multitude of factors that can affect recovery for dual diagnosis clients means this population often requires additional resources for treatment that are related to quality of life improvements. Absent an investment in comprehensive care, the risks of relapsing and future arrest for this population increase.<sup>69</sup>

## Unmet Needs: Housing and Employment

Justice system-involved individuals who are mandated to drug treatment as a condition of diversion or probation often have additional needs that are just as pressing, if not more so, than drug use. During interviews, one county official observed that “sometimes getting them sober is the easy part.” Unemployment and homelessness in particular are risk factors for relapsing to drug use and future arrest, making these critical areas for drug diversion efforts to address. County officials acknowledged that the lack of housing and employment opportunities are serious obstacles for many justice system-involved clients for which the county does not have an easy solution.

Community providers also frequently mentioned employment and housing, as well as accessing social assistance and health insurance, as challenges that can interfere with clients’ recoveries from substance use. Regarding the importance of employment to preventing relapse and recidivism, one respondent explained, “If you are 19 or 20 years old and don’t have a job skill, what are you going to do?” Other respondents lamented the lack of housing opportunities, especially of sober housing. One interview respondent explained that “many clients lack housing and live with friends and family...there are no sources for housing and the sources that do exist have lots of requirements,” such as social security cards or other forms of identification that this population often lacks. Prior criminal history or a documented history of drug use can be additional barriers to securing housing.

The survey data indicate that while some treatment providers offer assistance in these areas, many, perhaps unsurprisingly, do not. Less than half (41%) of facilities surveyed reported helping clients obtain services such as health insurance, WIC, and SSI. Only 37% of facilities surveyed reported offering employment training or assistance. Forty-nine percent of survey respondents reported that their facilities offer assistance obtaining housing, but during follow-up interviews, several respondents that provide housing assistance noted that their efforts are constrained by the lack of options in the community. The challenges are also not uniform across different populations; for example, respondents reported that finding housing for single mothers with children is relatively “easy,” but finding accommodations for single males or single females is much harder.

Offering assistance for these critical needs may be beyond the scope of many providers’ resources and capabilities. Some providers may assist with résumé building or employment applications, but programs that teach a trade or skill are typically separate enterprises that cost money or have limited free or reduced-price slots available.

Given that unemployment and homelessness are risk factors for initiating substance use, as well as for relapsing and recidivism,<sup>70</sup> individuals charged with drug offenses may need to be diverted to services other than or in addition to drug treatment, as failure to address these areas of need may limit the ability of diversion programs to decrease drug use and recidivism. Long-term policy efforts aimed at decreasing addiction prevalence should consider investing in job training and affordable housing as protective measures against substance use and its related public health and safety challenges.



### *Ensuring Standards of Care*

Survey and interview data point to several shortcomings in substance use treatment for justice system-involved populations, including a lack of residential treatment options, accessible MAT services, and treatment that is integrated with mental health and other service needs. This study also found limitations in the county's ability to ensure that justice system-involved populations mandated to treatment are receiving quality care.

The Harris County courts and probation department are largely unable to monitor outcomes among clients that receive court-mandated services from community providers. The county has memoranda of understanding with several providers, but because the majority of these agreements are not paid contracts, most providers are not required to deliver outcome data to the county. One county representative noted that "we try to go out once a year to evaluate non-contract providers," but also acknowledged the difficulties in ensuring that providers are delivering good-quality and evidence-based care. Such challenges may be especially acute for mental health; one county official stated that, with the exception of services offered by the Harris Center (the county's state-designated local mental health authority), "assessing mental health treatment is even harder than it is for drugs."

Several interview respondents felt that justice system-involved clients need more guidance in selecting appropriate treatment. The data collection process for this project also suggested difficulty navigating the field of options to find available, affordable, and appropriate drug treatment.<sup>71</sup>

A probation department official noted that officers can help clients search for facilities in their zip code and point them to places that offer discounted services. However, little additional information exists to help clients make informed choices, in part because the county does not systematically track client outcomes associated with various providers. One interview respondent that works for the county suggested that the county would eventually have outcome data for providers, but it is not clear how or when such data would be aggregated.

It is well-documented that the drug treatment field as a whole is not held accountable for providing evidence-based care.<sup>72</sup> By requiring participation in drug treatment as a condition of diversion from incarceration, the justice system assumes some responsibility for the quality of these alternative services, making the lack of accountability especially problematic.

## Limitations of the Justice System's Role in Drug Treatment

Harris County's decision to develop a special court dedicated to drug diversion (RIC) demonstrates a desire to reduce incarceration of people charged with drug offenses. The vast majority of providers interviewed for this project felt that Harris County has improved its handling of people charged with drug offenses in the past five years. Providers noted that MAT is gaining acceptance as a legitimate treatment for opioid use within the criminal justice community, and that probation officers and judges increasingly respect and follow the opinions of addiction professionals. During interviews for this project, RIC officials stressed their willingness to be flexible in managing care for individuals with complex needs charged with drug offenses.

Despite these improvements, uncertainties remain about whether RIC and other diversion efforts can remedy the structural issues that limit the justice system's ability to adequately address the needs of individuals charged with drug offenses. County officials are aware of persistent challenges. According to one RIC official (emphasis added):

When RIC was created, there were two basic things: more opportunity for treatment and diversion, and getting people the right treatment and assistance. **We have made more diversion opportunities available. The hard part is diverting them to something good and appropriate; otherwise they will keep having the same problems. It's not a surprise but it is a challenge. It is difficult for the system to change.**

While RIC has streamlined the processing of individuals charged with drug offenses and increased the number of people diverted from jail, the court has had difficulties ensuring participants are connected with services that meet their needs. This challenge was noted by all county officials interviewed for this project. The problem was often framed as a shortage of resources, and every person we spoke with stressed a lack of funding as a limitation to providing adequate care, not just for justice system-involved individuals but for a significant subset of the SUD population.

Drug treatment services for indigent, uninsured, and justice system-involved populations are generally considered to be the responsibility of the state, and Texas has fallen short of meeting residents' needs. A lack of resources is not the only impediment to care, however, and a majority of interviewed providers expressed concerns that requirements for people on diversion or probation, despite recent county efforts to increase leniency, remain too burdensome.

Community providers suggested that diversion requirements can impede a person's recovery or increase the likelihood that they will continue to be entangled with the justice system. On the subject of probation, one respondent explained:

Is it better than them going to jail? Yes. But they have so many things to do, so much money to pay... all of these requirements from probation that by the time they get to counseling, all they care about is getting off probation.

Another provider who commended the county on its efforts to provide treatment to justice system-involved populations also felt that

one thing really challenging for our [clients], especially when they get to the point where they are ready for employment, there are so many stipulations. Like getting drug tested. And if you have kids...but the kids can't come with you [to get tested] and you have no one to watch them and you are supposed to be at work...those are barriers. I understand they still need to have accountability, but if there was an option that is a good fit for the client, then let them try that option and maybe it's not exactly the box that has to be checked, but it will work for them.

Many providers expressed the belief that the criminal justice system acts as a double-edged sword that can have a positive impact on people's lives by requiring them to get treatment, but that also has severely negative consequences for those who do not engage in that treatment successfully. A majority of interview respondents believed that an encounter with the legal system can be a useful tool that serves as a "wakeup call" and "gets a person's attention." One county employee described the justice system as a "velvet hammer" that holds people accountable to the recovery process.

But several providers also noted that even though some clients mandated to drug treatment become invested in recovery, many others do only what is necessary to complete probation or diversion—and those who do not invest in recovery continue to face too many collateral consequences. One respondent, noting the shortcomings of the justice system's ability to deal with the challenges of drug addiction, stated that **"the issue with the system is not that it is incompetent or ineffective but it is ill-equipped. [The system's] first priority is law enforcement"** (emphasis added).

### Recommendations

While Harris County has made significant improvements in how it handles individuals charged with drug offenses, information gathered for this study suggests that the criminal justice system remains a flawed vehicle for responding to the needs and challenges of this population. This is partly a function of insufficient community resources, a limitation that findings from this project suggest was not a major consideration in the county's initial implementation of large-scale diversion.

More fundamentally, while the county should be commended for its efforts to reduce incarceration of individuals charged with drug offenses, findings from this project are consistent with prior research that suggests the justice system is generally not designed to meet the needs of a large segment of the diverted population, many of whom do not present a direct threat to public safety, but do have many unaddressed social, psychological, and physical needs.<sup>73</sup> In cases of simple possession, the evidence available suggests that the justice system's involvement continues to impose collateral consequences that are not justified by the limited effectiveness of that involvement.<sup>74</sup>

## Gaps in Drug Treatment for Justice System-Involved Populations in Harris County, Texas

In order to avoid the negative effects of legal interventions, we recommend that drug use among individuals arrested for drug possession be treated primarily as a public health issue. A public health approach would significantly reduce the role of the justice system in addressing the needs of people who use drugs, as reliance on this system ultimately conflicts with public health goals and results in resource expenditures that would be better spent on building an affordable and comprehensive treatment services model within the community.

This shift, already taking place in some U.S. cities, would involve reducing legal oversight of people arrested for and charged with drug offenses. It would also require placing greater emphasis on providing access to a full continuum of substance use care, including harm reduction measures, peer support services, sober living options, and low-barrier MAT programs, as well as services in other areas of need that are related to drug use, such as physical and mental health care, housing, and employment. Reducing drug use would remain a policy goal, but individuals would not face legal sanctions for continuing drug use so long as they were not risking harm to others as a result of that use.

The criminal justice reforms that would most effectively begin the shift toward treating drug use as a public health issue would be for: 1) the state of Texas to reduce the penalty for possession of less than one gram of a controlled substance from a state jail felony to a misdemeanor, and 2) Harris County (and other localities) to divert those found in possession of drugs from the legal system prior to arrest and court involvement.

Treating drug possession as a felony offense creates additional collateral consequences for those charged, wastes public resources due to the more intensive monitoring requirements associated with felony offenses, and limits the capacity of local jurisdictions to experiment with alternative ways of handling this population. Regarding local jurisdictions' roles in addressing drug offenses, law enforcement officers and other first responders can identify people who need treatment and other services, but we argue that it would be more appropriate to connect this population directly with these services rather than first funneling them into the court system.

While we strongly believe that these reforms are needed to address the inherent shortcomings of using the criminal justice system to respond to drug use, we also recognize that current political realities at both the state and local levels severely diminish the prospects for adoption.

Given such realities, the following recommendations are more moderate measures that state and local officials can take to improve their handling of individuals charged with drug offenses. Several of these recommendations are also geared toward changes in the broader drug treatment infrastructure that are needed to improve service provision for justice system-involved individuals and that would also lead to better outcomes for the general population.

## Criminal Justice Policy Recommendations for the State of Texas

### *Recommendation 1: Incentivize probation departments to reduce the population under supervision.*

Current state funding structures tie probation department budgets to the number of people under supervision, with greater funding provided for individuals on probation for felonies than misdemeanors.<sup>75</sup> This creates incentives for probation departments to supervise individuals for longer periods of time and makes it less likely that such departments will develop strategies to reduce the number of people under their supervision.<sup>76</sup> Similarly, probation departments rely on supervision fees for approximately one-third of their budgets, which not only incentivizes them to have more people under supervision, but also discourages early termination for probationers who are doing well.<sup>77</sup> As an alternative, Texas could front-load state funding to probation departments to address probationers' needs earlier in their supervision terms (when they are more likely to recidivate), then taper the funding later in their terms, even if they terminate early.<sup>78</sup>

### *Recommendation 2: Ensure access to all three types of MAT for justice system-involved individuals.*

The evidence from this study and elsewhere suggests a preference within the criminal justice sphere for the non-narcotic extended release naltrexone over the better established (and cheaper) methadone and buprenorphine options.<sup>79</sup> As the state of Texas considers expanding access to MAT, it should work to make all three FDA-approved MATs<sup>80</sup> readily available to justice system-involved individuals, as recommended by the Substance Abuse and Mental Health Service Administration's best practices.<sup>81</sup> The Texas Department of Criminal Justice should add methadone and buprenorphine to its formulary so that individuals with opioid use disorder serving time in a state correctional facility have access to MAT and can be ensured continuity of care throughout their transition from correctional to community care.<sup>82</sup> Another critical component of expanded MAT access is to allow funds from the state's Treatment as Alternative to Incarceration program<sup>83</sup> to cover this treatment for indigent clients in drug diversion programs.

### *Recommendation 3: Eliminate legally mandated drug education classes and driver's license suspensions as penalties for drug offenses.*

Individuals convicted of drug offenses in Texas have their driver's licenses automatically suspended for 180 days and are legally required to enroll in a drug and alcohol education class to complete their sentence.<sup>84</sup> One county official interviewed for this project said of the drug education classes that "it is ridiculous it is still in statute." There is no clear evidence that the class reduces drug use among participants, and the license suspension and class requirement create additional financial and logistical impediments to successful completion of probation. Both penalties should be repealed.

*Recommendation 4: Create a process for automatic record expungement for diverted drug offenses.*

Individuals who successfully complete a diversion program must still wait one year before they can apply to have the charges expunged from their record. The year-long period, combined with the fact that people have to proactively apply for expungement, results in lost opportunities for individuals to reap the full benefits of diversion. One county official supportive of an automatic expungement process pointed out that the incentive of having a clean record “is the main reason people are willing to do diversion.” Logistic difficulties to making expungement automatic need to be addressed so that this can be a possibility.

## **Criminal Justice Policy Recommendations for Harris County**

*Recommendation 5: Urge state officials to make needed policy changes.*

Harris County officials have a legal obligation to enforce state laws, so absent significant changes to those laws, the county’s large-scale reform options remain somewhat limited. Budgetary considerations, also largely driven by the state, are another constraining factor. Interviews for this project suggested that a number of county officials recognize shortcomings in current policies and have ideas for effective solutions. The issue of automatic expungement is one example. As the largest county in the state, Harris County could represent a powerful advocacy force for important criminal justice reforms.

*Recommendation 6: Reduce the focus on drug use in diversion programs.*

To their credit, Harris County justice officials increasingly seem to recognize that success in diversion will look different for different participants; support for MAT and greater leniency for participants that fail a drug screen are examples of this emerging flexibility. Still, completion of diversion depends on satisfying a number of requirements, one of which is to abstain from drug use for a given period of time (or in the case of people on MAT, to not use illicit opioids or other drugs).

Abstinence is a desirable goal, but it is not achievable for everyone. SUDs are considered chronic illnesses, and an estimated 40% to 60% of people who receive treatment for addiction relapse.<sup>85</sup> Given how common relapse is for the general population of people who use drugs, it seems unreasonable and unrealistic for the legal system to expect abstinence for justice system-involved people who use drugs. While diversion programs today seem to treat those charged with drug offenses with greater leniency than in the past, the threat of legal consequences for using drugs while on diversion essentially criminalizes the act of drug use for this population in a way that it is not criminalized for everyone else.

In light of the limited resources of diversion programs and the clients in such programs, the county should consider focusing on outcomes other than completing a drug treatment program—namely, that a diverted individual does not commit a new, non-drug-related offense. Concerns regarding other participant outcomes should be handled outside the criminal justice system.

*Recommendation 7: Continue reducing barriers to compliance with probation and diversion requirements.*

Fees associated with supervision are a challenge for many clients, who may have to choose between paying these expenses and other necessary life purchases. The sheer size of the county also presents logistical issues for clients, many of whom lack reliable transportation and have to make multiple appointments that are far from where they live. Local officials recognize these challenges and have taken steps to be more flexible about fee payments and to increase the number of locations where justice system-involved clients can check in with probation or other case managers.<sup>86</sup> Still, fees and appointment requirements continue to present obstacles.<sup>87</sup> Current efforts should continue to reduce compliance barriers by increasing the number of physical check-in locations and the number of services located in a single location, providing clients with the option of meeting where they live or work, offering services and appointments outside of regular business hours, and limiting the use of drug screens. Fees will continue to be a barrier as long as probation departments rely on them for a substantial portion of their budgets; this is an issue that needs to be addressed by the state (See Recommendation 1).<sup>88</sup>

## **Drug Treatment Policy Recommendations for the State of Texas**

As discussed above, critical shortcomings in the state's drug treatment infrastructure hamper efforts to provide these services to justice system-involved populations. Interview respondents repeatedly mentioned that expanding Medicaid would have the single greatest impact on improving drug treatment availability for all Texans, not just those involved in the legal system. Medicaid expansion is not realistic in Texas' current political climate; however, the state could take other measures to address current gaps in care. The following recommendations would improve general drug treatment service provision for justice system-involved individuals, not just in Harris County but across the state.

*Recommendation 8: Increase the state budget for drug treatment.*

The Texas Health and Human Service Commission (HHSC)'s budget for SUD prevention, intervention, and treatment services is \$242 million for fiscal year 2020 and \$222 million for fiscal year 2021. These budget numbers reflect the decision by the 86th Texas Legislature, at the request of HHSC, to provide an additional \$5 million in general revenue funds and \$23 million in funds targeting pregnant women and women with dependent children for the FY 2020/2021 biennium.<sup>89</sup> While any increase is welcome, this falls far short of what is required to address Texans' needs, and it covers a mere 5% of the indigent population in need of substance use services.<sup>90</sup>

The bulk of the state's treatment budget continues to rely on federal grants. Grants are an integral part of the state's ability to offer services, but some of those dollars, such as those provided for recent opioid response efforts, are severely restricted in how they can be used. In addition, the continuation of federal grant money is not guaranteed, making reliance on it a precarious long-term strategy.<sup>91</sup> Insufficient funding creates waitlists in several areas of care, some of which were highlighted in this report. Such lists are

problematic because, as one respondent put it, “waiting lists are a way to capture need, but people who are addicted don’t sit on a waiting list very well.” The state must reevaluate its spending and prioritize an allocation of drug treatment funds that will adequately address the significant need for services, both among justice system-involved individuals and the state’s larger population.

*Recommendation 9: Increase funding for integrated mental health and substance use treatment.*

While overall increases in state funding for drug treatment are needed, there are also several areas that deserve special attention, one of which is services for dual diagnosis clients. Texas budgets considerably more for mental health services compared to drug treatment (\$1.54 billion in FY2018-2019, over 80 % of which came from state funds), a discrepancy that interview respondents attributed to greater understanding among elected officials and the public that mental illness is a brain disease (while SUDs continue to be regarded as “disorders of choice”). Interview respondents suggested that separation of funding streams for mental health and drug treatment at the state level has contributed to protectiveness, and sometimes competitiveness, over resources between mental health and substance use providers. This suggests the state should financially incentivize integrated service delivery and encourage direct partnerships between mental health and substance use providers.

*Recommendation 10: Increase funding for medication-assisted treatment for alcohol misuse.*

While Texas has made progress in increasing the percentage of people with opioid use disorders receiving MAT through state funding,<sup>92</sup> MAT for alcohol use remains largely unfunded. Several people interviewed for this project lamented that the extended-release naltrexone that is now available for people who use opioids is not a treatment option for people who use alcohol, despite its effectiveness.<sup>93</sup> According to state representatives, extended-release naltrexone is not available for alcohol misuse because the money used by the state to reimburse providers for it comes from federal grants, which require those dollars to be spent specifically on opioid use. This is unfortunate, and federal agencies should reconsider funding structures for drug treatment. But given this limitation, the state should use its own funding to cover extended-release naltrexone for individuals with alcohol use disorder.

*Recommendation 11: Increase funding for detox services.<sup>94</sup>*

Providers with detailed knowledge of treatment resources in the county estimate that there are only 31 state-funded detox beds for all of Harris County. The lack of beds for indigent clients means there is frequently a waiting list for detox; placement on a waiting list typically translates into a lost opportunity to get someone into treatment. Several facilities that offer detox services have the capacity to increase their clientele but, without funding, this capacity remains underutilized, and there is little incentive for detox providers to accept state-funded clients because state reimbursement rates often do not cover the cost of care. The state must increase funding allocations to support the expansion and utilization of local detox beds, in turn closing a gap in the continuum of care for people addicted to opioids and alcohol.



## Drug Treatment Policy Recommendations for Harris County

The county is largely dependent on the state for any expansion of its local treatment capacity. That said, Harris County can take several steps to improve the coordination and availability of drug treatment services in its jurisdiction.

### *Recommendation 12: Advocate for increased community drug treatment resources.*

Several interview respondents indicated that a challenge to improving service delivery in the county is the absence of a community-based plan that presents local needs to state authorities. This is at least partly due to state funding structures. In contrast to mental health services, for which HHSC contracts with 39 local authorities to oversee those services in regions across Texas, HHSC contracts directly with several hundred providers throughout the state for substance use services. Absent a centralized authority in the county, these local treatment providers lobby individually to HHSC for increased funding, a limited strategy that can put providers in competition with one another for resources. The main advocacy group for treatment providers, the Association of Substance Abuse Programs, can be effective at lobbying for legislative reforms, but it is likely to focus on issues that affect the entire state. This is important work, but circumstances are likely to vary by region; as one interview respondent said, “what works in Houston is going to be very different than what works in Amarillo.” One method for recourse, then, would be for the county to advocate for resources. As one interview respondent explained, “the county carries more weight with HHSC” than any individual service provider, and it is better positioned to frame the resources issue as one impacting the entire community. The county should appoint a person or a committee to assess local funding needs and advocate directly to HHSC and the Texas legislature for these resources.

### *Recommendation 13: Coordinate local health systems to improve access to harm reduction services.*

The local agencies that focus on public health (Harris County Public Health, City of Houston Health Department), medical care (Harris Health System), and mental health (Harris Center) could leverage existing partnerships to offer basic harm reduction services to local residents, especially those who are uninsured, indigent, or more vulnerable to drug use and overdose. Service center locations managed by these various entities could, for example, be used as sites to provide patients and visitors, when relevant, with access to the overdose reversal drug naloxone, with fentanyl test strips, and with information about safe drug using practices, including the drug combinations that carry a high risk of overdose. Such measures would also have the benefit of advancing efforts to integrate substance use care with physical and mental health care.

*Recommendation 14: Increase public outreach and data collection related to drug use trends and services.*

Harris County could improve its communications with residents about safe drug use practices and resources available for people dealing with addiction. As discussed above, existing physical locations that offer other health services are one avenue to provide such information, but to reach residents who are unlikely to visit those locations, the county should work on other communication strategies. Examples include prominent public displays of information regarding the overdose risks of certain drug combinations, such as on city buses, and text alerts (similar to emergency alerts for flooding) to warn residents if synthetic opioids have recently been detected in the illicit drug supply.

The county should also provide residents with more information about resources that are available to them. For instance, the overdose reversal drug naloxone is available at pharmacies without a prescription, but few residents are likely aware of this. As for drug treatment resources, a Google search will yield results of facilities in the area, but as we have learned in the course of this project, it is challenging to navigate the field of options to find available, affordable, and appropriate services.

Providing residents with information on drug safety and treatment resources is an important aspect of public health policy. Doing this effectively requires improved data gathering and information sharing in such areas as drug use and overdose trends, illicit drug supply developments, and treatment availability. These efforts would be a worthwhile investment, as proactive public initiatives can increase the likelihood that individuals are connected with needed services. The earlier that people have access to community-based interventions in their experiences with mental illness, drug use, and addiction, the less likely that the criminal justice system will need to intervene.

## Endnotes

<sup>1</sup> Drug Policy Alliance, “A Brief History of the Drug War,” Drug Policy Alliance, 2019, <http://www.drugpolicy.org/issues/brief-history-drug-war>.

<sup>2</sup> Betsy Pearl, “Ending the War on Drugs: By the Numbers,” Center for American Progress, June 27, 2018, <https://ampr.gs/2yKhJGc>; See the Baker Institute’s Brian C. Bennett Drug Charts for trends in drug use rates, <https://www.bakerinstitute.org/bennett-charts/>.

<sup>3</sup> Susan Stellan, “Is the ‘War on Drugs’ Over? Arrest Statistics Say No,” *The New York Times*, November 5, 2019, <https://nyti.ms/2qJ4AKe>; Suchitra Rajagopalan, “New FBI Report: Every 20 seconds, someone is arrested for a drug law violation in the U.S.” Drug Policy Alliance, September 24, 2018, <http://www.drugpolicy.org/blog/new-fbi-report-every-20-seconds-someone-arrested-drug-law-violation-us>.

<sup>4</sup> See ACLU of Kansas, “Choosing Incarceration,” December 6, 2017, <https://www.aclukansas.org/en/publications/choosing-incarceration>.

<sup>5</sup> See A.J. Mistretta, “Houston Still Most Diverse City in the Nation, Report Finds,” Greater Houston Partnership, April 12, 2019, <https://www.houston.org/news/houston-still-most-diverse-city-nation-report-finds>.

## Gaps in Drug Treatment for Justice System-Involved Populations in Harris County, Texas

<sup>6</sup> See Jon Schuppe, “How One Texas County Drove a Record Rise in Exonerations,” *NBC News*, March 8 2017, <https://www.nbcnews.com/news/us-news/how-one-texas-county-drove-record-rise-exonerations-n730161>.

<sup>7</sup> Data retrieved from “Statistics & Other Data,” State of Texas Office of Court Administration Court Activity Database, accessed April 2, 2019, <https://www.txcourts.gov/statistics/court-activity-database/>. In 2017-18, 13,134 of 65,824 charges filed in Harris County District Courts were for felony drug possession. Statewide, 27.2% (118,539/435,465) of charges filed in District Courts were for felony drug possession. Office of Court Administration numbers do not differentiate between the different types of felony drug possession charges. Despite filing approximately 11% of the state’s felony drug possession charges in 2017 and 2018, Harris County was responsible for nearly 25% of dismissals of those cases statewide, meaning many cases are brought without sufficient evidence.

<sup>8</sup> Chris Harris, Holly Kirby, and Dianna Williams, *Care Not Cages: Stop Racist Policing and Jailing in Harris County* (Houston: Grassroots Texas, forthcoming).

<sup>9</sup> District Clerk data showed that over three-quarters (6747/8961) of felony drug cases disposed in 2017 were cases where the defendant was charged with possession of less than a gram of a controlled substance. The charge of PCS<1g can refer to any controlled or illicit substance other than marijuana; county data does not systematically track specific drugs involved in these charges.

<sup>10</sup> Harris County District Clerk Historical Court Data. African-American defendants accounted for 1,970/4,201 defendants charged with PCS<1G. The proportion of Hispanic defendants for the same charge is unknown, as Harris County court records don’t identify Hispanic defendants.

<sup>11</sup> *Ibid.* Of defendants listed with an attorney, 2,847/3,811 required appointed counsel.

<sup>12</sup> On June 3, 2019, the Harris County Sheriff’s Office reported that there were 319 people charged with drug possession housed in the Harris County Jail.

<sup>13</sup> See “Harris County mulls deal to outsource inmates to Fort Bend County Jail,” *Houston Chronicle*, September 7, 2018, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-mulls-deal-with-Fort-Bend-county-13213611.php>.

<sup>14</sup> Harris County Budget Management Department, “Harris County General Fund Budget FY19-20,” accessed November 5, 2019, [https://budget.harriscountytexas.gov/doc/Budget/fy2020/approved\\_budget/FY20\\_Organizational\\_Budgets.pdf](https://budget.harriscountytexas.gov/doc/Budget/fy2020/approved_budget/FY20_Organizational_Budgets.pdf).

<sup>15</sup> See “Racial Disparity in Houston’s Pretrial Population,” Texas Southern University Center for Justice Research, September 2018, <https://www.centerforjusticeresearch.org/wp-content/uploads/2018/09/CJR-Pretrial-Report.pdf>. See also Brian Rogers, “Jail reform tackles racial disparities,” *Houston Chronicle*, April 14, 2016, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Jail-reform-tackles-racial-disparities-7247268.php>.

<sup>16</sup> See “About the Challenge,” Safety + Justice Challenge, accessed November 5, 2019, <http://www.safetyandjusticechallenge.org/about-the-challenge/>.

<sup>17</sup> See Mihir Zaveri, “Harris County approves funds to reform jail, criminal justice system,” *Houston Chronicle*, April 26, 2016, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-Co-commissioners-back-5-3M-reform-plan-7377302.php>.

<sup>18</sup> Harris County used the name “The Reintegration Impact Court for the Safety and Justice Challenge,” but it has also referred to the court as the “Responsive Interventions for Change” docket. See “Harris County, TX,” Safety and Justice Challenge, accessed November 5, 2019, <http://www.safetyandjusticechallenge.org/challenge-site/harris-county/>; See also Harris County District Courts, “Responsive Interventions for Change Docket,” 2019, <https://www.justex.net/Courts/Criminal/CriminalCourt.aspx?crt=77>.

<sup>19</sup> In 2017, the Reintegration Court started accepting a limited number of PCS 1-4 gram cases and 4th-time prostitution charges as well. Defendants who wish to contest their guilt or want to opt out of RIC requirements have their cases transferred to one of Harris County's other district courts. Certain criteria can disqualify a person from participating in RIC, such as being on probation for or having a pending non-RIC eligible offense such as burglary or assault.

<sup>20</sup> Teresa May, "Harris County Safety and Justice Challenge Responsive Intervention for Change Docket," presentation of collected data available upon request.

<sup>21</sup> Per Harris County CSCD officials. Also see House Select Committee on Opioids and Substance Abuse, "86th Legislature House Committee on Opioids Interim Report," November 2018, <https://bit.ly/30vqLAA>. Defendants who opt out of RIC may wish to contest their innocence in one of the traditional criminal courts.

<sup>22</sup> The tendency for some defendants to choose pleading guilty and taking time served over serving time on probation for felony charges is a well-known issue in the criminal justice system that applies to other types of offenses as well. Also see Texas Criminal Justice Coalition, "Failure in the Fourth Degree: Reforming the State Jail Felony System in Texas" One Size Fails All Report Series, 2018, [https://www.texascjc.org/system/files/publications/A Failure in the Fourth Degree Report.pdf](https://www.texascjc.org/system/files/publications/A%20Failure%20in%20the%20Fourth%20Degree%20Report.pdf).

<sup>23</sup> For example, see Athelia Knight, "When Clogged Courts Fail to Speed Justice," *Washington Post*, October 26, 1993, <https://www.washingtonpost.com/archive/politics/1993/10/26/when-clogged-courts-fail-to-speed-justice/9a397bf3-0dc4-47ce-95bd-1a8cafd73d17/>; "Courts clogged with drug cases," *Washington Times*, November 8, 2003, <https://www.washingtontimes.com/news/2003/nov/8/20031108-111530-8707r/>; Andria Simmons, "Deluge of drug-war defendants clogs Gwinnett courts," *The Atlanta Journal Constitution*, June 24, 2010, <https://www.ajc.com/news/local/deluge-drug-war-defendants-clogs-gwinnett-courts/YJv7tgoYGdeBofAo0lXx8H/>; Greg Bluestein, "State budget cuts clog criminal justice system," *NBCNews*, October 26, 2011, [http://www.nbcnews.com/id/45049812/ns/us\\_news-crime\\_and\\_courts/t/state-budget-cuts-clog-criminal-justice-system/#.XcHUOIVKiUk](http://www.nbcnews.com/id/45049812/ns/us_news-crime_and_courts/t/state-budget-cuts-clog-criminal-justice-system/#.XcHUOIVKiUk).

<sup>24</sup> Emily Yoffe, "Innocence is Irrelevant," *The Atlantic*, September 2017, <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>.

<sup>25</sup> See National Judicial College, "Why Jury Trials are Important to a Democratic Society," <https://www.judges.org/uploads/jury/Why-Jury-Trials-are-Important-to-a-Democratic-Society.pdf>.

<sup>26</sup> See Katharine Barrett & Richard Greene, "Measuring the Efficiency of Courts," *Governing Magazine*, August 2011, <https://www.governing.com/columns/smart-mgmt/measuring-the-efficiency-of-courts.html>.

<sup>27</sup> "PBS Frontline: The Plea," June 17, 2004, <https://www.pbs.org/wgbh/pages/frontline/shows/plea/etc/synopsis.html>.

<sup>28</sup> Harris County Office of Court Administration Court Activity Report. Data retrieved from "Statistics & Other Data."

<sup>29</sup> Michael Kiefer, "Maricopa County attorney sued over marijuana diversion program," *The Arizona Republic*, August 24, 2018, <https://www.azcentral.com/story/news/local/phoenix/2018/08/24/maricopa-county-attorney-sued-over-marijuana-diversion-program/1089031002>.

<sup>30</sup> Ibid.

<sup>31</sup> This list was provided by probation officials upon request.

<sup>32</sup> Gift cards were provided to increase response rate, a concern in this research design.

<sup>33</sup> The population of interest in this case is the treatment facility, not individual providers. Efforts were made to send the surveys to the most appropriate contact person at each facility. In some cases, emails were sent to multiple addresses at a single facility in order to increase the chances of response.

In cases where there were multiple responses from individuals representing a single provider, we selected the first response we received for inclusion in analysis and excluded the later responses.

<sup>34</sup> Confidentiality for all interview respondents was ensured in order to encourage open and honest dialogue.

<sup>35</sup> Criminogenic risk factors are those that may lead an individual to engage in criminal activity. The eight major criminogenic risk factors are: presence of antisocial behavior, antisocial personality pattern, antisocial cognition, antisocial associates, family and/or marital status, school and/or work, leisure and/or recreation, and substance abuse. For more, see D. A. Andrews, James Bonta, and Robert D. Hoge, "Classification for Effective Rehabilitation: Rediscovering Psychology," *Criminal Justice and Behavior* 17, no. 1 (1990): 19–52.

<sup>36</sup> Texas Department of Criminal Justice, Community Justice Assistance Division, "Texas Risk Assessment System Participant Manual," 2014, <http://www.bidnet.com/bneattachments/?371469000.pdf>.

<sup>37</sup> The T-RAS assesses an individual's risk according to several different domains, including criminal history; education, employment, and financial situation; family and social support; neighborhood; substance use; peer associations; and criminal attitudes and behavioral patterns. Generally, if an individual scores moderate or high in multiple domains they are assessed overall has moderate or high risk of probation will try to treat them internally. It is important to note that while the T-RAS is considered a valid tool for predicting an individual's likelihood of committing a future offense, it does not distinguish by offense type. Because possession of any controlled substance other than cannabis is considered a felony in Texas, an individual could be considered at high risk of committing a felony offense without necessarily presenting a risk to public safety.

<sup>38</sup> The Harris County probation department contracts with Harris Health to provide mental health services, and with SOC Telemed (formerly known as JSA Health Telepsychiatry) to provide prescription medications.

<sup>39</sup> "HHCSCD Residential Expansion Program Needs," summary report prepared for Texas Legislature, provided by CSCD upon request.

<sup>40</sup> According to the probation department, about 13% of deferred adjudication cases are referred to probation residential treatment, compared to 7% of PTI cases. Together this accounts for 10% of all RIC cases.

<sup>41</sup> The term "high risk" was used by both county officials and treatment providers to refer to clients who are assessed by the T-RAS as having a higher likelihood of future arrest. We use that term as it was conveyed to us by interview respondents, but as researchers, we do not assume that the individuals labeled as "high risk" by the T-RAS are in fact at high risk of recidivism or a high risk to public safety.

<sup>42</sup> According to CSCD officials, the probation department's funding requests were not included in the Texas Department of Criminal Justice (TDCJ) 2019 Legislative Appropriations Request, and this likely contributed to the failure to get a legislature-approved funding increase. However, through interviews we learned that the DDRP bed capacity recently increased from 60 to 100, with the eventual goal of increasing to 200 beds.

<sup>43</sup> Most people on pre-trial intervention, the diversion option for individuals without a history of felony convictions, will be referred to community treatment. If individuals qualify as indigent, they can be offered supportive or intensive outpatient services through the probation department for free. Funding for treating this population comes primarily from the TDCJ's TAIP funding; however, county officials indicated that not enough funding is provided to cover need.

<sup>44</sup> Supportive outpatient programs generally include a minimum of two hours of group therapy per week for three to six months; intensive outpatient services typically involve at least six hours of group therapy per week for one to three months. See "Programs," Harris County Community Supervision and Corrections Department, 2019, <https://bit.ly/2WWtRjq>.



- <sup>45</sup> This is the case for people in treatment generally, not just justice system-involved clients. It is largely a function of what clients can afford and what insurance will cover.
- <sup>46</sup> This is the same list we used to identify community providers for our survey. Clients are told to select a provider from this list, but there are occasions where a client will seek services from a different provider that is approved by the client's probation officer.
- <sup>47</sup> Some of these providers deal only with justice system-involved populations, but the vast majority also treats individuals without any legal issues.
- <sup>48</sup> It is not exactly clear why demand for residential services may have increased, but speculation from interview respondents attributed it to increases in more serious drug use, drug diversion efforts, and efforts to connect people with available treatment services.
- <sup>49</sup> Fifty percent of providers surveyed reported accepting private insurance, although in follow-up interviews providers noted that insurance companies typically try to avoid covering residential treatment, opting to cover less intense, and less expensive, treatment settings instead.
- <sup>50</sup> Robert G. Rychtarik et al., "Treatment Settings for Persons with Alcoholism: Evidence for Matching Clients to Inpatient versus Outpatient Care," *Journal of Consulting and Clinical Psychology* 68, no. 2 (2000): 277-289, <https://psycnet.apa.org/record/2000-15237-010>; Quyen Q. Tiet, Mark A. Ilgen et al., "Treatment Setting and Baseline Substance Use Severity Interact to Predict Patients' Outcomes," *Addiction* 102, no. 3 (March 2007): 432-440, <https://doi.org/10.1111/j.1360-0443.2006.01717.x>; James R. McKay et al., "Evaluation of Full vs. Partial Continuum of Care in the Treatment of Publicly Funded Substance Abusers in Washington State," *The American Journal of Drug and Alcohol Abuse* 28, no. 2 (2002): 307-338, <https://www.tandfonline.com/doi/abs/10.1081/ADA-120002976>.
- <sup>51</sup> This assertion is well-established in the public health and addiction literature, but for information on how MAT reduces illicit opioid use, overdoses, criminal activity, and infectious disease transmission and increases social functioning, see National Institute on Drug Abuse, "Effective Treatments for Opioid Addiction," November 2016, <https://bit.ly/2o7VWxE>.
- <sup>52</sup> The three FDA-approved medications to treat opioid use are methadone, buprenorphine, and naltrexone.
- <sup>53</sup> One of the 49 respondents did not provide an answer to this question on the survey.
- <sup>54</sup> These findings are consistent with other studies that have shown low utilization of MAT among justice system-involved individuals. One study found that only 4.6% of people referred to treatment through the criminal justice system received opioid agonist treatment compared to 40.9% of people referred through other sources. See Noa Krawczyk et al., "Only One in Twenty Justice-Referred Adults in Specialty Treatment for Opioid Use Receive Methadone or Buprenorphine," *Health Affairs* 36, no. 12 (December 2017): 2046-2053, <https://bit.ly/31LKsnT>.
- <sup>55</sup> Law enforcement officials rate meth as the greatest drug threat for the area. Fifty percent of drugs identified and tested by the Houston Forensics Science Laboratory in 2018 were cocaine or methamphetamine, compared to 6% that were heroin or other opioids, according to data provided by Houston Forensics Science Laboratory.
- <sup>56</sup> Other factors include strong evidence for MAT's efficacy compared to abstinence-based treatment, consistent support and increased funding from federal agencies for MAT, and growing acceptance for medical interventions generally and for addiction specifically.
- <sup>57</sup> As of November 2018. There is not always a waiting list; when the provider's contract with the state gets renewed each year they have a specific number of people they can serve with that funding. Once that limit is met, people go on a waiting list.
- <sup>58</sup> According to a MAT provider in the area, the first week of methadone services for private pay patients costs \$125 and averages \$85 per week thereafter. This provider further noted that "fees include methadone every day for the whole first week, intake with an experienced addiction physician, physical, lab, urine drug screen, and counseling."

## Gaps in Drug Treatment for Justice System-Involved Populations in Harris County, Texas

<sup>59</sup> Availability is also an issue but not as significant in Harris County as in more rural parts of the state. This is another issue that could be addressed through greater funding.

<sup>60</sup> At the time of this writing, buprenorphine and extended-release naltrexone were not available to CSCD's residential drug treatment population.

<sup>61</sup> The main qualification to receive TAIP funding is indigent status, but the TDCJ does not provide enough funding to cover the county's need.

<sup>62</sup> Detox from opioids can increase the chances of an overdose if a person is not put on extended-release naltrexone following the period of detox. An opioid user's risk of overdose is higher following a period of abstinence because their body will have a lower tolerance for opioids.

<sup>63</sup> The recidivism and relapse rates reported so far by the HCSO are lower compared to what has been demonstrated by some studies comparing patients receiving extended-release naltrexone to a control group. See Joshua D. Lee et al., "Extended-Release Naltrexone to Prevent Opioid Relapse in Criminal Justice Offenders," *The New England Journal of Medicine* 364 (March 2016): 1232-1241, <https://bit.ly/2OXsokq>.

<sup>64</sup> National Survey on Drug Use and Health, *Key Substance Use and Mental Health Indicators in the United States*, 2017, <https://www.samhsa.gov/data/report/2017-nsduh-annual-national-report>.

<sup>65</sup> House Select Committee on Opioids and Substance Abuse, Interim Report to the 86<sup>th</sup> Texas Legislature, November 2018.

<sup>66</sup> A county official gave a lower estimate of 40% of RIC clients who are dual diagnosis. This lower percentage could reflect the fact that the court population includes more individuals facing first-time drug offenses, and who may be younger and less likely to have a co-occurring mental illness, than the population of justice system-involved drug users more frequently seen by community providers.

<sup>67</sup> Major depression, bipolar disorder, and schizophrenia are examples of major psychiatric illnesses, all of which are more common among corrections populations than the general population; See Seena Fazel et al., "The Mental Health of Prisoners: A Review of Prevalence, Adverse Outcomes and Interventions" *Lancet Psychiatry* 3, no. 9 (September 2016): 871-881, <https://bit.ly/2VVgYBG>.

<sup>68</sup> Texas Department of Health and Human Services, "Co-Occurring Psychiatric and Substance Use Disorder," 2019, <https://bit.ly/2oXnhJk>. The information regarding the number of COPSD counselors was last available in mid-2019. The agency has since changed its website and no longer provides this specific information; we are not inclined to assume that there has been a significant increase in the number of COPSD providers since the website change.

<sup>69</sup> Numerous studies point to mental illness, relapse to drug and alcohol use, and demographic characteristics such as unemployment and homelessness as risk factors for reoffending. For examples, see Albert M. Kopak et al., "Key Risk Factors for Relapse and Rearrest among Substance Use Treatment Patients Involved in the Criminal Justice System," *American Journal of Criminal Justice* 41 (2016), 14-30, <https://bit.ly/2WHP10l>; Anders Håkansson and Mats Berglund, "Risk Factors for Criminal Recidivism—A Prospective Follow-up Study in Prisoners with Substance Abuse," *BMC Psychiatry* 12 (2012): 111, <https://bit.ly/30qDDYP>; Scott Huntington, "Integrated Treatment and Reducing Re-entry into the Criminal Justice System," (Ph.D. dissertation, Walden University, 2016), <https://bit.ly/2HtMWyJ>.

<sup>70</sup> See note 67 above. Also see Albert M. Kopak, Steven L. Proctor, and Norman G. Hoffman, "The Cumulative Risk Associated with Demographic Background Characteristics among Substance Use Treatment Patients," *Addiction Research and Theory* 25, no. 3 (2017): 216-224, <https://bit.ly/2VtQ7eS>.

<sup>71</sup> This challenge is exacerbated when location is a factor in accessibility, as it can be for a population that may have unreliable transportation in a jurisdiction as sprawling as Harris County. According to District Clerk data, just over 40% of individuals charged with PCS<1G live in the same zip code as one of the treatment facilities that the courts direct defendants to. This figure would likely be even lower if it could account for whether defendants are in close proximity to treatment that is financially accessible and therapeutically appropriate for them.

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<sup>72</sup> For examples, see Mari Edlin, “Scammers, Fraudsters Capitalize on Opioid Addiction Treatment,” Managed Healthcare Executive, March 2, 2018, <https://bit.ly/2VuoFgP>; Tami Mark, “Improving Addiction Treatment with Consumer Report Cards,” RTI International, January 5, 2018, <https://bit.ly/2JoemcC>; Lisa Riordan Seville, Anna Schecter, and Hannah Rappleye, “Florida’s Billion-Dollar Drug Treatment Industry is Plagued by Overdoses, Fraud,” *NBC News*, June 25, 2017, <https://nbcnews.to/2lPISBe>.

<sup>73</sup> See The National Academies of Sciences, Engineering, and Medicine, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: The National Academies Press, 2014), <https://www.nap.edu/read/18613/chapter/2>.

<sup>74</sup> Supporters of justice-based interventions for people who use drugs sometimes argue that most individuals arrested for drug possession are likely to commit offenses that harm people or property in the near future. Setting aside the questionable accuracy of this argument, we view this reasoning as problematic because it implies that individuals should face legal sanctions based on possible future actions.

<sup>75</sup> See TX Government Code 509.011 (a) (1) (2), Community Justice Assistance Division, Payment of State Aid, <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.509.htm#509.011>.

<sup>76</sup> For more on proposed changes to probation funding structures, see Marc Levin and Michael Haugen, “Advancing Reforms to Community Supervision in Texas,” Texas Public Policy Foundation Policy Brief, May 2019, <https://bit.ly/2NiOwrE>.

<sup>77</sup> See Community Justice Assistance Division, “Community Supervision in Texas,” September 2019, <https://bit.ly/2HkldQy>; Levin and Haugen, “Advancing Reforms.”

<sup>78</sup> Texas Criminal Justice Coalition, “House Committee on Appropriations – Adult Probation Funding Formula,” April 2018, <https://bit.ly/2NB9f9S>.

<sup>79</sup> For example, a criminal justice official we interviewed noted that “if a person can get [methadone] and a doctor prescribes it, we don’t interfere...but we are looking towards more of the non-narcotics.” For evidence of a broader trend, see Alec MacGillis, “The Last Shot,” *ProPublica*, June 27, 2017, <https://bit.ly/2sSn7SY>; and Lev Facher, “Trump’s opioid plan writes in favoritism to single company’s addiction medication,” *STAT*, March 26, 2018, <https://bit.ly/2GbTe4h>. Costs can vary somewhat, but according to one Vivitrol provider, the cost is roughly \$495/month for a person with insurance, after meeting their medication deductible. Without insurance, the cost is approximately \$995/month.

<sup>80</sup> The three FDA-approved medications to treat opioid use are methadone, buprenorphine, and naltrexone.

<sup>81</sup> See SAMHSA, *Medication-Assisted Treatment for Opioid Addiction in Opioid Treatment Programs*, 2005, <https://bit.ly/2wbc73R>.

<sup>82</sup> According to a state agency official, the HHSC is intending to partner with the TDCJ to provide all three MATs to prison inmates who are six months prior to release through the TDCJ’s Texas Substance Abuse Felony Punishment Program.

<sup>83</sup> The legislature allocates approximately \$10 million for the Texas Department of Criminal Justice’s TAIP program, the primary funding mechanism for drug treatment for indigent, justice system-involved populations across the state. See Texas Department of Criminal Justice, “Fiscal Year 2019 Operating Budget,” August 24, 2018, <https://bit.ly/2LN9SWE>.

<sup>84</sup> Texas Department of Public Safety, “Drug or Controlled Substance Offenses,” <https://www.dps.texas.gov/DriverLicense/DrugOffenses.htm>

<sup>85</sup> National Institute on Drug Abuse, “Drugs, Brains, and Behavior: The Science of Addiction,” July 2018, <https://bit.ly/2KcwAfr>.



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<sup>86</sup> According to the probation department, the county is currently working to establish three new locations for probation office check-ins. The Harris Center, which provides mental health services to probation clients, has recently expanded its reentry services to three locations and is also collocated in probation and parole offices. Both the probation department and the Harris Center are also expanding telepsychiatry services to facilitate prescribing of medications for those who need them.

<sup>87</sup> See Texas Criminal Justice Coalition, “Failure in the Fourth Degree.”

<sup>88</sup> Levin and Haugen, “Advancing Reforms.”

<sup>89</sup> 86th Texas State Legislature, House Bill 1, passed on June 15, 2019, <https://legiscan.com/TX/bill/HB1/2019>; The Association of Substance Abuse Programs, “86th Texas Legislature Priority Issue Legislation Passed,” available upon request.

<sup>90</sup> This estimation was produced internally by HHSC and provided upon request to TCJC. The analysis is done by taking the number of state residents who are likely to have an SUD based on demographic and epidemiological research, and then estimating the percent of that population that is below 200% of the poverty level and therefore eligible for block grant funding.

<sup>91</sup> For example, see Abby Goodnough, “States are Making Progress on Opioids. Now the Money That’s Helping Them May Dry Up,” *New York Times*, July 16, 2019, <https://nyti.ms/32K7g8O>.

<sup>92</sup> According to HHSC, they had a 24% increase in the proportion of state-funded opioid use disorder (OUD) treatment clients receiving MAT from May 2017 to March 2019. Roughly 37% of state-funded OUD clients receive MAT.

<sup>93</sup> There are three FDA-approved medications to treat alcohol use. One of these, disulfiram, has recently fallen out of favor as a treatment option due to unpleasant side effects caused when a patient drinks while taking it. The other two approved drugs are acamprosate, a drug that can reduce cravings for alcohol, and naltrexone, which also treats OUD and can reduce feelings of euphoria and intoxication associated with drinking and in doing so can help people to significantly reduce the amount they consume. While clinical evidence for the efficacy of these medications in helping reduce alcohol use and cravings is not as strong as the evidence supporting the use of MAT for OUD, there is evidence that they help at least some patients, suggesting that the medications should be an option in a person’s treatment regimen. See Daniel Jonas et al., “Pharmacotherapy for Adults with Alcohol Use Disorders in Outpatient Settings: A Systematic Review and Meta-Analysis,” *JAMA* 311, no. 18 (May 2014): 1889-1900, <https://bit.ly/2H7rbWb>; J.C. Garbutt et al., “Efficacy and Tolerability of long-Acting Injectable Naltrexone for Alcohol Dependence: A Randomized Control Trial” *JAMA* 293, no. 13: 1617-1625, <https://bit.ly/2z2hAeE>; Karl Mann et al., “Precision Medicine in Alcohol Dependence: A Controlled Trial Testing Pharmacotherapy Response Among Reward and Relief Drinking Types,” *Neuropsychopharmacology* 43, no. 4 (March 2018): 891-899, <https://bit.ly/2Mjjocl>.

<sup>94</sup> While detox is not necessary for opioid users who are planning to receive methadone or buprenorphine-based MAT services, it is necessary for opioid users to receive oral or injectable naltrexone, and it is considered effective and necessary for alcohol addiction, which affects many more people than opioid use.