

THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Sustainability Efforts: Substance Use Model Legislation

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Legislative Analysis and Public Policy Association (LAPPA)

ABOUT LAPPA



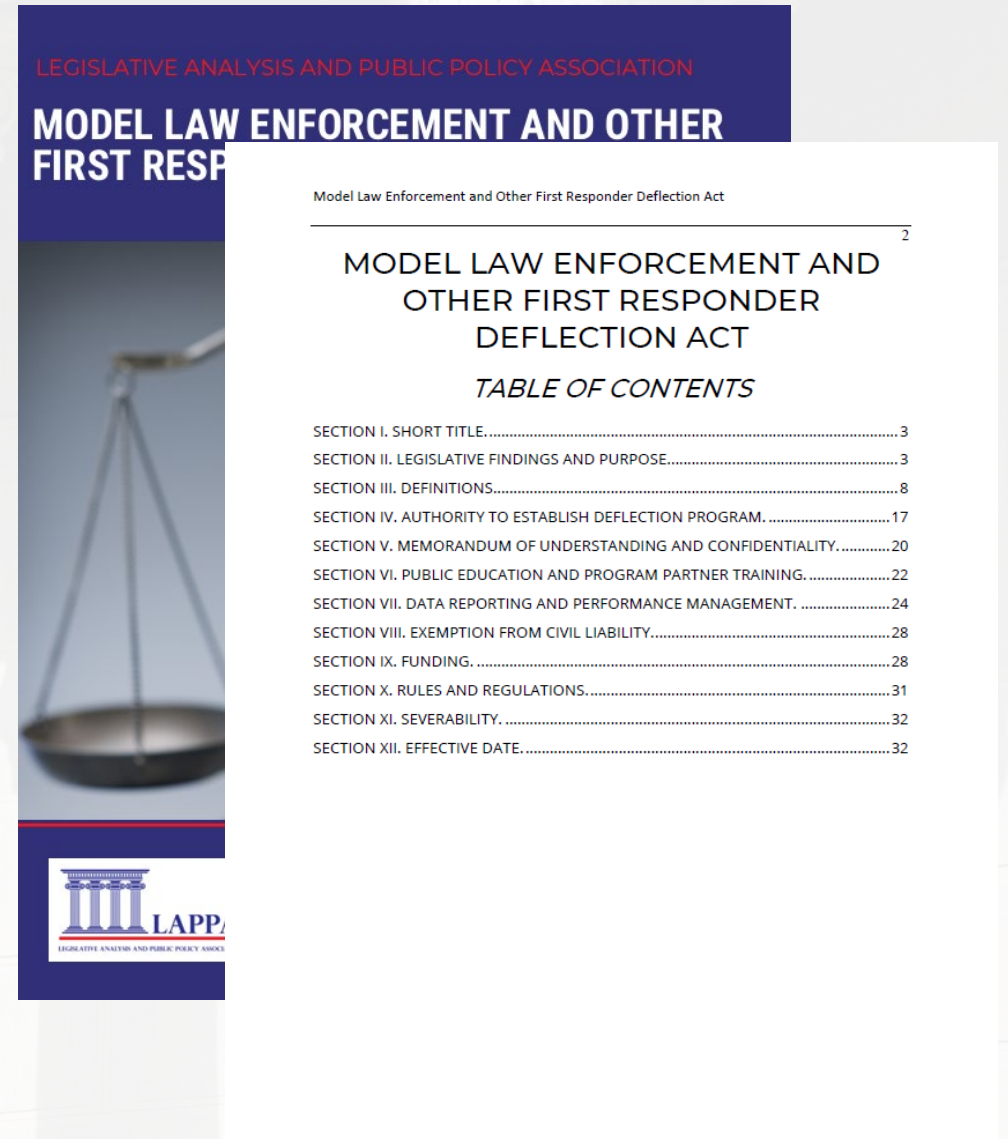
501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

ONDCP's Model Acts Program Grant recipient for 2019-21 and 2021-23.

www.legislativeanalysis.org

What is model legislation?

- Stand alone document that could be turned into bill
- Provides stakeholders with ideas about revisions to current laws
- Educates legislators and stakeholders about the underlying issues (“commentary”)
- LAPPA focuses on state laws



What is model legislation?

- “Lay of the land” → summary of laws in 50 states + D.C. + territories
- LAPPA’s funding sources focus on drug laws, SUD, and SUD treatment

OREGON	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • OR. REV. STAT. ANN. § 689.681 (immunity provisions). • OR. REV. STAT. ANN. § 689.682 (pharmacist prescription). • OR. REV. STAT. ANN. § 689.684 (naloxone administered by employee of social services agency). • Or. Admin. R. 855-019-0460 (co-prescription provision). • OR. REV. STAT. ANN. § 431A.855 (reporting to PDMP). • OR. REV. STAT. ANN. § 689.686 (written notice of naloxone availability). • OR. REV. STAT. ANN. § 339.871 (naloxone in schools- immunity). • OR. REV. STAT. ANN. § 339.869 (naloxone in schools- policy).
Initial effective date(s)	<ul style="list-style-type: none"> • June 6, 2013 (OR. REV. STAT. ANN. § 689.681). • April 4, 2016 (OR. REV. STAT. ANN. § 689.682 and 689.684). • September 7, 2016 (Or. Admin. R. 855-019-0460). • October 6, 2017 (OR. REV. STAT. ANN. § 431A.855). • September 29, 2019 (OR. REV. STAT. ANN. § 689.686). • January 1, 2020 (OR. REV. STAT. ANN. § 339.871 and 339.869).
Term(s) used	Naloxone.
Substantive amendment(s) to law(s)	<ul style="list-style-type: none"> • October 6, 2017 amendment to OR. REV. STAT. ANN. § 689.681 removes the requirement that the Oregon Health Authority establish criteria for training on treatments for opiate overdoses and removes the requirement that persons have completed the training in order to receive immunity for any act or omission committed during the course of administering naloxone. • September 29, 2019 amendment to OR. REV. STAT. ANN. § 689.682 allows a pharmacy to co-prescribe naloxone with an opioid. • January 1, 2020 amendment to OR. REV. STAT. ANN. § 689.684 allows a person to administer naloxone not distributed to him or her if the person is an employee of a social services agency or is trained under the rules adopted by the Oregon Board of Education.
Standing order	Under OR. REV. STAT. ANN. § 689.682, a pharmacist may prescribe naloxone and the necessary medical supplies to administer the naloxone. It is not necessary for the individual to see their healthcare provider first to obtain a prescription.
Persons who can prescribe	<ul style="list-style-type: none"> • “Health care professional.” The term is not defined by statute. • Pharmacist.
Prescriber immunity	Not addressed by statute.

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How can (model) legislation support sustainability?

- Incentivize (fund) voluntary initiatives meeting certain requirements
- Require initiatives to begin and remain ongoing
- Lessen/remove penalties for low-level criminal offenses
- Require data collection/reporting to understand effects of initiative

Do any other ways come to mind?

What do you wish legislation in your state would do?

How can (model) legislation support sustainability?

- Remainder of presentation
- Use LAPPA's model laws (and real-world statutes) to:
 - ❑ Provide examples of each sustainability method
 - ❑ Generate ideas for future initiatives designed to reduce, or having the anticipated effect of reducing, incarceration
 - ❑ Prompt Q&A and/or discussion

Incentivizing through funding access

- [Model Law Enforcement and Other First Responder \(OFR\) Deflection Act](#)
- Description of the deflection pathways

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

MODEL LAW ENFORCEMENT AND OTHER FIRST RESPONDER DEFLECTION ACT

Model Law Enforcement and Other First Responder Deflection Act

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MODEL LAW ENFORCEMENT AND OTHER FIRST RESPONDER DEFLECTION ACT

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Deflection pathways

PATHWAYS TO COMMUNITY



Self-Referral • An individual voluntarily initiates contact with a first responder agency (law enforcement, fire, or EMS) for a referral to treatment and services. If the contact is initiated with a law enforcement agency, the individual makes contact without fear of arrest.

Active Outreach • A first responder intentionally identifies or seeks out individuals with SUD to refer them to or engage them in treatment and services; outreach is often done by a team consisting of a behavioral health professional and/or peer with lived experience.

Naloxone Plus • A first responder and program partner (often a behavioral health professional or peer with lived experience) conduct outreach *specifically* to individuals who have recently experienced an opioid overdose to engage them in and provide linkages to treatment and services.

First Responder and Officer Referral • As a preventative approach, during routine activities such as patrol or response to a service call, a first responder engages individuals and provides a referral to treatment, services, or to a case manager. *(Note: if law enforcement is the first responder, no charges are filed or arrests made.)*

***Officer Intervention** • (Only applicable to law enforcement) During routine activities such as patrol or response to a service call during which charges otherwise would be filed, law enforcement provides a referral to treatment, services, or to a case manager, or issues a non-criminal citation to report to a program. Charges are held in abeyance until treatment and/or a social service plan is successfully completed.

Community Response • In response to a call for service, a team comprising community-based behavioral health professionals (e.g., crisis workers, clinicians, peer specialists, etc.), and/or other credible messengers—individuals with lived experience—sometimes in partnership with medical professionals, engages individuals to help de-escalate crises, mediate low-level conflicts, or address quality of life issues by providing a referral to treatment, services, or to a case manager.

To learn more about PTACC, contact Jac Charlier, Executive Director
at info@ptaccollaborative.org

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Incentivizing through funding access

- [Model Law Enforcement and Other First Responder \(OFR\) Deflection Act](#)
- Description of the deflection pathways
- Authorization (but no requirement) for LE and OFR to start these initiatives
- Grants available for deflection initiatives that collect data, involve collaboration, provide certain services, etc.

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

MODEL LAW ENFORCEMENT AND OTHER FIRST RESPONDER DEFLECTION ACT

Model Law Enforcement and Other First Responder Deflection Act

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Incentivizing through funding access

(d) To receive funding for activities as described in Section 35 of this Act, planning for the deflection program shall include:

- (1) the involvement of one or more licensed treatment programs and one or more community members or organizations; and
- (2) an agreement with the Illinois Criminal Justice Information Authority to collect and evaluate relevant statistical data related to the program, as established by the Illinois Criminal Justice Information Authority in paragraph (2) of subsection (a) of Section 25 of this Act.
- (3) an agreement with participating licensed treatment providers authorizing the release of statistical data to the Illinois Criminal Justice Information Authority, in compliance with State and Federal law, as established by the Illinois Criminal Justice Information Authority in paragraph (2) of subsection (a) of Section 25 of this Act.

Illinois – 5 ILL. CONS. STAT 820/15 (West 2023)

(g) Eligibility for funding.—A deflection program is not eligible to receive funding pursuant to this section unless the deflection program:

- (1) Meets the requirements provided for in sections IV(b), VI(d), and VII(f); and
- (2) Includes, as one of its program activities, harm reduction services, including providing naloxone and related supplies essential for carrying out overdose reversal for distribution to program participants or for use by law enforcement or other first responders.

Model Act – Section IX(d)

Require initiatives to commence and continue

- [Model Access to Medication for Addiction Treatment in Correctional Settings Act](#)

SECTION IV. MEDICATION FOR ADDICTION TREATMENT PROGRAM IN CORRECTIONAL SETTINGS.

(a) In general.— The [Commissioner of the Department of Health]¹⁵, in conjunction with the [Commissioner of the Department of Corrections], the state director for alcohol and drug treatment, and any other state agency as appropriate, shall establish a medication for addiction treatment program to be administered in correctional settings in the state. Pursuant to this Act, the program shall include:

- (1) Access to all forms of medication for addiction treatment for the duration of a program participant's incarceration; and
- (2) Initial and ongoing training and technical assistance for correctional setting staff, including health care practitioners, in each facility.

Require initiatives to commence and continue

- Model Access to Medication for Addiction Treatment in Correctional Settings Act

(d) Minimum required services. — Services provided in this section shall include, but not are not limited to, the following:

- (1) Benzodiazepine, stimulant, heroin, alcohol, and opioid withdrawal management;
- (2) Access to all forms of medication for addiction treatment to ensure that each program participant receives the particular form found to be the most effective at treating and meeting their individual needs;
- (3) Group and individual counseling and clinical support;
- (4) Peer support services;
- (5) Reentry planning; and
- (6) Reentry and transitional support.

Require initiatives to commence and continue

Effective: March 7, 2020

MD Code, Correctional Services, § 9-603

§ 9-603. Opioid use disorder screening, evaluation, and treatment

Maryland

Effective: October 1, 2019

MD Code, Correctional Services, § 9-603.1

§ 9-603.1. Opioid use disorders; medication-assisted treatment program

Require initiatives to commence and continue

SECTION IV. SUBSTANCE USE DISORDER TREATMENT IN HOSPITALS AND FREESTANDING EMERGENCY DEPARTMENTS.

- [Model Substance Use Disorder Treatment in Emergency Settings Act](#)

- (a) In general.—Every hospital or freestanding emergency department shall offer a suite of services to patients presenting with a substance use-related emergency that includes:
- (1) Stabilization, as defined in this Act;
 - (2) Initiation of treatment with buprenorphine or methadone for patients with opioid use disorder, and initiation of treatment with medications for addiction treatment for patients with other types of substance use disorders;
 - (3) Information about options for substance use disorder treatment, mental health treatment and support, peer support services, harm reduction services, overdose prevention hotline(s) such as the “Never Use Alone” hotlines; and recovery support services;
 - (4) Comprehensive discharge planning that includes:
 - (A) A timely virtual or in-person appointment with a substance use disorder treatment provider;
 - (B) For patients with opioid use disorder, a sufficient supply of buprenorphine or methadone, dispensed in accordance with 21 CFR § 1306.07(b), to last until the patient’s appointment with a substance use disorder treatment provider or until a medication plan can be implemented;

Require initiatives to commence and continue

- [Model Substance Use Disorder Treatment in Emergency Settings Act](#)

- (C) Affirmative connection to a peer support professional through an in-person meeting, by phone, electronically, or virtually, before the patient is discharged;
 - (D) Facilitation of transportation to the scheduled appointment with the substance use disorder treatment provider, either by the peer support professional or other means;
 - (E) Naloxone in hand and instructions on use;
 - (F) Referral to a harm reduction services provider;
 - (G) Referral to a mental health provider, if clinically indicated; and
 - (H) Communication with the patient's emergency contact, current substance use disorder treatment provider, recovery support system, and/or primary care provider(s), as applicable and permitted under state and federal laws, to coordinate post-discharge follow-up care.
- (5) Any other standards developed by the [STATE HEALTH AUTHORITY] pursuant to Section VI of this Act.

Require initiatives to commence and continue

- [Model Substance Use Disorder Treatment in Emergency Settings Act](#)

SECTION VII. COMPLIANCE.

- (a) In general.—[STATE HEALTH AUTHORITY] shall work with the relevant regulatory and/or inspection agencies to regularly inspect hospitals and freestanding emergency departments to ensure compliance with the Act and applicable regulations and standards developed pursuant to Sections VI and XIV.
- (b) Corrections of violations.—If the [STATE HEALTH AUTHORITY] finds, upon inspection or through information in its possession, that a facility is not in compliance, the [STATE HEALTH AUTHORITY] shall order the facility to correct such violation by issuing a corrective action order, which shall provide the facility notice, in writing, of each violation.
- (c) Corrective action order.—In such corrective action orders, the [STATE HEALTH AUTHORITY] shall specify a reasonable time, not to exceed [NUMBER] days after receipt thereof, by which time the facility shall remedy or correct each violation cited therein; provided, that, in the case of any violation which, in the opinion of the department, is not capable of correction within [NUMBER] days, the department shall require only that the facility submit a written plan for correction of the violation in a reasonable manner.

Require initiatives to commence and continue

Effective: July 1, 2013

C.G.S.A. § 19a-490h

§ 19a-490h. Emergency room screening of trauma patients for substance abuse. Assistance by Department of Mental Health and Addiction Services

Connecticut

Effective: July 25, 2020

Gen.Laws 1956, § 23-17.26-3

§ 23-17.26-3. Comprehensive discharge planning

Rhode Island

Require initiatives to commence and continue

- [Model School Response to Drugs and Drug-related Incidents Act](#)

SECTION IV. RESPONSE PLAN.

- (a) In general.—Every public school district located within [State] shall establish and follow a consistent and multi-level response plan for [State] public schools to support students who are involved in any non-violent incident that includes the use or possession of drugs or controlled substances on school premises or at a school-related function as provided in this Act.
- (b) Required elements.—A response plan must include at least the following elements:
- (1) An internal fact-finding system to appropriately determine the level of an incident before a response is made, to include at a minimum:
 - (A) A determination of the following relevant factors:
 - (i) What drug(s) is/are involved;
 - (ii) Whether there are any immediate health concern (*e.g.*, overdose);
 - (iii) Where the student(s) obtained the drug(s);
 - (iv) If the student(s) has a history of past drug or drug-related incidents in the school; and
 - (v) In what stage is the student's use of drugs;⁴² and

Lessen penalties associated with low-level offenses

- [Model Syringe Services Program Act](#)
- Employee, staff member, consultant, volunteer, or participant of a syringe services program
- Immunity from arrest/charge/prosecution for:
 - ❑ Possessing, distributing, or furnishing hypodermic needles, syringes, or other supplies
 - ❑ Possessing controlled substance or other illicit drug due to the presence of residue
- No stop/seizure or probable cause

Lessen penalties associated with low-level offenses

- [Model Fentanyl Test Strip and Other Drug Checking Equipment Act](#)
- Notwithstanding any other law, any “person” may:
 - ❑ Obtain, possess, purchase, sell, provide, transport, distribute, use, or request another person to use DCE;
 - ❑ Possess, transport, deliver, or provide drug packaging or a nominal amount of controlled substances for, or during, analysis by DCE; or
 - ❑ Possess, provide, or communicate the results of the drug checking analysis in paper, electronic, or verbal form
- No probable cause

Lessen penalties associated with low-level offenses

- [Model Substance Use during Pregnancy and Family Care Plans Act](#)
- Provide certain protections to pregnant or postpartum individuals with SUD so that such individuals are not penalized for receiving medical treatment, including medication(s) to treat SUD
- Establish that an infant born affected by parental SUD or showing signs of withdrawal is not, by itself, grounds for submitting a report of child abuse or neglect

Data reporting and collection

- Most LAPPA model laws contain a data reporting/collection provision that leads to a publicly accessible report
- Means for legislators, initiative designers, individuals charged with implementation, and other stakeholders to measure effectiveness of it and attempt to gauge equity
- Challenges:
 - ❑ Creates additional work for over-taxed individuals and entities
 - ❑ Participant concerns about extent of personal information collected

Deflection (revisited)

- [Making Deflection the New Diversion for Drug Offenders](#)

- Advantages of prosecutor involvement in deflection:

- ❑ Manage case-level interventions for substance users
- ❑ Coordinate a consistent response among fragmented agencies
- ❑ Increase police buy-in to deflection efforts
- ❑ Presence helps to reduce participant distrust of LE



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Making Deflection the New Diversion for Drug Offenders

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Questions?

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