



*Opioid addiction has reached crisis levels in the United States. The Opioid Intervention Court in Buffalo, New York, serves as a model other state courts could follow to fight this epidemic.*

# New York State's Opioid Intervention Court

Hon. Janet DiFiore, Chief Judge, New York Court of Appeals

## A National Crisis

On July 31, 2017, the President's Commission on Combating Drug Addiction and the Opioid Crisis issued a preliminary report describing the severity of the opioid-addiction crisis gripping communities across America.<sup>1</sup>

- Approximately 142 Americans are dying every day from opioid abuse, a death toll equal to September 11th every three weeks.
- Drug overdoses now kill more people every year than gun homicides and car crashes combined.
- The number of drug overdoses in the United States has quadrupled since 1999.
- In 2015 nearly two-thirds of all drug overdoses were caused by opioids, especially heroin, fentanyl, Percocet, and OxyContin.

A new report from the Police Executive Research Forum, an independent research organization that focuses on "critical issues in policing," puts those numbers in context, noting that more Americans died from drug overdoses in 2016 (64,070) than lost their lives during the entirety of the Vietnam War (58,200).

## New York's Response: A First-of-Its-Kind Court

The Opioid Intervention Court—the first of its kind in the nation—began operating on May 1, 2017, in Buffalo, Erie County, an area hard hit by opioid addiction and overdose deaths.<sup>2</sup> The new court is unique in that it relies on immediate intervention and treatment of individuals at high risk of opioid overdose. Within 24 hours of arrest, defendants are linked to medication-assisted treatment, followed by up to 90 days of intensive daily court monitoring.

In the Opioid Intervention Court, treatment is prioritized and criminal prosecution held in abeyance—thus flipping the usual legal process in order to save lives.

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Over the last several years, local judges, law enforcement, and public-health officials grew very concerned about the sharp increase in opioid-overdose deaths in Buffalo

and Erie County. According to statistics provided by the Erie County Department of Health, opioid-overdose deaths jumped from 127 in 2014 to 296 in 2016.<sup>3</sup> In a single week in 2016, three defendants in the Buffalo City Court died from opioid overdoses, driving home the need for a different approach when dealing with defendants suffering from opioid-use disorders. Judges and court staff in Buffalo and Erie County took the lead in reaching out to local stakeholders to develop a new court model to address the unique needs of opioid-addicted defendants.

The Buffalo City Court was well positioned to take the lead on this issue because of its sophisticated and successful judicial-diversion and drug-treatment programs, and the extensive community partnerships developed under the COURTS program (Court Outreach Unit: Referral and Treatment Services). Started in 1994 by City Court Chief Judge Thomas Amodeo, COURTS integrates social-service professionals into the arrest-and-arraignment process so that judges can make informed decisions, linking defendants to the best available treatment options based on expert screening and referral recommendations.

With the support of the court system's grants and contracts office, the Buffalo proposal was submitted to the Department of Justice's Bureau of Justice Assistance, which awarded a \$300,000 grant for piloting a specialized opioid court for defendants at high risk of opioid overdose.

The grant supports immediate, targeted, and intensive drug-treatment services provided by physicians and case workers from the University of Buffalo's Family Medicine Addiction Clinic. A key to the program is the participation of physicians who administer medication-assistance treatment to severely addicted persons, which involves using certain medications, such as methadone, naltrexone, and buprenorphine, known to be effective in blocking the euphoric highs of opioids, stabilizing brain chemistry, and relieving psychological cravings. Experienced caseworkers provide behavioral therapy and counseling, enforce curfews, perform wellness checks, and transport patients to court.

## The Opioid Court Process

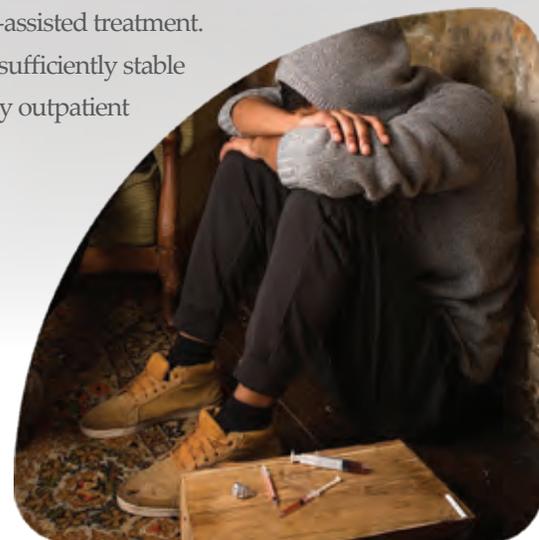
Participation in the Opioid Intervention Court begins shortly after arrest and before arraignment. Each morning, trained court staff go through the city court's holding facility to personally interview all persons awaiting arraignment. A brief six-question protocol is used to identify those persons who are at risk of an opioid overdose. Persons deemed at risk are flagged and have their court files marked for appearance at a special morning arraignment calendar before Craig Hannah, the presiding judge of the Opioid Intervention Court. All persons appearing in the opioid court are represented by counsel.

At arraignment, persons charged with nonviolent crimes who consent to participate in the opioid court are released to the supervision of a treatment provider for up to 90 days of medication-assistance treatment. The Erie County district attorney, John J. Flynn, has agreed to suspend prosecution of participants for the period they are undergoing treatment.

Immediately following arraignment, each participant receives a complete psychosocial assessment by an on-site team of treatment professionals and case coordinators. An individualized treatment plan is developed for each participant based on the severity and circumstances of his or her addiction.<sup>4</sup> Because so many opioid users experience severe addiction withdrawal symptoms, they are immediately linked to medication-assisted treatment.

Individuals who are sufficiently stable participate in a 90-day outpatient treatment regimen.

With few exceptions, the entire process of screening, arraignment, assessment, and placement in



treatment occurs within 48 hours of arrest and is carried out by trained personnel who personally transport each participant from the jail or courthouse to the treatment facility.<sup>5</sup>

## Phase One of the Program

Participants released to the community for outpatient treatment following arraignment, or who return to the community after completion of inpatient treatment, must report, Monday through Friday, to Presiding Judge Craig Hannah for six weeks.

This initial 12-week, 90-day period of stabilization and intensive monitoring is phase one of the opioid-court treatment program. Phase one is critical because experience has shown that opioid users are most vulnerable to fatal overdoses when they first return to using opioids after having been “clean” for a period of time.



While drug testing generally takes place randomly in a standard drug court, participants in the Opioid Intervention Court undergo daily testing. Community-service providers and court staff are present in the courtroom every day to measure blood pressure, assess medical status, and report to the court on home visits and curfew checks.

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Opioid court staff also check in with participants on weekends by phone and sometimes in person.

One of the clear success factors for the Opioid Intervention Court is the strong personal connection that quickly develops between the participants and the court’s remarkable presiding judge, Craig Hannah, who is in recovery himself. Judge Hannah’s philosophy of “tempering justice with mercy” permeates the entire process as he interacts with the participants daily. His firm but compassionate personality serves to motivate and support these individuals as they work to maintain sobriety and get their lives back on track.

Finally, the district attorney’s office and defense counsel use the phase-one treatment period to investigate the case and negotiate an appropriate plea agreement. Even if participants do not move on to phase two because a plea agreement is not reached, or plead guilty and are sentenced to jail, they have at least been linked to appropriate treatment to

help get them through the difficult withdrawal phase and to overcome their opioid addiction.

Arrest warrants have been issued for participants who failed to make their court appearances during phase one, but the Buffalo Police Department and Erie County Sheriff’s Office have agreed to prioritize execution of these warrants and return participants to court as quickly as possible to avoid the high risk that they will relapse and die of an overdose.

## Phase Two

Following completion of phase one, and as part of a plea agreement, many participants move on to phase two and continued monitoring in Buffalo’s drug-treatment or mental-health courts before Judge Robert T. Russell, a pioneering drug-court judge who also presides over the nation’s first veterans treatment court. While some participants experience an adjustment period as they move away from intensive daily supervision and begin establishing a new weekly relationship with Judge Russell, the transition to phase two has gone smoothly.

## Evaluating the Court

While it is too early to draw definitive conclusions about this innovative court, one vital outcome is already apparent. It is preventing the tragic overdoses that were occurring during the period between arrest and placement in treatment. The court has experienced just a single overdose death among its 204 participants since May 1, 2017, thus achieving the goal of saving lives. As Judge Hannah put it: “That is our purpose. If saving lives means we put their criminal case on hold for 30, 60, or 90 days, we have our partners in government who agreed to do it and we’re going to do it.”<sup>6</sup>

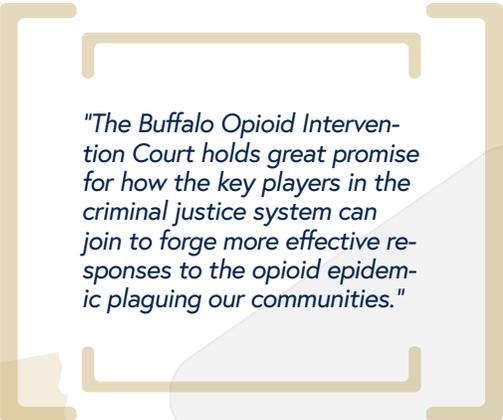
The court’s goal, initially, was to successfully treat at least 200 people a year and provide a model for potential replication in other jurisdictions.<sup>7</sup> The court is currently handling between 45 to 60 active participants at any given time and is well on its way to doubling the original goal of 200 participants a year.

## Learning from the Buffalo Experience

The Buffalo Opioid Intervention Court holds great promise for how the key players in the criminal justice system can join to forge more effective responses to the opioid epidemic plaguing our communities. Given the devastatingly addictive quality of opioids and the profile of their users, there is a high risk that these individuals will die without the kind of immediate intervention, linkage to treatment, and intense supervision provided by the opioid court.

The Bureau of Justice Assistance grant supports an evaluation of outcomes relating to reductions in recidivism and drug use, as well as a process evaluation to examine how the program can be sustained over time. One thing is clear. The Buffalo Opioid Intervention Court reflects a resource-intensive approach that may be hard for some jurisdictions to replicate given the many behavioral-health and court personnel required to manage and execute the multiple aspects of the program. The early

success of the Opioid Intervention Court is built on a strong infrastructure of community partnerships developed over many years by committed jurists like Buffalo Chief Judge Thomas Amodeo and Associate Judge Robert Russell. Replication efforts must consider the need for significant local planning and coordination with multiple stakeholders, as well as the available resources and prevailing conditions in each community.



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The New York State court system is taking the lessons learned from the Buffalo experience and applying it to other communities struggling with the opioid epidemic. For example, in Bronx County, 261 people died from opioid overdoses in 2016, and the final numbers are likely to be higher in 2017. District Attorney Darcel Clark, Bronx County Criminal Court Supervising Judge George Grasso, Bronx Community Solutions, the defense bar, and other providers have adopted the Bronx version of an opioid treatment court—a specialized case track called OAR (the Overdose Avoidance and Recovery Track)—for misdemeanor offenders at high risk for opioid overdose.

The protocol adopted in Bronx County provides strong incentives for treatment. The district attorney has agreed, where no new arrests occur while the case is pending and upon completion of treatment, that a case will be dismissed and the defendant’s record sealed. Plans are underway to expand the OAR approach to the rest of New York City as soon as possible.

In addition to these court responses, New York State Court Officers have now received training to administer Narcan, the critical antidote drug that instantaneously reverses an opioid overdose. This training investment has already paid off. In just a few months, court officers have saved the lives of four people overdosing on opioids in and around our courthouses.

## Conclusion

For court leaders and policymakers in New York and around the country, the Opioid Intervention Court can serve as a useful model to help understand how the courts and the criminal justice system can respond effectively to the societal scourge of opioid abuse. It is also an example of how state court systems can advance the national conversation on critical justice issues by being proactive in devising better ways to meet the challenges presented by difficult and complex trends like

opioid addiction.<sup>8</sup> The Buffalo Opioid Intervention Court is being watched closely by policymakers and court managers. We are optimistic that the lessons learned will have a positive impact on our justice system and the well-being of our communities in New York and all around the country.

## The Opioid Epidemic & Children

The opioid epidemic is having a devastating impact on children and families. The number of children in foster care is rising. From 2012 to 2016, the percentage of removals nationally due to parental substance abuse increased from 13 percent to 32.2 percent. Research clearly shows that children do better in the least restrictive and most family-like placements, yet the shortage of placement resources is plaguing state child welfare systems. States are looking for innovative court programs and practices that specifically address parents and youth with opioid use disorders. Florida's Early Childhood Court is one such program that is helping curb the impact of the opioid epidemic on young children.

<sup>1</sup> Preliminary Report of the Presidential Commission on Combating Drug Addiction and the Opioid Crisis, July 31, 2017.

<sup>2</sup> Figures released by the Erie County Health Department show a major increase since 2014, when there were 127 opioid-related deaths. That number soared to 256 in 2015 and 296 in 2016.

<sup>3</sup> "DA Joins Buffalo's Chief Judge in Announcing Country's First Opiate Intervention Court," press release, Congressman Brian Higgins, May 31, 2017, available at <https://tinyurl.com/ydck4frs>.

<sup>4</sup> Community partners include University of Buffalo Family Medicine, Horizon Health Services, HOPE Program, Catholic Health Systems/Pathways, and Better Self Health.

<sup>5</sup> If a defendant is held on bail, he or she is referred to the treatment program that operates within the sheriff's jail. If the defendant does not consent, the case proceeds under the traditional case-processing path.

<sup>6</sup> "Buffalo Leads Nation with First Opiate Intervention Court," WKBW, May 31, 2017, available at <https://tinyurl.com/yaq8zdrh>.

<sup>7</sup> In April the National Governors Association announced that eight states—Alaska, Indiana, Kansas, Minnesota, North Carolina, New Jersey, Virginia, and Washington—will study, among other things, how to expand treatment within the criminal justice system.

<sup>8</sup> In 2017 all New York State court officers and sheriff's deputies were trained to administer Naloxone, or Narcan, a critical antidote drug that reverses the effects of an opioid overdose. Naloxone kits were supplied to the courts by the State Department of Health and are available in every courthouse in the state.