



# Intent v. Impact

Are we set up to fail?

Developed by: Impaired Driving Solutions

---

©NCDC, March 2023

The following presentation may not be copied in whole or in part without the written permission of the author of the National Center for DWI Courts. Written permission will generally be given upon request.







## Caution: Possible Fail Ahead

Entry Motivations

Technology

Treatment

Recovery Support Groups

Responding to Behavior

Fines and Fees



# Motivation for Entry: Intent

## PERIOD OF SOBRIETY

- Shows motivation by the candidate

## ACCEPTANCE

- Identifies SUD problem
- Shows motivation to change

## DISMISSED/REDUCED CHARGES (IMPAIRED DRIVERS)

- Motivation to enter and complete
- Common in other models





# Motivation for Entry: Impact

## PERIOD OF SOBRIETY

- If able, do they need us?

## ACCEPTANCE

- Stage of change?

## DISMISSED/REDUCED CHARGES (IMPAIRED DRIVERS)

- Loss of support from stakeholders
- Future prosecution and sentence



# Use of Technology: Intent

## ALCOHOL AND DRUG TESTING

- Wide variety of testing technology at your fingertips
- Layering; i.e., using multiple methods to test
- Extend time



# Use of Technology: Impact

## ALCOHOL AND DRUG TESTING

- “Doubling-up” does not equal better
- Extending use may result in helplessness
- Extended use may result in relying on testing versus recovery tools
- Technology is only as good as the response
- Technology can be expensive



# Use of Technology: Intent

## TELESERVICES

- Capacity to serve
- Easier to attend treatment
- Easier to appear in court
- Easier to conduct supervision contacts



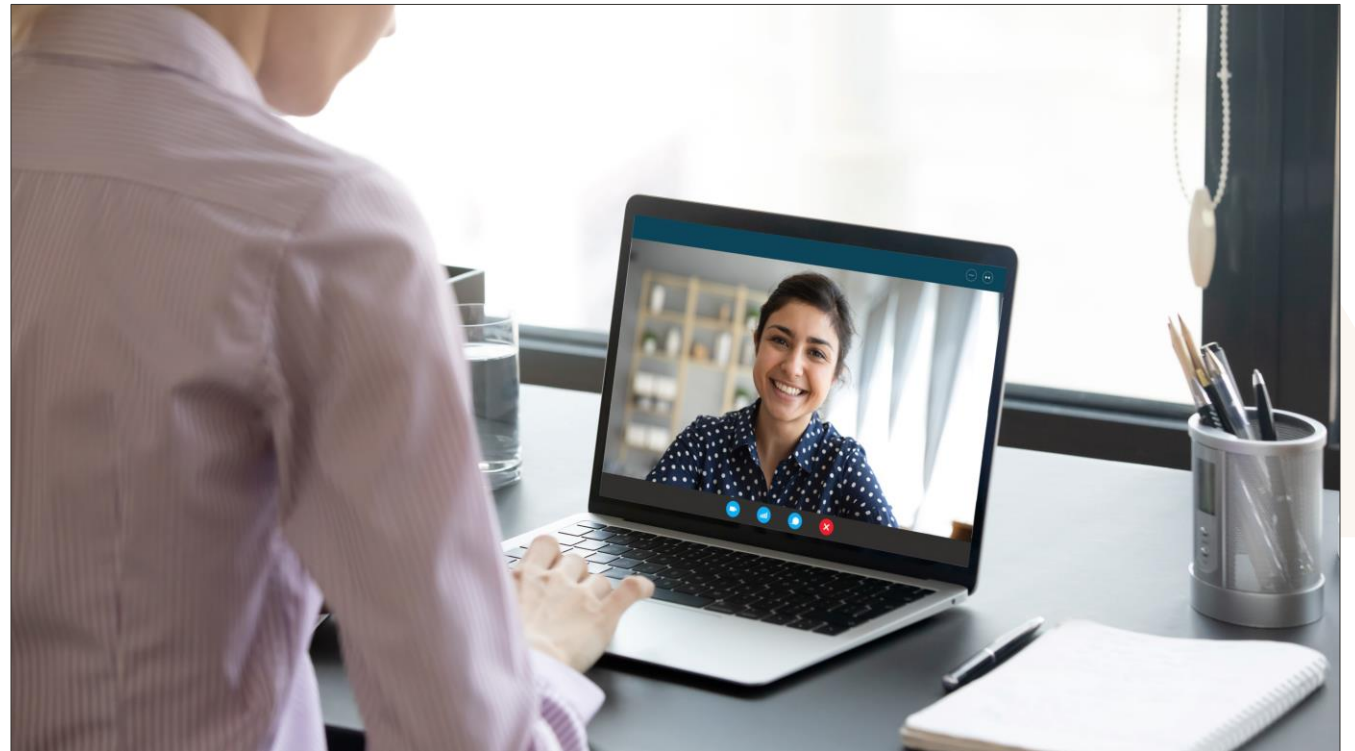


# Use of Technology: Impact

## TELESERVICES

- Expanding capacity beyond available resources
- Meet my representative
- Privacy issues

## RESEARCH SUPPORTS THE USE OF TELEHEALTH





## Attend Treatment: Intent

Attend

Comply

Follow the rules

Do the work



# Attend Treatment: Impact

## ATTEND

- Doing time not treatment

## COMPLIANCE

- Interventions do not match stage of change
- Not tailored to individual needs



# Attend Treatment: Impact

## FOLLOW THE RULES AND DO THE WORK

- Often subjective based on “experience”
- Outcomes/engagement subjectively measured

## MISSES OPPORTUNITY FOR THERAPEUTIC ALLIANCE





# Treatment: Intent

## GROUP THERAPY

- Efficient... treat more people
- Effective
- Manualized curriculums are geared toward group process
- Offers peer support



# Treatment: Impact

## GROUP THERAPY

- Treating more could result in mixed populations
- Checking the box versus symptom reduction
- Not all individuals are group ready



# Treatment: Intent

## TWO OR FEWER TREATMENT AGENCIES

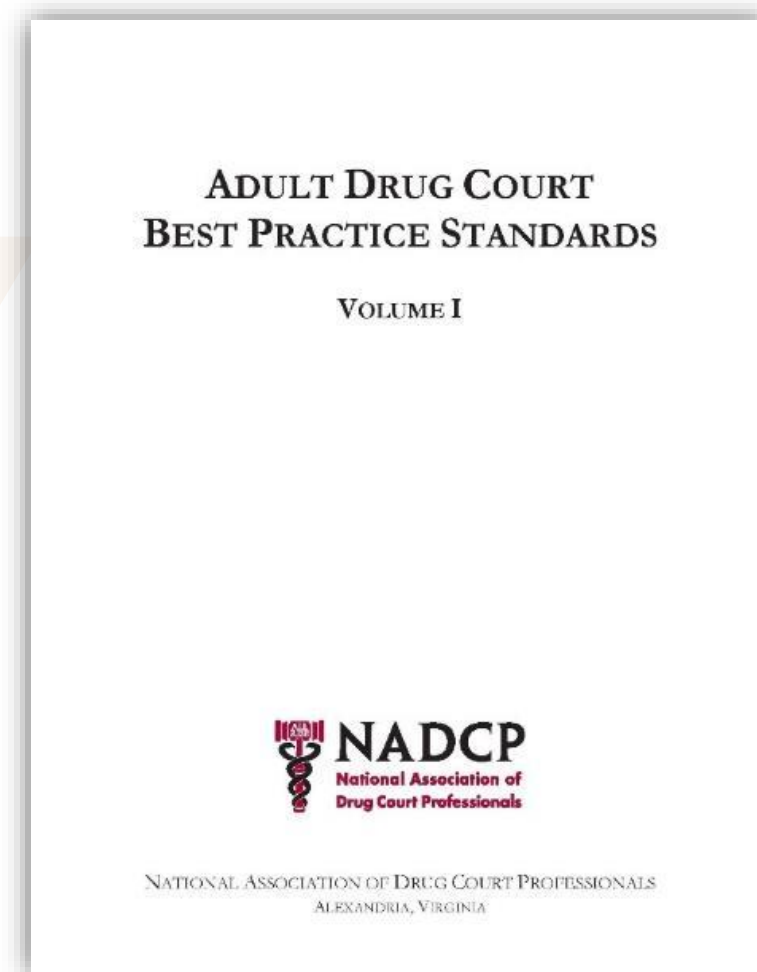
- All Rise Best Practice Standards

## SUPPORT GROUPS

- Supports treatment and recovery

## EDUCATION PROGRAMMING

- Poor habitual driving behavior
- Compliance with state mandates



# Treatment: Impact



## TWO OR FEWER TREATMENT AGENCIES

- Two or fewer may limit treatment options
- Understand the research
- Ethical considerations

## SUPPORT GROUPS

- Does not replace treatment
- Options

## EDUCATION PROGRAMMING

- Does not replace treatment





# MAT & Rx: Intent



## PROHIBIT USE – MAT & RX

- Substituting one drug for another
- Does not support sobriety/recovery
- “Not my path to recovery”

## MANDATE USE – MAT

- What’s good for the goose...
- ADA complicity

## TITRATION – MAT & RX

- If still taking meds, is it recovery?
- Goal is abstinence


# MAT & Rx: Impact

## PROHIBITING/MANDATING/TITRATING USE MAT & RX

- Blanket prohibitions and mandates are unconstitutional
- Not individualized treatment
- Delaying treatment progress
- Potential for causing harm to participants
- It is not substituting one drug for another
- Different pathways to recovery

# Are Individuals Receiving MAT Protected By Federal Disability Laws?

FACT SHEET: DRUG ADDICTION AND FEDERAL DISABILITY RIGHTS LAWS



U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
**OFFICE FOR  
CIVIL RIGHTS**

**DRUG ADDICTION AND FEDERAL DISABILITY RIGHTS LAWS**

**WHEN IS A DRUG ADDICTION A DISABILITY UNDER FEDERAL DISABILITY RIGHTS LAWS?**

Drug addiction, including an addiction to opioids, is a disability under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Section 1557 of the Affordable Care Act, when the drug addiction substantially limits a major life activity.<sup>1</sup>

**WHEN DOES AN INDIVIDUAL WITH A DRUG ADDICTION “QUALIFY” AS AN INDIVIDUAL WITH A DISABILITY UNDER FEDERAL ANTIDISCRIMINATION LAWS?**

To be protected by federal disability rights laws, an individual with a disability, must be a “qualified” individual with a disability, which means that the individual must meet the essential eligibility requirements for receipt of services or participation in a covered entity’s programs, activities, or services. Under these laws, qualified individuals with a disability may not be excluded from participation in programs and services, be denied the benefits of, or otherwise be subjected to discrimination based on the disability. In addition, covered entities are required to reasonably modify rules, policies or practices, provide appropriate auxiliary aids and services, or remove architectural and communication barriers to ensure equal opportunities for qualified individuals with disabilities.

Federal disability rights laws also protect individuals if they:

- Have successfully completed a supervised drug rehabilitation program or have otherwise been successfully rehabilitated and are not currently engaged in the illegal use of drugs;
- Are participating in a supervised drug rehabilitation program and are currently not engaged in the illegal use of drugs; or
- Are erroneously regarded as engaging in such use, but are not engaging in such use.

**WHO MUST COMPLY WITH THE LAW**

Any entity that receives federal financial assistance from the U.S. Department of Health and Human Services must comply with federal nondiscrimination laws. Covered entities may include, but are not limited to:

<sup>1</sup> Examples of major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

FACT SHEET: DRUG ADDICTION AND FEDERAL DISABILITY RIGHTS LAWS

- Substance Use Disorder Treatment Programs
- Hospitals and Health Clinics
- Pharmacies
- Contracted Service Providers
- Medical and Dental Providers
- Nursing Homes
- Child Welfare Agencies
- State Court Systems

In addition, state and local governments are prohibited from discriminating on the basis of disability.

**EXCEPTION CONCERNING CURRENT ILLEGAL USE OF DRUGS**

Individuals who currently engage in the “illegal use of drugs”<sup>2</sup> are specifically excluded from the definition of an individual with a disability when a covered entity takes an adverse action on the basis of that current use. However, an individual is not to be denied health services, or services provided in connection with drug rehabilitation, vocational rehabilitation programs and services, and other programs and other specific programs and services funded under the Rehabilitation Act on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

**ARE INDIVIDUALS RECEIVING MEDICATION ASSISTED TREATMENT PROTECTED BY FEDERAL DISABILITY RIGHTS LAWS?**

Medication Assisted Treatment (MAT) has been shown to be an effective treatment to address opioid misuse and addiction. MAT is the use of FDA-approved medications, such as buprenorphine, methadone, and naltrexone, in combination with counseling and behavioral therapies to treat an opioid use disorder or other substance use disorders. The determination of whether an individual receiving MAT is entitled federal disability rights protections is a fact-specific inquiry based on the criteria described above. However, persons receiving MAT cannot be, by virtue of that fact, excluded from protection under federal disability rights laws. Because MAT related medications are prescribed and are taken under the supervision of a licensed health care professional, MAT is not the illegal use of drugs.

**FOR MORE INFORMATION**

If you are interested in learning more about how federal civil rights laws protect qualified individuals with an opioid use disorder, as well as OCR’s important work on how HIPAA allows the appropriate sharing of important health information about individuals who are in crisis due to opioid addiction, visit OCR’s website at: [www.hhs.gov/ocr/opioids](http://www.hhs.gov/ocr/opioids).

For more help, information and helpful resources concerning opioid prevention, treatment and recovery, visit HHS’s opioids website at: [www.hhs.gov/opioids](http://www.hhs.gov/opioids).

**DISCLAIMER:** This guidance document is not a final agency action, does not legally bind persons or entities outside the Federal government, and may be rescinded or modified at the Department’s discretion. Noncompliance with any voluntary standards (e.g., recommended practices) contained in this document will not, in itself, result in any enforcement action.

October 25, 2018

<sup>2</sup> Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. It does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Substances Act or other Federal law. Alcohol is not a “controlled substance,” but alcoholism is a disability if it substantially limits one or more major life activities.

“Because MAT related medications are prescribed and are taken under the supervision of a licensed health care professional, MAT is not the illegal use of drugs.”

“Persons receiving MAT cannot be, by virtue of that fact, excluded from protection under federal disability rights laws.”

# U.S. Department of Justice Action – 2022



## Department of Justice Finds PA Court System Violated Federal Law By Banning Medication for Opioid Use Disorder

Sally Friedman, Rebekah Joab


February 3, 2022

As stated in the Department of Justice's (DOJ) letter of findings, "The Department has determined that the UJS, through the actions of its component courts, violated Title II of the ADA by at times prohibiting and at other times limiting the use of disability-related medication to treat OUD by individuals under court supervision."

Department of Justice

U.S. Attorney's Office

District of Massachusetts

SHARE 

FOR IMMEDIATE RELEASE

Thursday, March 24, 2022

### U.S. Attorney's Office Settles Disability Discrimination Allegations with the Massachusetts Trial Court Concerning Access to Medications for Opioid Use Disorder

BOSTON – United States Attorney Rachael S. Rollins announced today that an agreement has been reached with the Massachusetts Trial Court to resolve allegations that its drug court violated the Americans with Disabilities Act (ADA) by discriminating against individuals with Opioid Use Disorder (OUD).



# Recovery Support Groups: Intent

## ENGAGE IN EARLY AND OFTEN

- Introducing recovery and peer supports as early as possible is critical
- More meetings are better



# Recovery Support Groups: Impact

## ENGAGE IN EARLY AND OFTEN

- Mandating too soon
- What's the research say about the number of meetings?
- Balancing act
  - Other requirements
  - Life
- What meetings are available and “approved”?



# Responding to Behavior: Intent



## CERTAINTY OF RESPONSE

- Matching infraction to set sanction
- Automatic termination

## TREATING EVERYONE THE SAME

- Structure is necessary for understanding and compliance

## SANCTIONING FOR USE

- Sending a message that use isn't acceptable

## EXPECTATION OF HONESTY

# Responding to Behavior: Impact



## CERTAINTY OF RESPONSE

- Doesn't allow for consideration of factors influencing behavior

## TREATING EVERYONE THE SAME

- Individualizing all programming
- Reasonable expectations for life changes

# Responding to Use: Impact

## SANCTIONING FOR USE

Creating an expectation that may be impossible to achieve

## EXPECTATION OF HONESTY

Does our response support honesty?



# Accept



**A**ssess what is and is not working in the treatment plan

**C**hange the treatment plan to address those identified problems or priorities

**C**heck the treatment contract if the participant is reluctant to modify the treatment plan

**E**xpect effort in a positive direction – “do treatment” not “do time”

**P**olicies that permit mistakes and honesty; not zero tolerance

**T**rack outcomes in real time – functional change (attitudes, thoughts, behaviors” not compliance with a program

# Using Jail: Intent



## AS A SANCTION

- Sends a message
- The longer the better

## AS A RESPONSE TO USE

- Protecting public safety
- To protect her/him/they from overdosing



# Using Jail: Impact

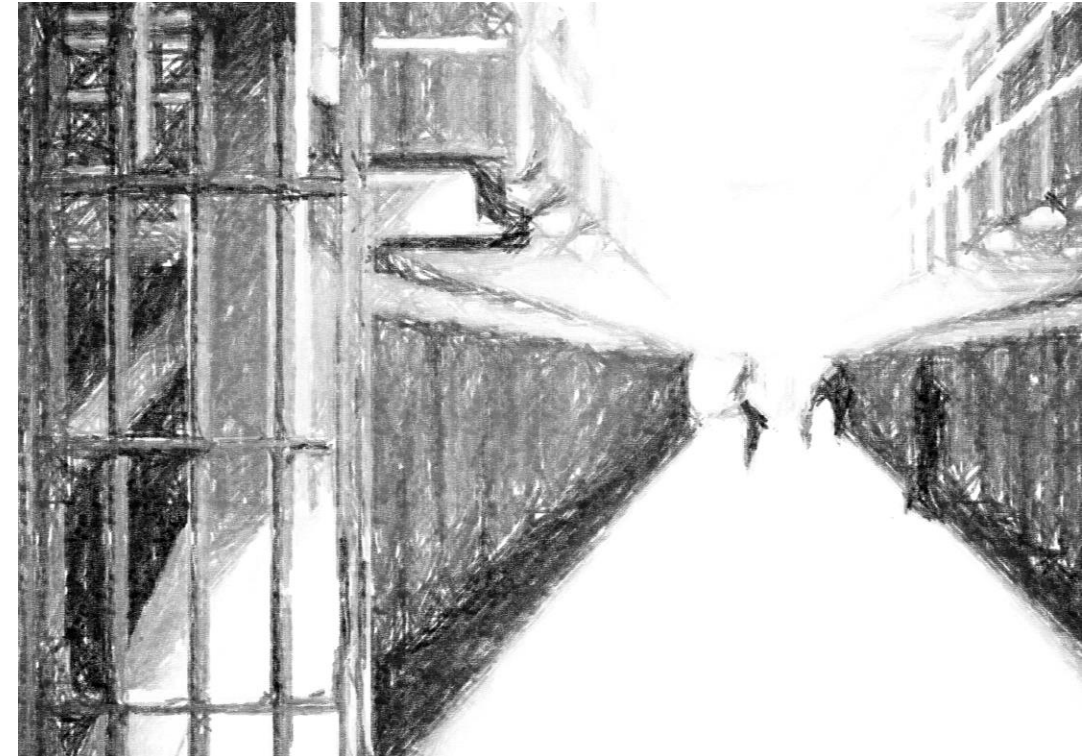


## AS A SANCTION

- Not everyone responds to jail in the same way
- Ceiling effect
- Long jail terms have a reverse effect

## AS A RESPONSE TO USE

- Balancing public safety and therapeutic responses
- Keeping the participant “safe” could cause death



# Why We Do Not Incarcerate for Use

Among women incarcerated in local jails, the average annual mortality rate due to drug/alcohol intoxication was nearly twice that of their male counterparts.

The median length of stay in jail before death from alcohol or drug intoxication was just **one day**.

BUREAU OF JUSTICE ASSISTANCE

## MANAGING SUBSTANCE WITHDRAWAL IN JAILS: A LEGAL BRIEF

A disproportionate number of people in jails have substance use disorders (SUDs).<sup>1</sup> Incarceration provides a valuable opportunity for identifying SUD and addressing withdrawal.<sup>2</sup> Within the first few hours and days of detainment, individuals who have suddenly stopped using alcohol, opioids, or other drugs may experience withdrawal symptoms, particularly when they have used the substances heavily or long-term. Without its identification and timely subsequent medical attention, withdrawal can lead to serious injury or death.

Deaths from withdrawal are preventable, and jail administrators have a pressing responsibility to establish and implement withdrawal policy and protocols that will save lives and ensure legal compliance. This brief describes the scope of the challenge, provides an overview of constitutional rights and key legislation related to substance use withdrawal, and outlines steps for creating a comprehensive response to SUD.

### Scope of the Challenge

Among sentenced individuals in jail, 63 percent have an SUD, compared to 5 percent of adults who are not incarcerated.<sup>3</sup> From 2000 to 2019, the number of local jail inmates who died from all causes increased 33 percent; the number who died from drug/alcohol intoxication during the same period increased 397 percent.<sup>4</sup> Among women

\* As noted in the Substance Abuse and Mental Health Services Administration's *Use of Medication-Assisted Treatment for Opioid Use Disorder in Criminal Justice Settings* (2019), medically supported withdrawal (also referred to as medical detoxification) is "designed to alleviate acute physiological effects of opioids or other substances while minimizing withdrawal discomfort, cravings, and other symptoms."

When Kelly Coltrain was booked for unpaid traffic violations in 2017, she told jail staff that she was drug dependent and had a history of seizures. Her request to go to the hospital for help with withdrawal symptoms was denied. She was placed in a cell that required 30-minute checks, but these checks rarely occurred. For the next 3 days, she was observed (by video camera) vomiting, sleeping often, and eating little. On her third night in jail, she started convulsing; then, all movement ceased. For at least the next 4 hours, no deputies or medical staff came to the cell to determine why she was still. Kelly's family filed a wrongful death suit, which was settled in 2019 for \$2 million plus 4 years of federal district court monitoring of the jail during implementation of new policies and procedures to ensure proper care of inmates at risk of withdrawal.<sup>2</sup>

incarcerated in local jails, the average annual mortality rate due to drug/alcohol intoxication was nearly twice that of their male counterparts.<sup>5</sup> The median length of stay in jail before death from alcohol or drug intoxication was just 1 day,<sup>6</sup> indicating that individuals on short stays, including those who are detained in pretrial status, are equally at risk.

It is not uncommon for individuals to experience substance withdrawal at the time of entry into jail, when access to their drug of choice is abruptly stopped. Estimates within specific regions vary widely, from 17 percent of people entering New York City jails being in acute opioid withdrawal<sup>7</sup> to a record 81 percent of people entering a Pennsylvania county jail needing detoxification services—half of them for opioid use disorders.<sup>8</sup>

This project was supported by Grant No. 2019-AR-BX-K061 to Advocates for Human Potential, Inc. awarded by the Bureau of Justice Assistance, a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Advocates for Human Potential, Inc. was supported by the Addiction and Public Policy Initiative of the O'Neill Institute for National and Global Health Law at Georgetown University Law Center. This project was developed in partnership with the National Institute of Corrections, an agency within the Department of Justice's Federal Bureau of Prisons.



February 2022  
<https://bja.ojp.gov>



# Fines and Fees: Intent



## SUSTAINABILITY OF THE PROGRAM

- Collected money will buy things we need

## ACCOUNTABILITY AND RESPONSIBILITY

- Instills motivation





# Fines and Fees: Intent



## ACTIVITY

- At your table/as a team, write down all of the fines and fees required of your participants
- Include court costs/fines, program fees, supervision fees, UA testing fees, technology fees, treatment costs... anything out of pocket
- Determine the monthly responsibility for a participant



# Fines and Fees: Impact



## REPORT OUT

# Fines and Fees: Impact



- Some people who owe financial sanctions “remain trapped in the criminal legal system, and are exposed to greater debt, harsh punishments, longer involvement in the system, financial tumult, barriers to obtaining wealth and stability, and the near-constant threat of incarceration.” –*“Paying on Probation” Harvard Law School (2020)*
- Resources devoted to collecting and enforcing fees and fines could be better spent on efforts that actually improve public safety. –*“The Steep Costs of Criminal Justice Fees and Fines” Brennan Center for Justice (2019)*
- Indebtedness has serious effects on health. –*“Health Effects of Indebtedness: A Systematic Review” Turunen & Hiilamo (2014)*

# Fines and Fees: Impact

## IMPACT OF REQUIREMENT TO PAY COURT FEES IN ORDER TO GRADUATE

- Resulted in a 197% increase in disparity in graduation rates between black participants and white participants



# Fines and Fees: Impact



## SUSTAINABILITY OF THE PROGRAM

- Have you reviewed if this is impactful on sustainability?

## ACCOUNTABILITY AND RESPONSIBILITY

- What financial expectations do we have of our participants outside of fines and fees?
- What do we hope for our participants (recovery capital)?

**TREATMENT COURTS ARE  
OFTEN TARGETED BY  
OPPONENTS FOR THE ATTEMPT  
TO SUPPORT THE SYSTEM ON  
THE BACKS OF PARTICIPANTS**



# Final Words

- Be sure that the program intent achieves the anticipated impact
- Understand the research and apply is appropriately
- Individualization matters



**“THE ROAD TO HELL IS PAVED  
WITH GOOD INTENTIONS.”**

***--ENGLISH PROVERB***

# AIIRise

**Treatment  
Court Institute**  
↑

**Impaired  
Driving Solutions**  
↑

**Justice  
for Vets**  
↑

**Center for  
Advancing Justice**  
↑

---

All Rise is the training, membership, and advocacy organization for justice system innovation addressing substance use and mental health at every intercept point.

Through its four divisions—the Treatment Court Institute, Impaired Driving Solutions, Justice for Vets, and the Center for Advancing Justice—All Rise provides training and technical assistance at the local and national level, advocates for federal and state funding, and collaborates with public and private entities.

