AUGUST 2024

QUICK TAKE

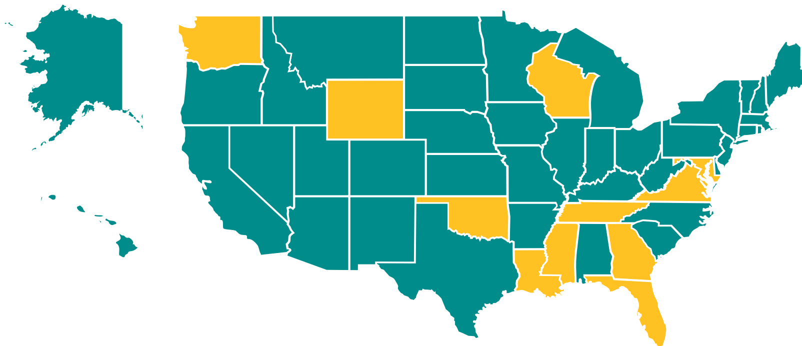
State Legislative Round-Up

HIGHLIGHTS OF THE 2024 STATE LEGISLATIVE SESSIONS

New Reform Legislation

Multiple states — including **Colorado**, **Florida**, **Georgia**, **Louisiana**, **Maryland**, **Mississippi**, **Oklahoma**, **Oregon**, **Tennessee**, **Virginia**, **Washington**, and **Wisconsin** — passed laws aimed at increasing access to naloxone, an overdose-reversal antidote, in various settings, including in public schools and higher education. For example, legislatures in Florida, Maryland, Mississippi, and Oklahoma provided immunity from liability to specified individuals who administer naloxone. These laws are promising and represent a recognition of naloxone's importance in mitigating the overdose epidemic.

STATES WITH LAWS PASSED INCREASING ACCESS TO NALOXONE



A handful of states took additional steps to increase access to tools to reduce the harms associated with substance use. **Idaho** passed a law excluding fentanyl testing equipment from the definition of "drug paraphernalia." **New York** passed a law removing the requirement that drug adulterant testing supplies be limited to medical offices and health care facilities. Additionally, in Utah, **SB60** designated certain circumstances in which a charge for possession of a hypodermic syringe or needle can be dismissed. Fentanyl test strips and syringe service programs reduce disease transmission and help address overdoses; individuals should not risk criminal penalties for possessing these items.

INTRODUCTION

In 2024, the Center for Addiction and Public Policy tracked state legislation intended to curb overdose deaths and improve drug and alcohol policies. The majority of state legislatures have adjourned, and our team has published a new round-up that examines state legislation passed in the United States this year. This year, there was a trend toward more law enforcement-centric approaches, with multiple states passing laws increasing drug-related penalties and creating new drug-related crimes. This Quick Take explores the 2024 state legislative sessions and outlines recommendations for states to consider in 2025, including strategies proven to save lives and improve outcomes for people with substance use disorder (SUD).

Given the heightened risk of overdose for justice-involved individuals, the use of treatment medication for opioid use disorder (MOUD) is a critical tool to improve their health outcomes — both during incarceration and upon reentry.[1] Notable legislation addressing opioid use disorder (OUD) in carceral settings includes an **Alabama law** that appropriates funds from the Opioid Treatment and Abatement Fund to the Department of Corrections to expand access to MOUD in state prisons. In Utah, **SB212** passed into law, allowing the state's Department of Corrections to continue MOUD for individuals who are incarcerated and had an active medication treatment plan prior to incarceration. The law provides that MOUD may be administered at the discretion of the chief administrative officer of the correctional facility.

In the 2024 legislative session, several states passed laws regarding the management of opioid litigation funds. In Maryland, **HB980** was signed into law, requiring the secretary of health to present decisions for how money is allocated from the Opioid Restitution Fund to the Opioid Restitution Fund Advisory Council. To improve transparency, the law also requires the findings to be posted publicly on the Department of Health's website. In Alabama, **HJR21** increased the membership of the Oversight Commission on Alabama Opioid Settlement Funds. In Mississippi, **HB1705** created the Opioid Settlement Fund, which consists of money received from settlements of opioid litigation. In Washington state, **SB6099** created the tribal opioid prevention and treatment account to prioritize money received from opioid settlements to address the opioid overdoses in tribal communities.

Punitive Measures

This year's state legislative sessions produced a multitude of punitive laws, including drug-induced homicide laws and laws increasing penalties for fentanyl possession and trafficking. For example, **Alabama** has designated the selling and distribution of a controlled substance containing fentanyl that results in death as a crime of manslaughter. In **Arizona**, a law was passed that set forth sentencing requirements for the sale of fentanyl. A new law in **Florida** imposes criminal penalties for adults who recklessly expose a first responder to risk in the course of possessing a controlled substance. **Georgia** law now creates the offense of aggravated involuntary manslaughter involving fentanyl. **Idaho** created the crime of "trafficking in fentanyl" and "drug-induced homicide." **Kansas** increased criminal penalties for aggravated endangerment of a child in situations involving fentanyl. **Kentucky** passed legislation to include the sale or distribution of fentanyl that causes the death of another within the definition of manslaughter. A new law in **Louisiana** sets forth criminal penalties related to the unlawful distribution of fentanyl. A new law in **Oregon** designates using drugs on public transit as a crime of "interfering with public transportation." **South Dakota**'s new law creates punishments for "death by distribution of a Schedule I or II substance. A new law in **Tennessee** requires that the death of another person as a result of fentanyl be punished as a second-degree murder. **Virginia** increased penalties relative to the manufacturing, selling, and distribution of controlled substances. **Alaska** created the crime of second-degree murder when a person knowingly manufactures or delivers a controlled substance that results in the death of another person.

The Alabama legislature also passed **SB240**, which authorizes a probate judge to involuntarily commit an individual with a substance use disorder that occurs secondarily to a primary diagnosis of one or more mental illnesses. The law allows any individual to file a petition seeking the involuntary commitment of another individual when there is reason to believe that person has a mental illness with a secondary diagnosis of a co-occurring SUD.

While some states passed bills focused on improving access to harm reduction tools, other states rolled back such efforts. **HB4667** was enacted in West Virginia, which prohibits syringe services programs (SSPs) from distributing smoking devices. Idaho's **HB617** repealed the Syringe and Needle Exchange Act, effectively banning SSPs in the state.

LOOKING AHEAD TO 2025

Aligning State Regulation of MOUD with Federal Regulations

One priority area for states is ensuring that their MOUD regulations align with new federal laws and regulations that expand access to such medications. A recently released rule from the Substance Abuse and Mental Health Services Administration (SAMHSA), "Medications for the Treatment of Opioid Use Disorder," makes flexibilities offered during the COVID-19 public health emergency for Opioid Treatment Programs (OTPs) permanent and further revises federal methadone regulations. The rule increases access to take-home doses of methadone and revises admission criteria to make methadone more accessible.[2]

Additionally, the new rule allows jails and prisons registered as hospitals or clinics with the Drug Enforcement Administration to treat incarcerated patients with methadone, as long as the patient is also being treated for a condition other than OUD.[3] This change for jails and prisons is significant, as it allows them to provide methadone in some circumstances without having to find local OTPs — which are not present in many areas of the country — and without having to become licensed as an OTP, which can be difficult for these facilities. The rule also authorizes practitioners to prescribe methadone via audio-video telehealth and buprenorphine through audio-only telehealth.[4] Nurse practitioners and physician assistants are allowed to order MOUD for dispensing at the OTP.

However, as significant as these federal changes are, parallel changes in state law are often required, given that OTPs are regulated at both the federal and state levels. States should align their laws and regulations with federal regulations to ensure increased access to methadone and buprenorphine. Additionally, states should review their scope of practice laws to allow wider access to buprenorphine by allowing practitioners, such as nurse practitioners and physician assistants, to prescribe.

Strategic Use of Federal, State, and Opioid Settlement Dollars

As states and local governments continue to receive substantial funds from opioid litigation settlements, states must have the appropriate laws in place to ensure the proceeds are effectively utilized to curb the overdose epidemic and untreated addiction generally. States must ensure these funds are used for their intended purposes: SUD prevention, treatment, recovery, and harm reduction. It is also imperative that states adopt mechanisms of transparency and accountability in the allocation and spending of opioid litigation proceeds.

> **To facilitate states' efforts in maximizing these funds, the O'Neill Institute and the Legislative Analysis and Public Policy Association (LAPPA) developed the "Model Opioid Litigation Proceeds Act."**

Expanding Access to MOUD in Carceral Settings

States should consider enacting legislation to increase the availability of MOUD in carceral settings. Individuals leaving incarceration are up to **129 times more likely** than the general population to die of an overdose in the weeks following reentry.[5] MOUD is an effective public health response to this increased risk of overdose faced by justice-involved individuals — yet only **30% of U.S. jails provide buprenorphine, and only 20% provide methadone**.[6] While the number of jails providing MOUD has increased dramatically in recent years due to litigation and efforts by states and the federal government, states play a critical role in expanding access to MOUD in carceral settings. As of September 2023, **16 states** have taken action on this issue, requiring access to MOUD in their state and local correctional settings.

> **The O'Neill Institute and LAPPA developed a model state law to require MOUD in jails and prisons, outlining best practices to improve health outcomes for justice-involved individuals with SUD.**

MOUD in Emergency Departments

Emergency departments are **critical intervention points** for people experiencing substance use-related emergencies, such as overdoses, infections, or accidents.[7] Connecting individuals with SUD to treatment, prevention, recovery, and harm reduction services following discharge from emergency department settings serves as a critical means for reducing rates of overdose and other negative health outcomes. States should prioritize the development of evidence-based protocols in emergency department settings and establish means for oversight and enforcement. Such protocols should include the initiation of buprenorphine or methadone for patients with OUD, information about SUD treatment, peer support services, harm reduction services, and comprehensive discharge planning.

> **The O'Neill Institute and LAPPA developed a "Model Substance Use Disorder Treatment in Emergency Settings Act" that requires such a protocol for emergency departments.**

Expanding Access to Naloxone

Naloxone is a proven safe and effective method for reversing opioid overdoses. During the 2024 legislative session, multiple states made efforts to increase access to naloxone, and all states should continue on this path during the 2025 legislative session. States may also consider reviewing their Good Samaritan Laws and granting immunity to individuals who administer an opioid antagonist.

> **LAPPA developed a model law expanding access to emergency opioid antagonists.**

Recovery Ready Workplace Model Law

Workplaces are an essential setting to address SUD, as 70% **of all adults with an alcohol or illicit drug use disorder** are employed. Approximately 1% of workers receive treatment annually for an SUD, and 9% report being in recovery.[11] Employment plays a key role in SUD recovery, and states should prioritize the adoption of recovery-ready workplace policies and procedures. Such policies should include expanding employment opportunities for people in or seeking recovery, facilitating access to SUD treatment, and implementing SUD education programs.

> ***LAPPA developed a model Recovery Ready Workplaces Act.***

Authorizing Syringe Service Programs

Syringe services programs provide a range of services, including sterile syringes and naloxone, as well as other comprehensive services, such as linkage to SUD treatment.[8] SSPs help reduce the transmission of HIV, viral hepatitis, and other infections and help minimize the harms associated with injection drug use.[9] States should also provide immunity for the possession, distribution, or furnishing of hypodermic needles and syringes.

As of July 2023, there were at least **534 operational SSPs** located in 45 states, D.C., and Puerto Rico. However, only **38 states**, D.C., and Puerto Rico, either explicitly or implicitly authorize SSPs. Further, SSPs are not authorized in Alabama, Alaska, Iowa, Kansas, Mississippi, Missouri, Nebraska, Pennsylvania, South Carolina, Wisconsin, South Dakota, and Wyoming.[10] Following the 2024 legislative session, syringe services programs are now also unlawful in Idaho.

CONCLUSION

The overdose epidemic is still with us — with over 100,000 overdose deaths in the 12-month period ending in September 2023[12]. The tragedy of this loss on families and communities will be felt for decades. This issue requires the urgent deployment of evidence-based policies in states. Looking ahead to 2025, states should prioritize the expansion of MOUD in carceral settings and in the community, the strategic use of opioid settlement dollars, and increased access to harm reduction tools, such as SSPs and naloxone.

Above all, states should adopt legislation that follows the science in order to curb the overdose epidemic and save lives.

ENDNOTES

1 Ingrid A. Binswanger et al., Release from Prison—A High Risk of Death for Former Inmates, 356(2) N. Engl. J. Med. 157 (Jan. 2007), https://www.nejm.org/doi/full/10.1056/NEJMsa064115.

2 42 C.F.R. Part 8 (2024).

3 *Id.*

4 *Id.*

5 Ingrid A. Binswanger et al., Release from Prison—A High Risk of Death for Former Inmates, 356(2) N. Engl. J. Med. 157 (Jan. 2007), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2836121/.

6 JCOIN's National Survey of Substance Use Services in Jails: Describing U.S. Jails and Their Screening, Treatment, Recovery, and Re-entry Practices, JCOIN (Aug. 9, 2023), https://www.jcoinctc.org/wp-content/uploads/JCOIN-2022-Jail-Survey-MAT-Results_08.09.2023v2.pdf.

7 2 Pinyao Rui & Alicia Ward, QuickStats: Number of Emergency Department Visits, for Substance Abuse or Dependence per 10,000 Persons Aged ≥18 Years, by Age Group — United States, 2008–2009 and 2016–2017, 68 MORBIDITY & MORTALITY WEEKLY REP. 1171 (2019).

8 *Syringe Services Programs*, CDC, https://www.cdc.gov/syringe-services-programs/php/index.html.

9 *Id.*

10 *Syringe Services Programs: Summary of State Laws*, LAPPA (Aug. 2023), https://legislativeanalysis.org/wp-content/uploads/2023/11/Syringe-Services-Programs-Summary-of-State-Laws.pdf.

11 *Workplace Supported Recovery: New NIOSH Research Addresses an Evolving Crisis*, CDC, https://blogs.cdc.gov/niosh-science-blog/2022/11/30/workplace-supported-recovery/.

12 *Provisional Drug Overdose Death Counts*, CDC, https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.

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