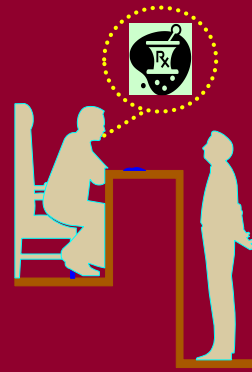
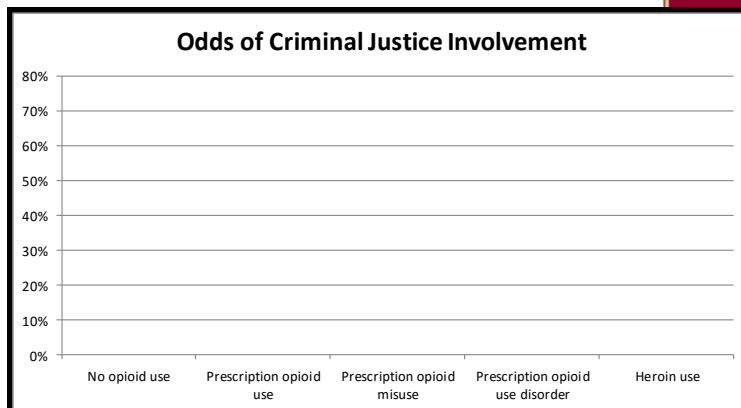


MEDICATION-ASSISTED TREATMENT: LAW & ETHICS

DOUGLAS B. MARLOWE, J.D., PH.D.

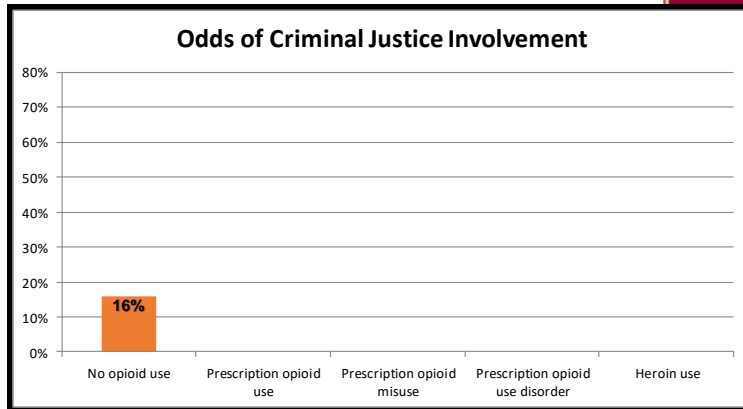


Opioids and Crime



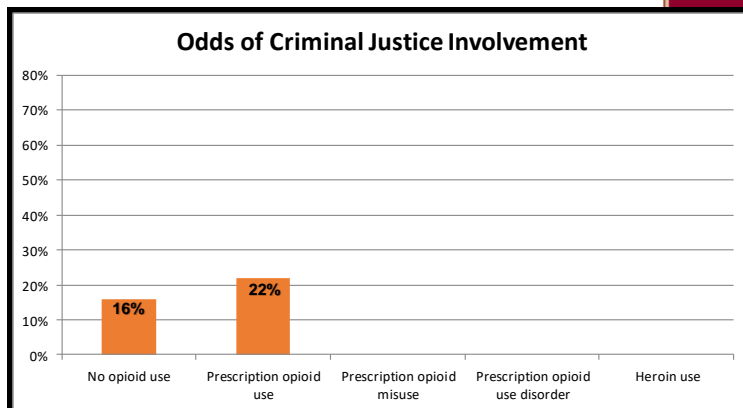
Winkelman et al. (2018) -- JAMA
2015-2016 National Survey of Drug Use & Health (N = 78,976)

Opioids and Crime



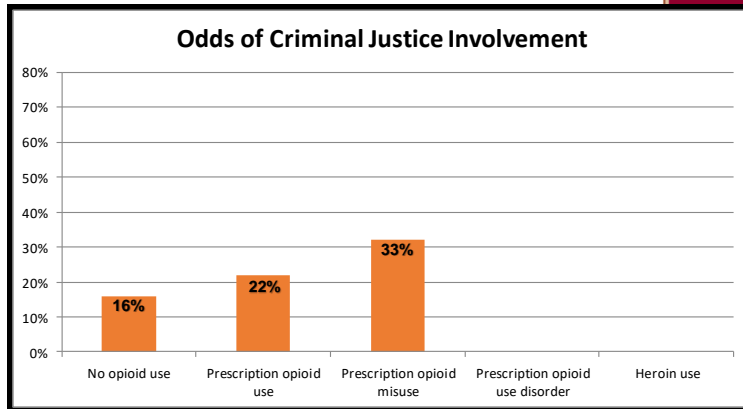
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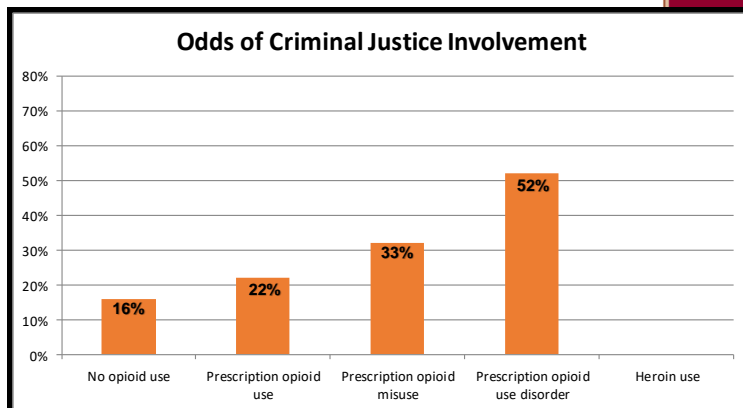
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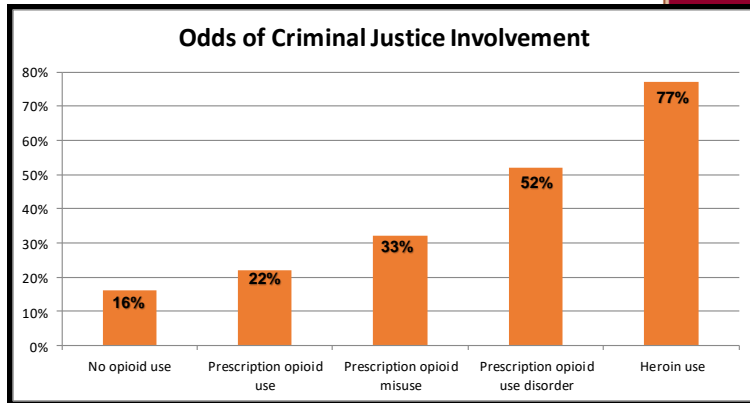
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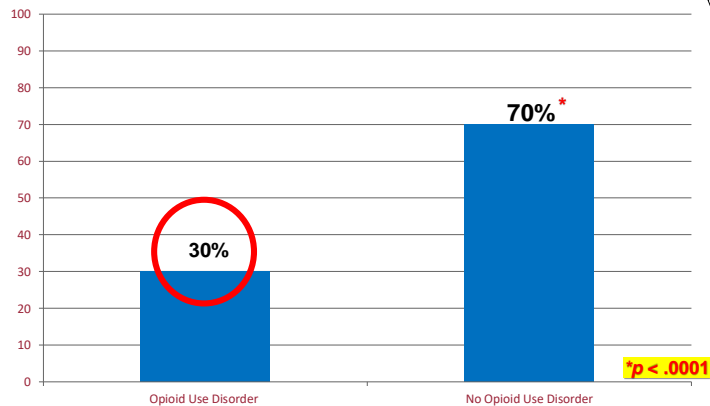
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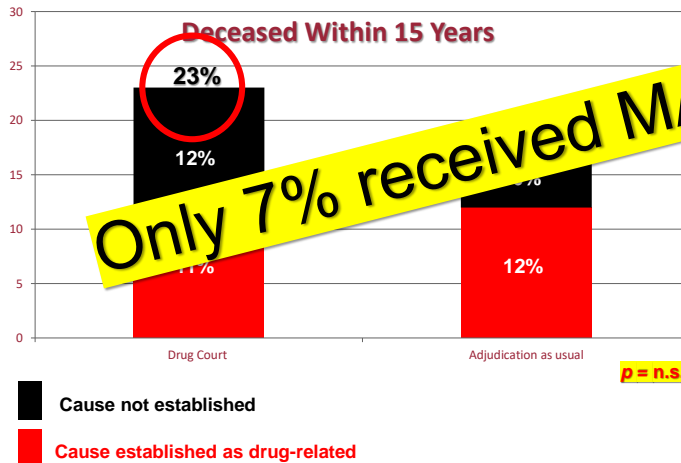
Success Rates in Drug Court



Gallagher et al., 2018

Overdose Deaths

Average time to death after drug court = 5.19 years



Kearley et al., 2019

Standard of Care

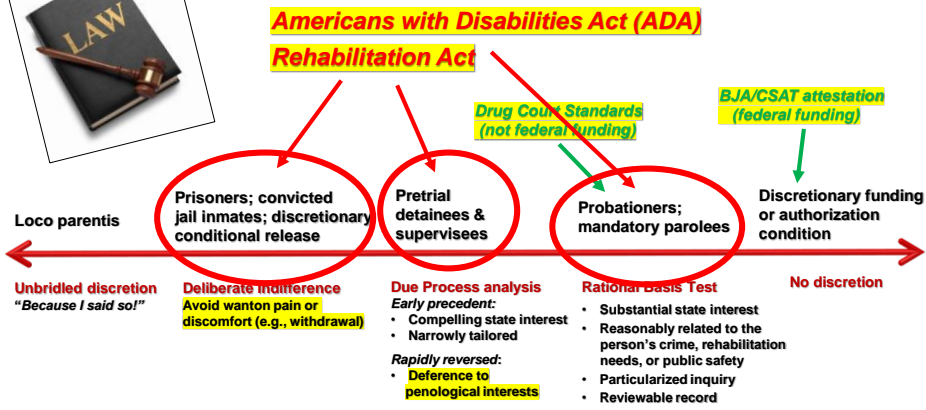
MAT is the Standard of Care for treating opioid use disorders:

- U.S. Dept. of Health & Human Services (1997)
- National Institute on Drug Abuse (2014, 2018)
- U.S. Surgeon General (2018)
- Substance Abuse & Mental Health Services Administration (2005, 2018)
- National Academy of Sciences, Engineering & Medicine (2019)
- World Health Organization (2004)
- Centers for Disease Control & Prevention (2002)
- American Medical Association (2017)
- American Psychiatric Association (2017)
- American Society of Addiction Medicine (2015)
- American Academy of Addiction Psychiatry
- American College of Obstetricians & Gynecologists (2016)
- **National Association of Drug Court Professionals (2013, 2015)**

Etc. . .



Legal Standards



Statutes, regulations, and professional practice standards can increase the level of scrutiny but cannot decrease it.

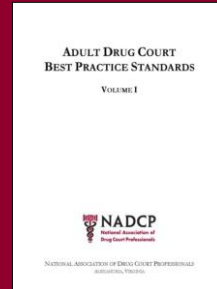
Drug Court Grants

- BJA / CSAT Drug Court Discretionary Grants
- Signed attestation accompanying application
- Will not deny access to, or successful graduation from, drug court due to a lawful prescription for MAT
- Exceptions:
 - Not taking the medication for SUD treatment
 - Not examined, diagnosed, and prescribed by a licensed medical practitioner
 - Misusing or diverting the medication



Best Practice Standards

- Affirmative obligation to learn the facts about MAT
- Obtain medical consultation
- No blanket prohibitions for entry or graduation
- Rational basis analysis
- Particularized inquiry
- Reviewable rationale
- Medical necessity or medical indication



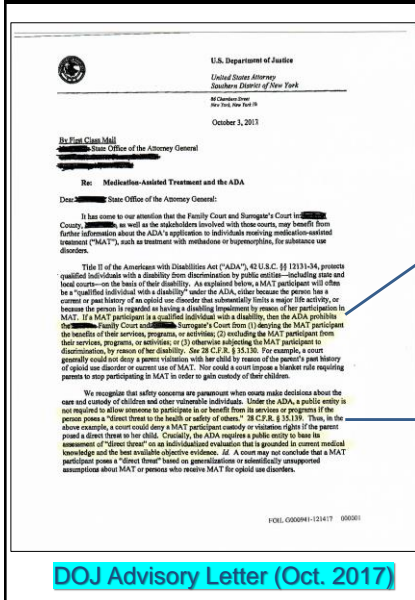
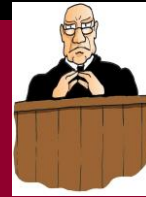
Convicted Inmates



Pesce v. Coppinger, No. 18-11972-DJC (D. Mass. 2018);
Smith v. Aroostook County, No. 1:18-cv-352-NT (D. Maine 2019), *aff'd* No. 19-1340 (1st Cir. 2019);
DiPierro v. Hurwitz, No. 1:19-cv-10495-WGY (D. Mass.2019) (settlement agreement)

- Denials of methadone or suboxone prescriptions
- Preliminary injunctions (substantial likelihood of success on the merits and serious irreparable harm)
- Qualified disability under the ADA (or Rehabilitation Act for BOP)
- Blanket prohibition or summarily dismissing MAT requests is unreasonable or arbitrary and capricious (and potentially deliberately indifferent)
- Prime facie showing of medical necessity
- Reasonable accommodations are available
- Prohibitions based on outmoded stereotypes and unproven assumptions about the disease of addiction

Other Court Programs

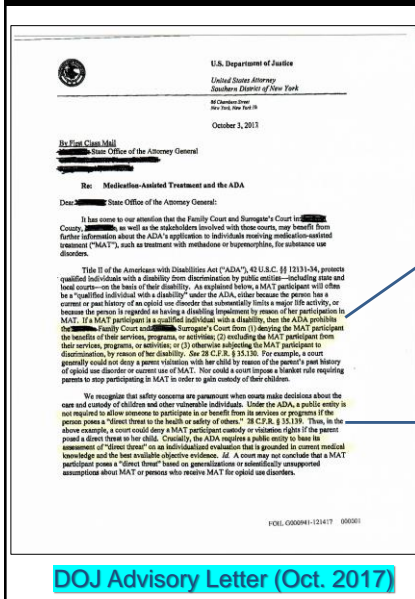
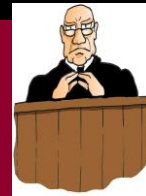


"If a MAT participant is a qualified individual with a disability, then the ADA prohibits the _____ Family Court and _____ Surrogate's Court from (1) denying the MAT participant the benefits of their services, programs, or activities; (2) excluding the MAT participant from their services, programs, or activities; or (3) otherwise subjecting the MAT participant to discrimination, by reason of her disability. See 28 C.F.R. § 35.130."

"Under the ADA, a public entity is not required to allow someone to participate in or benefit from its services or programs if the person poses a "direct threat to the health or safety of others." 28 C.F.R. § 35.139.

...
Crucially, the ADA requires a public entity to base its assessment of "direct threat" on an individualized evaluation that is grounded in current medical knowledge and the best available objective evidence. *Id.*"

Other Court Programs

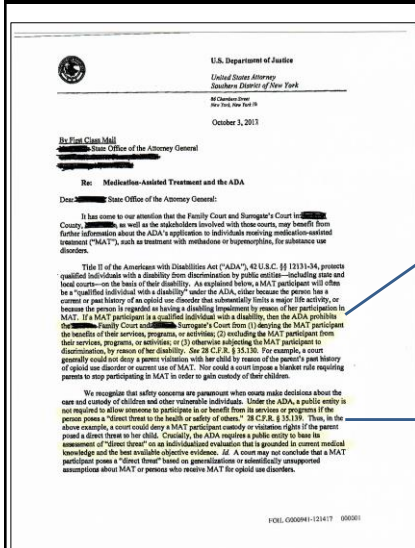
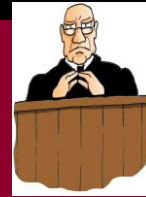


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Factual Basis for ADA Claim

- Develop a record and retain all correspondence
- Sample letters and forms: <https://lac.org>
- Prescribing Medical Practitioner:
 - ✓ Qualifications and experience
 - ✓ Personally examined the participant
 - ✓ Diagnosis of moderate to severe opioid use disorder
 - ✓ Prognosis with vs. without MAT (or agonists)
 - ✓ Failed efforts at drug-free counseling or other medications, or likelihood of failure
 - ✓ Benefits substantially outweigh risks for MAT (or agonists)
 - ✓ MAT is **medically necessary** (or medically indicated)
 - ✓ Denial or forced withdrawal is **against medical advice** and falls **below the recognized medical standard of care**
 - ✓ Involuntary cessation is likely to significantly increase the **risk of relapse, overdose, and death**

Elements of an ADA Claim

- **Defense Counsel:**
 - ✓ Motion to modify conditions (mandamus if denied)
 - ✓ Participant has **qualified disability** under the ADA (applicable state law, due process, or Rehabilitation Act if a federal court or action)
 - ✓ ADA applies to probationers, parolees and inmates
 - ✓ Participant requests **reasonable accommodations**, which may include observed administration or similar measures
 - ✓ MAT prohibition **not reasonably related to the goals of supervision** (rehabilitation, recidivism, public safety)
 - ✓ Blanket prohibition or tapering requirement violates the *Drug Court Best Practice Standards* (if applicable)
 - ✓ **Imminent risk of irreparable harm** from relapse, ensuing legal consequences, overdose, and/or death
 - ✓ Attach and reference affidavit(s) from medical prescriber

Other Service Professionals

- **Qualified immunity, at most**
- **Respectful collegiality**
- **Educate first before assuming adversarial posture**
- **Raise issue informally, and then formally, before there is a case in dispute**
- **Clarify the nature of the ethical conflict**
- **Make known your commitment to ethical standards**
- **Take reasonable steps to resolve the conflict**
- **Always be prepared to step back to education**
- **Abiding vs. contributing to sub-standard care and practices**