

Access to Medication Assisted Treatment in Jails and Prisons

Part 2: Constitutional Considerations Under the 8th and 14th Amendments

Bureau of Justice Assistance (BJA)








Residential Substance Abuse Treatment (RSAT)
Program for State Prisoners

Training and Technical Assistance Resource

This project was supported by grant No.15PBJA-22-GK-01132-RSAT awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is 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 SMART Office, and the Office for Victims of Crime. Point of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.



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Today's Speakers

Andrew Klein, Ph.D.

Senior Scientist for Criminal Justice
Advocates for Human Potential, Inc.

Michael Campion, J.D.

Assistant United States Attorney
U.S. Attorney's Office - District of New Jersey

Curtis Harris, J.D.

Trial Attorney
U.S. Department of Justice - Civil Rights Division

Learning Objectives

Upon completion of this presentation, participants will be able to:

- Understand the connection between unmanaged withdrawal and suicide, especially in jail settings.
- Identify at least two ways the 8th and 14th Amendments protect the rights of individuals with opioid use disorder.
- Learn what civil rights violations can be reported under the 8th and 14th Amendments.

Current Profile – Prison and Jail MAT Programs

Prisons

- ~33 Departments of Corrections provide MAT (excluding pregnancy)
- ~22 do not provide MAT for pregnancy
- ~16 provide agonist & antagonist medications
- ~17 provide antagonist only

Jails

- 450+ provide MAT
- 300+ provide antagonist only
- ~2,500 have no MAT
- ~1,750 have no MAT for pregnancy

Source: Jail and Prison Opioid Project, The Center for Health and Justice Transformation, <https://prisonopioidproject.org/>, Accessed January 2023

8th Amendment

Excessive bail shall not be required,
nor excessive fines imposed, *nor cruel and
unusual punishments inflicted.*



14th Amendment

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



Civil Rights of Institutionalized Persons Act (CRIPA)

42 U.S.C. §§ 1997a et seq.

- Allows the U.S. Attorney General to review and address conditions and practices within prisons and jails run by state or local governments.
- Enforced by the Special Litigation Section of DOJ's Civil Rights Division and US Attorneys' Offices



From <https://www.justice.gov/crt/rights-persons-confined-jails-and-prisons>

Civil Rights of Institutionalized Persons Act (CRIPA)

CRIPA Process

- *“After a CRIPA investigation, we can act if we identify a **systemic pattern or practice** that causes harm. Evidence of harm to one individual only - even if that harm is serious - is not enough. If we find systemic problems, we may send the state or local government a letter that describes the problems and what steps they must take to fix them. The Department will try to reach an agreement with the state or local government on how to fix the problems. If they cannot agree, then the Attorney General may file a lawsuit in federal court.”*

From <https://www.justice.gov/crt/rights-persons-confined-jails-and-prisons>

Civil Rights of Institutionalized Persons Act (CRIPA)

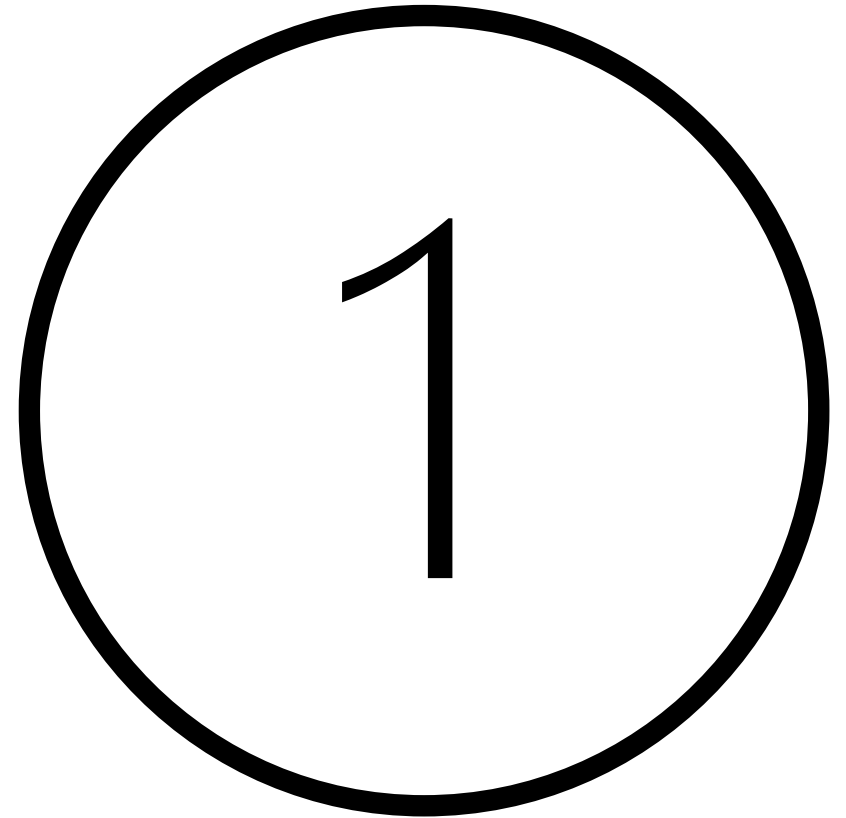
Sample of Currently Open Cases

- Alabama Prisons
- Alameda County, CA (Santa Rita Jail)
- Boyd County, KY Jail
- Cumberland, NJ County Jail
- Edna Mahan Correctional Facility for Women, NJ
- Georgia Department of Corrections
- Hinds County, MS Jail
- Lowell Correctional Institution and Annex, FL
- Mississippi Department of Corrections
- San Luis Obispo, CA County Jail

See website for full list of CRIPA matters: [Special Litigation Section Cases and Matters \(justice.gov\)](https://www.justice.gov/special-litigation-section-cases-and-matters)

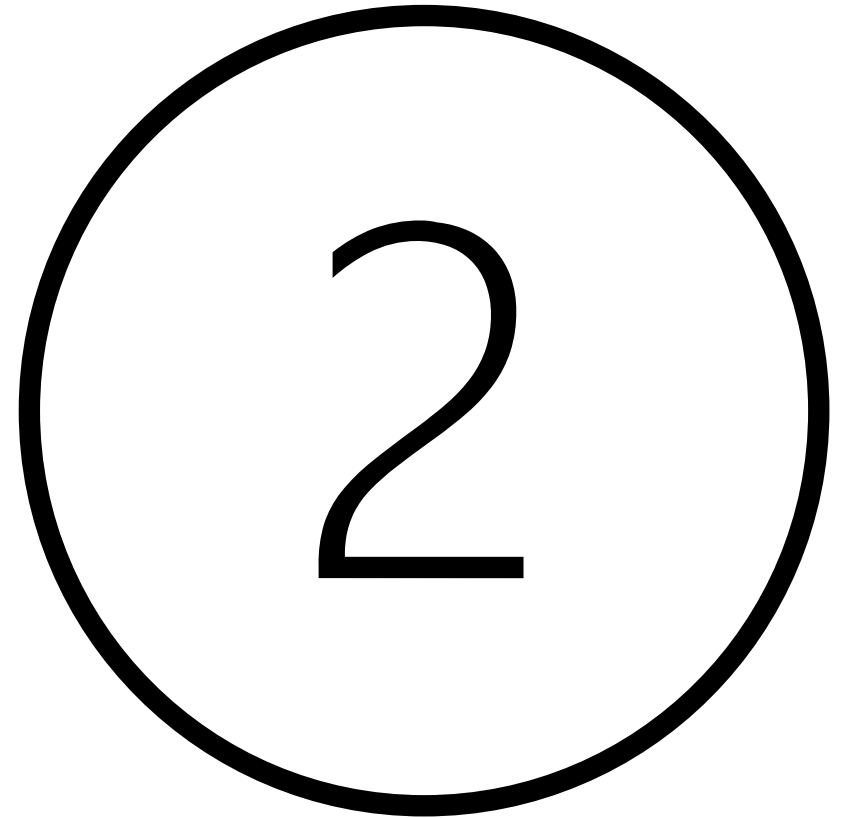
MAT Considerations for Prisons and Jails

- Individuals entering a facility who may be on prescribed buprenorphine or Methadone (enrolled in OTP) for opioid use disorder
- American with Disabilities Act (ADA) requires continuation of medication until and unless it is no longer medically indicated



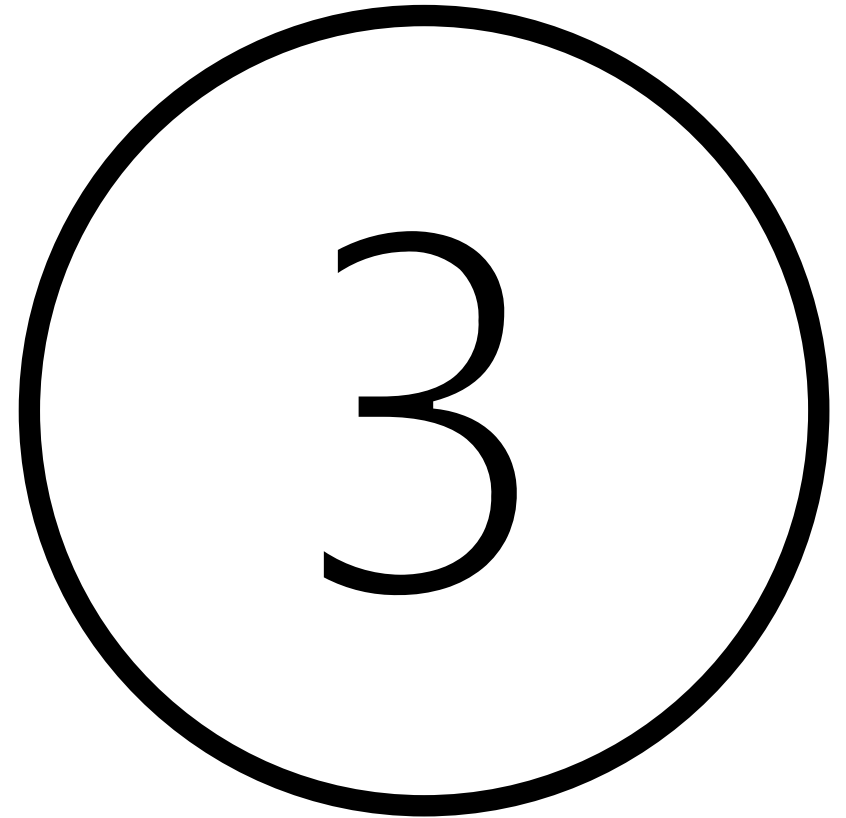
MAT Considerations for Prisons and Jails

- Individuals entering the facility who are under the influence of opioids, alcohol, benzodiazepines and other substances require clinical withdrawal management.



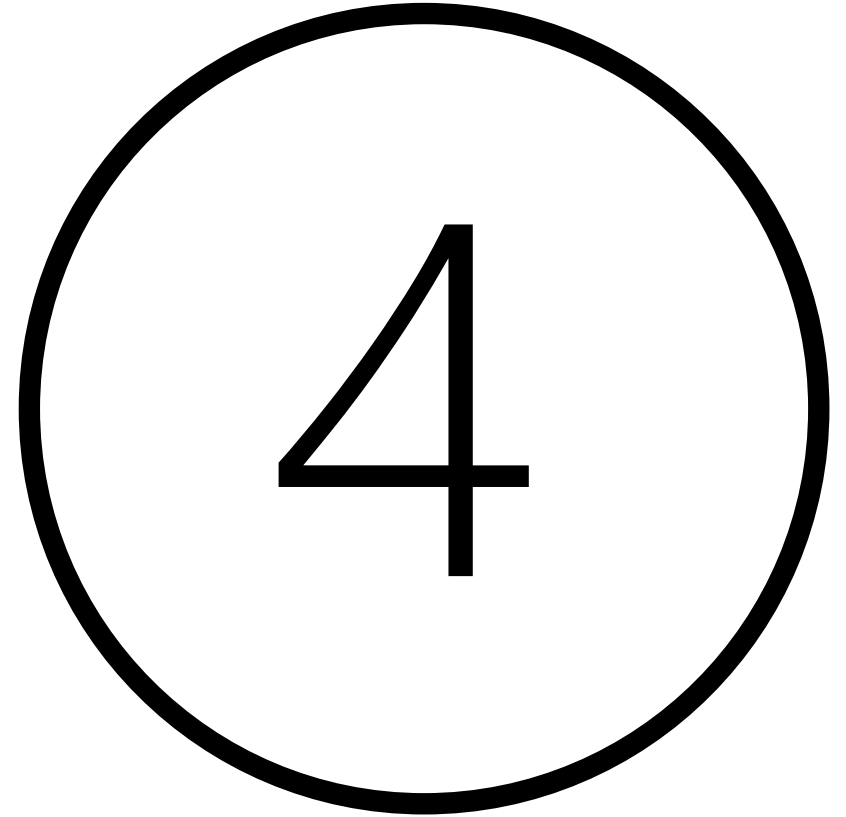
MAT Considerations for Prisons and Jails

- Incarcerated individuals with substance use disorders need of treatment consistent with contemporary standards of care.



MAT Considerations for Prisons and Jails

- Reentry of individuals from prisons and jails will need continued medication.



MAT Considerations for Prisons and Jails

What is required for jails and prisons regarding these considerations?

Medically?

Ethically?

Legally?

Investigation of the Cumberland County Jail (Bridgeton, New Jersey)

United States Department of Justice
Civil Rights Division
United States Attorney's Office
District of New Jersey
January 14, 2021



Michael Campion, District of New Jersey



Cumberland County Jail (CCJ)

- 300 to 350 population when investigation began
- Six suicides in less than 3 years
- All six deaths: inmates who used opioids prior to admission
- Additional suicide after investigation opened

Michael Campion, District of New Jersey



Eighth and Fourteenth Amendments:

- Prohibit deliberate indifference to serious medical needs
- This includes inmates with a “particular vulnerability to suicide.”

Woloszyn v. Cty. Lawrence, 396 F.3d 314 (3d Cir. 2005)

Michael Campion, District of New Jersey



Three-Part Test to determine deliberate indifference to suicide risk:

1. Did individual have a particular vulnerability
2. Whether jail official knew or should have known of that vulnerability
3. Did jail official act with reckless or deliberate indifference

Woloszyn v. Cty. Lawrence, 396 F.3d 314 (3d Cir. 2005)

Michael Campion, District of New Jersey



CCJ knew or should have known that OUD was prevalent

- Cumberland County has one of the highest rates of opioid deaths in New Jersey
- In NJ, at least 25 percent of the incarcerated population is addicted to opioids
- Six inmates (and others) entered jail with withdrawal symptoms

Michael Campion, District of New Jersey



MAT/MOUD: Standard of Care for Treating Opiate Withdrawal

- Methadone
- Buprenorphine

Michael Campion, District of New Jersey



MAT/MOUD – Policy and Recommendations

- Federal BOP
- National Sheriff's Association
- World Health Organization
- American Psychiatric Association
- SAMHSA

Michael Campion, District of New Jersey



CCJ's Inadequate Treatment of Opioid Withdrawal

- Increased Risk of Harm
- Likely Contributed to Suicides at CCJ

Michael Campion, District of New Jersey



Other Findings:

- CCJ's screening process is ineffective in identifying mental illness and risk of suicide
- CCJ failed to properly classify and house inmates with mental illness and risk of suicide
- CCJ's suicide watch exposed prisoners to harm
- Systemic deficiencies in CCJ's mental health services

Curtis Harris, DOJ Civil Rights Division



Minimal Remedial Measures

“...the Attorney General shall certify to the court—that...the Attorney General has notified in writing the Governor or chief executive officer...of the appropriate State or political subdivision and the director of the institution of...the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance.”

42 U.S.C. § 1997b(a)(1)(C)

Curtis Harris, DOJ Civil Rights Division



Remedies for CCJ's Inadequate Treatment of Opioid Withdrawal

- Immediately providing MAT/MOUD to individuals identified as having or potentially having OUD at the time of admission
- Ensuring timely access to medical and mental health care when individuals exhibit withdrawal symptoms
- Ensuring that discharge or transfer planning services are provided for individuals with OUD, including services for individuals in need of further MAT/MOUD at the time of discharge or transfer

Curtis Harris, DOJ Civil Rights Division



Remedies for CCJ's screening process

- Ensuring that initial screenings are performed by staff trained in identifying medical and mental health needs
- Conducting comprehensive health assessments of individuals within 14 days of their arrival
- Making all reasonable efforts to obtain and incorporate individuals' prior mental health records from prior correctional institutions and community providers

Remedies for CCJ's classification process

- Ensuring that individuals receive the level of care and housing classification appropriate to their mental health needs and suicide risk

Curtis Harris, DOJ Civil Rights Division



Remedies for CCJ's suicide watch practices

- Ensuring that individuals demonstrating a suicide risk receive adequate mental health treatment and follow-up care
- Ensuring that an order of “constant watch” observation results in staff having an unobstructed view of the prisoner at all times, and no other duties to complete while conducting the watch
- Ensuring that individuals demonstrating a suicide risk are provided quality, private suicide risk assessments on a daily basis

Curtis Harris, DOJ Civil Rights Division



Remedies for systemic deficiencies in CCJ's mental health services

- Providing timely access to qualified mental health professionals
- Ensuring that appropriate, detailed treatment plans are developed and regularly reviewed for individuals with serious mental health needs
- Providing clinically appropriate therapy and counseling for individuals with serious mental health needs
- Providing confidential, clinically appropriate settings for discussions about treatment between mental health professionals and patients
- Maintaining adequate psychiatry coverage and psychiatry support staff
- Providing clinically appropriate medication administration practices
- Incorporating complete morbidity/mortality reviews of all deaths into quality assurance program
- Ensuring that discharge or transfer planning services are provided for individuals with serious mental health needs

References and Resources

- [Investigation of the Cumberland County Jail – Report](#)
- [SAMHSA, Medications for Substance Use Disorders](#)
- [National Institute on Drug Abuse, Effective Treatments for Opioid Addiction](#)
- [American Society of Addiction Medicine – Practice Guidelines for the Use of Medication in the Treatment of Addiction Involving Opioid Use](#)
- [FDA Safety Announcement, Harm reported from sudden discontinuation of opioids](#)
- [National Sheriff’s Association and National Commission on Correctional Health Care – Jail-Based Medication-Assisted Treatment](#)

QUESTIONS

- ▶ Type your questions in the Q&A box on your screen.



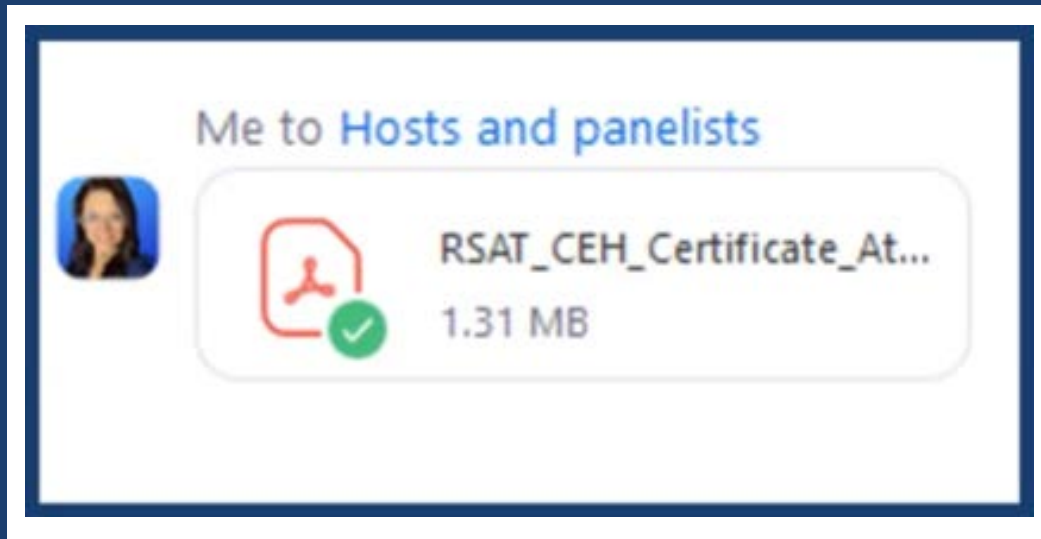
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You can download the certificate of attendance from the chat.





CERTIFICATE OF CONTINUING EDUCATION



1 Continuing Education Hour (CEH) approved by NAADAC, the Association of Addiction Professionals



Pass 10-question quiz with 7 correct answers



Download certificate upon completion of the quiz

March 15, 2023 RSAT webinar CEH quiz link:

<https://survey.alchemer.com/s3/7256233/March-15-2023-RSAT-Webinar-CEH>

CONTACT



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