

# THE NEED FOR WITHDRAWAL MANAGEMENT IN CORRECTIONAL SETTINGS

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## INTRODUCTION

Withdrawal syndrome occurs in individuals who have developed physiological dependence on a substance and who discontinue or reduce their use of it.<sup>1</sup> The signs and symptoms of withdrawal syndrome vary depending on the substance discontinued, but may include vomiting, seizures, heart problems, and even death.<sup>2</sup> Individuals who use drugs or alcohol prior to incarceration may experience the onset of withdrawal syndrome while in a correctional setting.<sup>3</sup> To reduce the pain and discomfort of withdrawal syndrome experienced by detainees, as well as decrease the non-trivial risk to them of serious injury or death associated with untreated symptoms, correctional settings should offer withdrawal management services to assess, monitor, and address acute physical symptoms.<sup>4</sup> Correctional settings that fail to provide proper withdrawal management services can cause serious physical harm to incarcerated individuals, commit constitutional violations, and face costly lawsuits.

## WITHDRAWAL IN CORRECTIONAL SETTINGS

Fifty-nine percent of individuals in state prisons and 63 percent of individuals in jails meet the criteria for substance use disorder (SUD).<sup>5,6</sup> It is not uncommon for many of these individuals to experience withdrawal syndrome upon entering a correctional setting because they are abruptly cut off from substances that they regularly ingest. Newly incarcerated individuals often require medical intervention to mitigate the effects of withdrawal symptoms and prevent death, suicide, and injury while in custody. Not only does this apply to individuals who use illegal drugs and/or alcohol, but withdrawal syndrome can occur from the sudden stoppage of legally prescribed medication for addiction treatment (MAT), such as methadone or buprenorphine.

Data show that providing safe withdrawal management in custody is imperative, particularly in jails, which house a transient population, many of whom are recent commitments and thus have had recent access to drugs and alcohol. For example, a survey of about 40 percent of Ohio's jails (40 of 106) revealed that 24,000 individuals received detoxification services during 2015.<sup>7</sup> The Westmoreland County Prison in western Pennsylvania reported that in the months of August and September 2020 respectively, 70 and 87 percent of its newly

<sup>1</sup> Nathanael J. McKeown, et al., "Withdrawal Syndromes," *Medscape*, July 13, 2022, <https://emedicine.medscape.com/article/819502-overview>.

<sup>2</sup> "Managing Substance Withdrawal in Jails: A Legal Brief," Bureau of Justice Assistance, last modified Feb. 2022, <https://bja.ojp.gov/doc/managing-substance-withdrawal-in-jails.pdf>.

<sup>3</sup> The phrase "correctional setting" encompasses a jail, prison, adult or juvenile detention center, correctional facility, or another environment in which an individual is confined by a federal, state, or local entity. Jails and prisons are the most common of these.

<sup>4</sup> "Managing Substance Withdrawal in Jails: A Legal Brief," *supra* note 2.

<sup>5</sup> "Jail Resource Center," BJA's Comprehensive Opioid, Stimulant, and Substance Abuse Program, accessed December 1, 2022, <https://www.cossapresources.org/Tools/JRC>.

<sup>6</sup> Jails confine individuals before or after trial and are usually operated by local law enforcement authorities such as a sheriff, a police chief, or a county or city administrator. Individuals housed in jails after conviction typically face sentences of less than one year. Prisons confine individuals convicted of felonies and are usually operated by a state department of corrections or the Federal Bureau of Prisons. Individuals housed in prisons typically face sentences longer than one year. *Correctional Institutions*, BUREAU OF JUSTICE RESEARCH, <https://bjs.ojp.gov/topics/corrections/correctional-institutions> (last accessed Dec. 1, 2022).

<sup>7</sup> Rachel Disell, "Ohio Jails Accept Role as States Busiest Opioid Detox Centers," *Cleveland*, Oct. 1, 2017, [https://www.cleveland.com/metro/2017/10/ohio\\_jails\\_accept\\_role\\_as\\_states\\_busiest\\_opioid\\_detox\\_centers.html](https://www.cleveland.com/metro/2017/10/ohio_jails_accept_role_as_states_busiest_opioid_detox_centers.html).

incarcerated individuals “needed to detox” upon arrival.<sup>8</sup> Nonetheless, a 2017 survey conducted by the Bureau of Justice Assistance, U.S. Department of Justice, found that just 19 percent of people serving sentences in jails who met the diagnostic criteria for “substance abuse or dependence” received any type of drug treatment while incarcerated.<sup>9</sup>

Failing to manage withdrawal syndrome can lead to serious health complications, including anxiety, depression, seizures, vomiting, dehydration, heart problems, hallucinations, tremors, and death.<sup>10</sup> In pregnant individuals, withdrawal syndrome can also result in premature labor, fetal distress, and miscarriage.<sup>11</sup> Untreated withdrawal in custody exacerbates the risk of suicide, particularly for individuals with underlying mental health conditions which are prevalent among individuals in custody. A 2017 Bureau of Justice Statistics, U.S. Department of Justice, report found that 44 percent of people in jails had a prior mental health disorder diagnosis by a professional.<sup>12,13</sup> Moreover, nearly 50 percent of incarcerated people with mental health disorders have a history of non-medical drug use.<sup>14</sup> From 2000 to 2019, the number of jail inmates who died from drug or alcohol intoxication during the year increased 397 percent, from 37 to 184, with most of the increase occurring after 2013.<sup>15</sup> Individuals in custody who died of drug or alcohol intoxication during those 20 years served a median of *one day* in jail prior to death, highlighting the need for immediate withdrawal management services upon intake, including for those detained in pretrial status.<sup>16</sup> Furthermore, from 2000 to 2019, suicide has remained the leading cause of death among jail inmates.<sup>17</sup>

## LEGAL IMPLICATIONS

The failure of a correctional setting to provide individuals with withdrawal management services can open it up to legal liability through several avenues. Jails, prisons, and other correctional facilities without administrative protocols addressing withdrawal in custody may violate federal and state civil rights laws, including the Americans with Disabilities Act,<sup>18</sup> the Eighth Amendment as applied to the states under the due process clause of the Fourteenth Amendment,<sup>19</sup> and the Civil Rights Act of 1871.<sup>20</sup> Additionally, the facility itself, along with its administration and staff, may be liable for the death or injury of an incarcerated individual based on state tort law

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<sup>8</sup> Westmoreland County Prison Board Meeting Minutes, October 26, 2020,

<https://www.co.westmoreland.pa.us/ArchiveCenter/ViewFile/Item/3058>.

<sup>9</sup> Jennifer Bronson and Jessica Stroop, “Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009,” *Bureau of Justice Statistics, U.S. Department of Justice*, June 2017, 13, <https://bjs.ojp.gov/content/pub/pdf/dudaspi0709.pdf>.

<sup>10</sup> “Managing Substance Withdrawal in Jails: A Legal Brief,” *supra*, note 2.

<sup>11</sup> “Jail-based Medication-assisted Treatment: Promising Practices, Guidelines, and Resources for the Field,” *National Commission on Correctional Health Care*, October 2018, 14, <https://www.ncchc.org/wp-content/uploads/Jail-Based-MAT-PPG-web.pdf>.

<sup>12</sup> Jennifer Bronson and Marcus Berzofsky, “Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12,” *Bureau of Justice Statistics, U.S. Department of Justice*, June 2017, 3, <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>.

<sup>13</sup> Indeed, according to the Westmoreland County Prison Board meeting minutes, 53% of the prison’s inmates were “on psych meds” in September 2020. Westmoreland County, *supra* note 8, at 2.

<sup>14</sup> Tala Al-Rousan et al., “Inside the Nation’s Largest Mental Health Institution: A Prevalence Study in a State Prison System,” *BMC Public Health* 17, no. 342 (April 2017), <https://doi.org/10.1186/s12889-017-4257-0>.

<sup>15</sup> “Managing Substance Withdrawal in Jails: A Legal Brief,” *supra* note 2, citing to E. Ann Carson, “Mortality in Local Jails, 2000-2019 -Statistical Tables,” U.S. Department of Justice Office of Justice Programs (December 2021), <https://bjs.ojp.gov/content/pub/pdf/mlj0019st.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2018). According to courts, individuals in recovery from opioid use disorder who are on MAT may face discrimination due to their record of impairment and thus, Congress intends for the ADA to protect those individuals from discrimination.

<sup>19</sup> *See* U.S. CONST. amend. VIII; U.S. CONST. amend. XIV § 1. Inmates’ base Eighth Amendment allegations on a claim of deliberate indifference due to inadequate or delayed medical care.

<sup>20</sup> The Civil Rights Act of 1871, 42 U.S.C. § 1983 (1996). The 1871 Civil Rights Act attaches personal liability to anyone “acting under color” of state law to violate the constitutional rights of another.

claims, including wrongful death, medical malpractice, and intentional infliction of emotional distress.<sup>21</sup> Litigation stemming from inadequate withdrawal management services increases costs to states and local governments through expensive settlements or judgments. For example, in October 2018, Lebanon County, Pennsylvania agreed to a \$4.75 million settlement with the estate of a man who died in custody while suffering from heroin withdrawal.<sup>22</sup> In January 2022, the Cherokee County, North Carolina Sheriff's Department reached a settlement for \$1.8 million with the estate of a man who died after overdosing on methamphetamine while in custody.<sup>23</sup> Here, the decedent's estate alleged that the sheriff's department's failure to provide the decedent with any medical screening or to react to his potential ingestion of an unknown quantity of a controlled substance and then failing to send him for emergency medical treatment in a timely manner resulted in his death.<sup>24</sup> In an analysis of civil lawsuits against jails for deaths in custody that reached a conclusion between 2015 and 2020, researchers found that: (1) 19 percent (69 of 359) involved deaths caused by withdrawal syndrome or overdose; and (2) the average settlement or jury award in those cases exceeded \$1 million, with the largest award exceeding \$12.8 million.<sup>25</sup>

## ESTABLISHING WITHDRAWAL MANAGEMENT SERVICES

Correctional settings can prevent serious harm and death and avoid exposure to costly litigation by creating and enacting policies that ensure adequate withdrawal management services for detained individuals. There is a consensus among several advisory organizations, including the Federal Bureau of Prisons, the World Health Organization, and the National Commission on Correctional Healthcare (NCCHC), that medically supervised withdrawal from alcohol or drugs is ideal.<sup>26</sup> Experts warn that the use of administrative segregation—also known as solitary confinement—by correctional facilities poses dangerous risks to individuals in custody experiencing withdrawal symptoms. Using administrative segregation to manage the medical needs of individuals in custody undergoing withdrawal or mental health crises can increase the risk of severe medical and behavioral health consequences, including death by suicide.<sup>27</sup> Additionally, NCCHC standards advise that health services and monitoring of individuals in custody be provided by licensed or certified health care professionals and not cell mates.<sup>28</sup> Use of cell mates to monitor withdrawal is a regular occurrence where evidence-based protocols do not exist and is not accepted clinical practice. Partnerships with local medical providers can help correctional settings safely manage withdrawal syndrome.

A comprehensive withdrawal management policy should establish and implement evidence-based clinical and administrative protocols for ensuring safe, medically managed withdrawal from benzodiazepines, alcohol, opioids, stimulants including methamphetamine, and any other substances. Additionally, the policy should ensure that, upon entry into a correctional setting, individuals currently receiving MAT for SUD, and/or other U.S. Food and Drug Administration approved medication(s) for psychiatric and/or medical condition(s), are provided with continued care and timely access to prescribed medications while detained. To be effective, withdrawal management policies must be available to all inmates and understood by all correctional staff and third-party

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<sup>21</sup> “Managing Substance Withdrawal in Jails: A Legal Brief,” *supra* note 2.

<sup>22</sup> “Pennsylvania County to Pay \$4.75M in Inmate Death,” *The Crime Report*, last modified Oct. 25, 2018, <https://thecrimereport.org/2018/10/25/pennsylvania-county-to-pay-4-75m-in-inmate-death/>.

<sup>23</sup> *Jason Blackwell v. Derrick Palmer*, et al., U.S. District Court for the Western District of North Carolina, Case No. 1:20-cv-00146-MR-WCM (settlement reached January 3, 2022).

<sup>24</sup> *Id.*

<sup>25</sup> Shelly Weizman, et al. “Dying Inside: To End Deaths of Despair, Address the Crisis in Local Jails,” *O’Neill Institute for National and Global Health Law*, December 2022, 3, [https://oneill.law.georgetown.edu/wp-content/uploads/2022/12/ONL\\_Big\\_Ideas\\_Dying\\_Inside\\_P5.pdf](https://oneill.law.georgetown.edu/wp-content/uploads/2022/12/ONL_Big_Ideas_Dying_Inside_P5.pdf).

<sup>26</sup> Lindsey Baumgartner and Laura Brooks, “Safe Withdrawal in Jail Settings: Preventing Deaths, Reducing Risk to Counties and States,” Center for Health and Justice at TASC, last modified January 2018, [https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail\\_010918.pdf](https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail_010918.pdf).

<sup>27</sup> Susan Pollitt & Luke Woollard, “Barriers to Access and Inadequate Levels of Care in North Carolina Jails,” 80 *North Carolina Medical Journal* 80, no. 6 (Nov. 2019): 345–346, <https://doi.org/10.18043/ncm.80.6.345>.

<sup>28</sup> “Jail-based Medication-assisted treatment,” *supra* note 11, at 22.

medical providers. Correctional and health care staff should be trained on the signs, symptoms, and treatment protocols related to withdrawal syndrome, SUDs, and related medical and health conditions. Furthermore, correctional settings should conduct ongoing evaluation of practices and implement quality control measures to identify where changes or updates to their withdrawal management policies and protocols are needed. The Legislative Analysis and Public Policy Association, in collaboration with the O'Neill Institute for National & Global Health Law at Georgetown University Law Center, released the [Model Withdrawal Management Protocol in Correctional Settings Act](#) in July 2021 (the Model Act). This Model Act provides state legislators, policymakers, and those in the correctional and health care professions with a comprehensive framework to better respond to withdrawal syndrome symptoms and related mental health crises of individuals in custody to decrease their mortality while in correctional settings. Among other things, the Model Act: (1) requires correctional settings to establish and follow a comprehensive withdrawal management protocol for initial and ongoing screening, assessment, and medical management of withdrawal for all individuals in custody; and (2) specifies necessary elements of the protocol, minimum required care, continuity of pre-custodial care, and a procedure for discontinuing care.

## CONCLUSION

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Correctional settings are key points of intervention for addressing mental health disorders, SUDs, and preventing related injury and death. Through the implementation of withdrawal management protocols, correctional settings can save lives and avoid costly litigation and settlements.

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