

# QUICK TAKE

## MEDICATIONS FOR OPIOID USE DISORDER IN US JAILS AND PRISONS: STATUS UPDATE

### 1. INTRODUCTION

**THE UNITED STATES IS IN THE MIDST OF A DRUG OVERDOSE CRISIS.** In the 12-month period ending in September 2023, more than 100,000 people died of a drug overdose.<sup>1</sup> While the overdose crisis is worsening across all demographics, it has especially impacted Black and Indigenous communities, in part due to disproportionate rates of incarceration.<sup>2</sup> Each life lost is a tragedy and leaves behind loved ones whose lives will never be the same. We must urgently deploy every evidence-based tool at our disposal—including medications for opioid use disorder (MOUD)—to save lives.

One proven, targeted approach to preventing overdose deaths is to ensure MOUD is available to people with opioid use disorder (OUD) who are incarcerated in US jails and prisons. Just a few years ago, only a small percentage of jails were providing MOUD to the general population with OUD.<sup>3</sup> **Today, about 30% of jails provide buprenorphine and about 20% of jails provide methadone, two of the three FDA-approved MOUDs.**<sup>4</sup>

While there has been some progress, additional efforts are urgently needed. The majority of jails and prisons still do not provide access to MOUD. Even in facilities where buprenorphine and methadone are provided, these medications are often only available to a subset of individuals with OUD. Given that MOUD is the [standard of care](#) for opioid use disorder,<sup>5</sup> the goal must be full access to MOUD for every person with opioid use disorder when clinically indicated. People with OUD must be assured access to these medications regardless of the setting, whether jail, prison, or in the community. Increasing access to these medications requires a coordinated and sustained advocacy effort using both legal and policy tools.

### 2. THE IMPERATIVE OF MOUD IN CARCERAL SETTINGS

There are three FDA-approved MOUDs: two agonist medications—the full agonist methadone and the partial agonist buprenorphine—and the antagonist medication naltrexone.<sup>6</sup> Agonist medications—methadone and buprenorphine—have the strongest evidence supporting their use.<sup>7</sup> Because the three MOUDs are not interchangeable, people with substance use disorder require individualized care and an informed choice of treatments based on their medical needs.

Providing MOUD in jails and prisons is a critical public health response to the risk of overdose and other drug-related death, a risk that many justice-involved individuals face during incarceration and upon re-entry. Incarcerated individuals face [disproportionate rates of OUD](#),<sup>8</sup> and individuals leaving incarceration are up to 129 times more likely than the general population to die of an overdose in the weeks following reentry.<sup>9</sup> At the same time however, they also risk overdose and other substance related deaths while incarcerated. The Bureau of Justice Statistics reported that jail deaths

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involving drug or alcohol intoxication quadrupled between 2000 and 2019.<sup>10</sup> About 40% of deaths in jails occur within the first seven days.<sup>11</sup> The median time served for deaths in custody related to drug or alcohol intoxication is one day.<sup>12</sup>

In short, MOUD saves lives. In the weeks following release from incarceration, people who had received MOUD are 75% less likely to die of an overdose and 85% less likely to die of any cause.<sup>13</sup> Rhode Island, the first state to provide all three OUD medications to its entire incarcerated population, experienced a 60.5% decrease in post-incarceration deaths in the year after the program's implementation.<sup>14</sup>

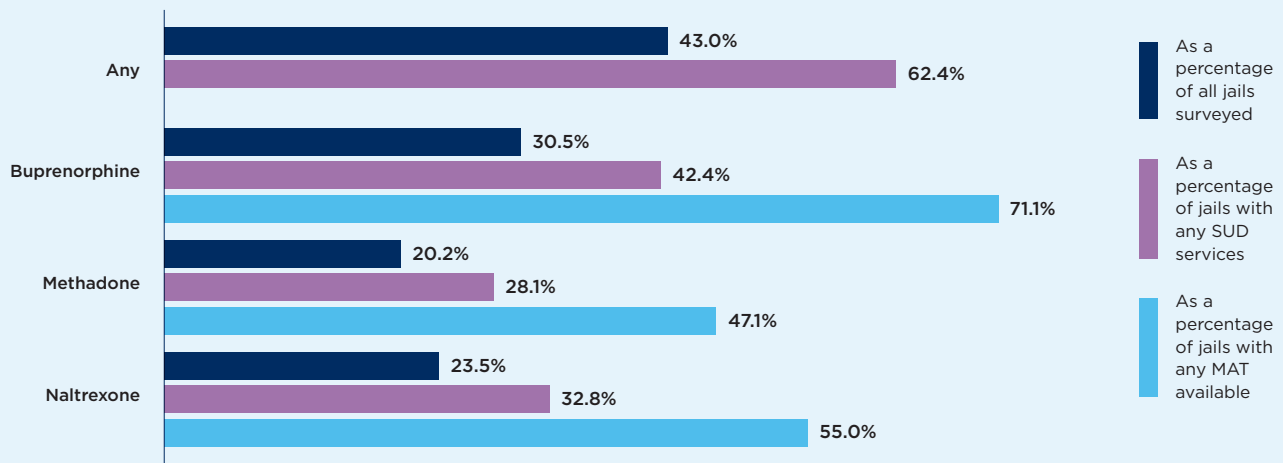
### 3. JCOIN SURVEY AND ACCESS TO MOUD IN JAILS

A JCOIN survey of U.S. jails released in 2023 found that about 30% of the nation's 3,535 jails provide

buprenorphine and about 20% provide methadone.<sup>15</sup> The study found that a majority of these jails make methadone and buprenorphine available to individuals already receiving MOUD prior to entry.<sup>16</sup> Fewer of these jails, however, initiate MOUD treatment for incarcerated individuals with an opioid use disorder.<sup>17</sup> While continuing MOUD treatment in jails is important, all facilities should both *continue and initiate* MOUD treatment for all individuals with an opioid use disorder upon entry into a jail when clinically indicated and desired by the individual.

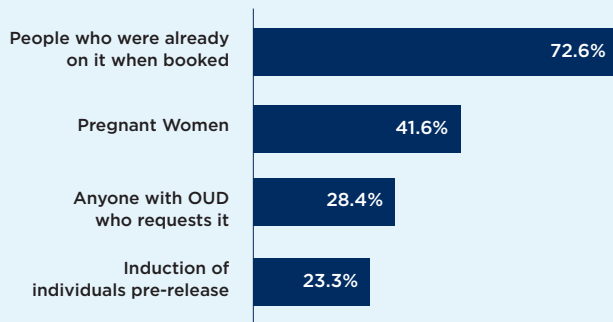
Initiation with naltrexone is more common than initiation with methadone or buprenorphine. Nearly a quarter of jails surveyed provide naltrexone. Of jails that provide naltrexone, over half provided it to people who were receiving naltrexone when booked.

#### AVAILABILITY OF EACH TYPE OF MAT



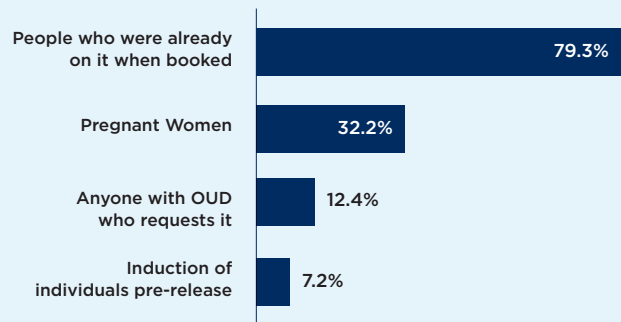
Each question on MAT was asked separately.

#### AMONG JAILS THAT PROVIDE BUPRENORPHINE: WHO IS IT AVAILABLE TO?



This question was a select all that apply; % do not add to 100%.

#### AMONG JAILS THAT PROVIDE METHADONE: WHO IS IT AVAILABLE TO?



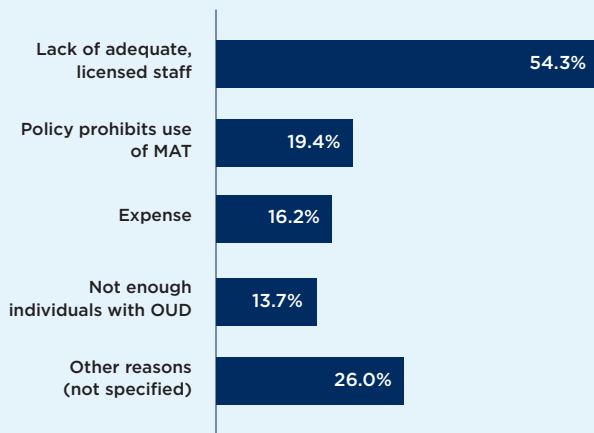
This question was a select all that apply; % do not add to 100%.

#### 4. LEGAL AND POLICY CONSIDERATIONS

To comply with constitutional protections and other federal laws, **every jail and prison should make all three forms of MOUD available to people who are incarcerated and have an opioid use disorder. Treatment should be available as clinically indicated, and with the individual's consent for the entirety of their time incarcerated. Importantly, individuals should be connected to community care upon re-entry. However, it is not sufficient to just provide MOUD in carceral settings, policymakers also must focus on increasing access to community based treatment. No one should have to be incarcerated to receive evidence-based treatment for their OUD.**

The JCOIN survey included questions on why jails might not provide MOUD. Reasons cited include a lack of “adequate, licensed staff” and policy prohibitions on the use of MOUD. The JCOIN survey also found that jails not offering MOUD cite expense as a common inhibitor to offering such care. This survey highlights a need for increased resources, including Medicaid coverage and workforce expansion, to optimize MOUD services. Expanded Medicaid coverage requires federal and state action, including submission and approval of state waiver requests.<sup>18</sup>

##### AMONG JAILS THAT OFFER SUD SERVICES, BUT DO NOT OFFER MAT, REASONS INCLUDE:



#### 5. INCREASING ACCESS TO MOUD IN JAILS AND PRISONS THROUGH LEGISLATION, LITIGATION, AND LEADERSHIP

The increase in jails offering MOUD is attributable to a combination of state and federal initiatives, along with strategic litigation based on violations of federal law and constitutional protections. While the JCOIN survey focuses on access to MOUD in jails, additional action is necessary to expand access in state and federal prisons. In a positive move, the Federal Bureau of Prisons is in the process of providing MOUD in all 122 of its facilities.<sup>19</sup>

Several state legislatures have also taken steps toward universal access to MOUD in their jail and prison systems. For example, Colorado passed legislation requiring public and private jail facilities to provide incarcerated individuals with OUD access to, and a choice among, the three FDA-approved medications for opioid use disorder.<sup>20</sup> New York State passed legislation in March 2022 requiring state prisons and local jails to provide MOUD to individuals diagnosed with OUD, regardless of whether they have been receiving MOUD in the community.<sup>21</sup>

The O'Neill Institute and the Legislative Analysis and Public Policy Association developed a model state law that requires MOUD in jails and state prisons.<sup>22</sup> In 2021, the O'Neill Institute published a 50 state snapshot,<sup>23</sup> with an update<sup>24</sup> in 2023, highlighting state-level progress toward MOUD in jails and prisons.

Recent litigation has acted as a catalyst for change as courts are requiring jails to provide plaintiffs with MOUD, noting that failure to do so likely violates the Americans with Disabilities Act (ADA) and, in some cases, the Eighth Amendment of the Constitution.<sup>25</sup> Litigation has also led to multiple settlements that have expanded access to MOUD.<sup>26</sup> In 2022, the U.S. Department of Justice's (DOJ) Civil Rights Division issued guidance outlining ADA protections for people with opioid use disorder and people prescribed MOUD. The guidance clarified that a jail's blanket policy prohibiting the use of MOUD violates the ADA.<sup>27</sup> Furthermore, the DOJ has taken enforcement action against facilities that have failed to provide MOUD, resulting in multiple settlements.<sup>28</sup> This includes requiring facilities to initiate new MOUD treatment. A recent settlement reached in Alleghany County, Pennsylvania, for example, required the defendant jail to initiate treatment with an option of any FDA-approved MOUD “if a qualified medical provider determines that such treatment is medically appropriate based on the individual's condition.”<sup>29</sup>

#### 6. RECENT GOVERNMENT ACTION TO EXPAND ACCESS VIA FINANCIAL OPPORTUNITIES AND RULEMAKING

The federal government has taken steps that will result in reduced barriers and enhanced financial opportunities to increase access to MOUD in carceral settings. In April 2023, the U.S. Department of Health and Human Services announced the new Medicaid Reentry Section 1115 Demonstration Opportunity. While federal law generally bans the use of federal Medicaid dollars to pay for services for incarcerated individuals, this new opportunity allows coverage for 90 days prior to reentry.<sup>30</sup> As of February 2024, fifteen states had submitted Section 1115 reentry

waivers seeking Medicaid coverage for services for incarcerated individuals.<sup>31</sup> California, Washington state, and Montana have all received 1115 waiver approvals. These states will begin the process to use federal Medicaid dollars for individuals 90 days prior to their reentry. The Bureau of Justice Assistance also administers grants to fund programs aimed at expanding jail-based MOUD treatment.<sup>32</sup>

The Substance Abuse and Mental Health Services Administration (SAMHSA) released a new rule, “Medications for the Treatment of Opioid Use Disorder,” updating the regulatory framework for methadone. This rule includes a provision clarifying that jails and prisons

registered with the Drug Enforcement Administration as a hospital/clinic may treat incarcerated patients with methadone, as long as the patient is also being treated for a condition other than OUD.<sup>33</sup> This allows jails and prisons that do not have an Opioid Treatment Program (OTP), or do not have a contract with an existing OTP, to provide methadone treatment for certain incarcerated people with OUD.

Together, bold action from the state and federal government, litigators, and policy advocates will result in changes on the ground. This concentrated effort may be replicable to tackle addiction as well as other public health challenges.

## CONCLUSION

Despite progress in increasing access to MOUD in jails and prisons, too many individuals with OUD do not receive the care they need, regardless of whether they are incarcerated or receiving treatment in the community. While we focus on efforts to increase access to MOUD in carceral settings, we must also focus on community based care. The research is clear: MOUD is the standard of care for people with opioid use disorder, and access to these medications prevent overdose death and unnecessary suffering among our prison population. MOUD saves lives—all three medications are needed in the community, as well as in our nation’s jails and prisons as we seek to curb the overdose epidemic in the U.S.

## ENDNOTES

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- 12 *Id.*
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- 16 Of jails that provide buprenorphine, almost 73% continue buprenorphine treatment upon entry into a jail. For jails that provide methadone, almost 80% continue people on this medication.
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- 25 *Smith v. Aroostook Cnty.*, 376 F. Supp. 3d 146 (D. Me.), *aff'd*, 922 F.3d 41 (1st Cir. 2019) (holding that failure to provide the plaintiff with their prescribed MOUD likely violated the ADA); *Pesce v. Coppinger*, 355 F. Supp. 3d 35 (D. Mass. 2018) (holding that failure to provide MOUD likely violates the ADA and Eighth Amendment); *P.G. v. Jefferson Cnty.*, No. 5:21-CV-388, 2021 WL 4059409 (N.D.N.Y. Sept. 7, 2021) (holding that failure to provide MOUD likely violates the ADA and Eighth Amendment); *M.C. v. Jefferson Cnty.*, No. 6:22-CV-190, 2022 WL 1541462 (N.D.N.Y. May 16, 2022) (notably the first class action against a jail to find denial of MOUD likely to amount to ADA and constitutional violations).
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- 27 *The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery*, U.S. DEPARTMENT OF JUSTICE (Apr. 5, 2022), [https://archive.ada.gov/opioid\\_guidance.pdf](https://archive.ada.gov/opioid_guidance.pdf).
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