

Board of Directors

Brad S. Karp
Chairman

Mary Beth Forshaw
Vice Chair

Gerald Balacek
Eric D. Balber
Elizabeth Bartholet
Suzanne B. Cusack
Dawn Dover
Jason Flom
Alexis Gadsden
Doug Liman
Elaine H. Mandelbaum
Kamran Masood
Michael Meltsner
Mark C. Morrill
Mary E. Mulligan
Debra Pantin
Samuel K. Roberts, Jr.
Elizabeth M. Sacksteder
Sharon L. Schneier
John J. Suydam
Harya Tarekegn
Kimã Joy Taylor
Anthony C. Thompson
James Yates
Richard Zabel

Arthur L. Liman
Founding Chairman

Daniel K. Mayers
Chairman Emeritus

Executive Team

Paul N. Samuels
Director and President

Anita R. Marton
Senior Vice President

Sally Friedman
Vice President of Legal Advocacy

Tracie Gardner
Vice President of Policy Advocacy

Ellen Weber
Vice President for Health Initiatives

Abigail Woodworth
Vice President of External Affairs

Gabrielle de la Guéronnière
Director of Policy

Roberta Meyers Douglas
Director of State Strategy & Reentry

Adela Prignal
Chief Financial Officer

Memorandum in Support of A.533/S.1795**An Act to amend the correction law, in relation to the establishment of a program for the use of medication assisted treatment for inmates and to amend the mental hygiene law, in relation to the implementation of substance use disorder treatment and transition services in jails.**

We write to urge the legislature to pass A.533(Rosenthal)/S.1795(Bailey) to **mandate the use provision of medication for the treatment of substance use disorder (SUD) in all New York State's jails and prisons.** The overdose crisis is an ongoing tragedy that requires evidence-based policy solutions. In New York, overdose increased for seven consecutive years—a 200% increase since 2010 and has been further exacerbated by the COVID-19 pandemic. Black New Yorkers in particular face significant overdose risk and face disproportionate criminalization due to institutional racism in our systems and state drug laws.

This legislation will ensure that individuals who are incarcerated can access FDA approved medication for the treatment of substance use disorder, including methadone and buprenorphine medications, which are considered to be the gold standard in evidence-based treatment for opioid use disorder. The recently enacted FY 2021-2022 budget includes funding to provide these medications, but this legislation is necessary to ensure it happens.

New York State prioritizes criminalization over public health and harm reduction responses to substance use, which is evident by the fact that 80% of people in the state's correctional facilities have a substance use disorderⁱ. In New York State, Department of Correction and Community Supervision (DOCCS) is the single largest treatment provider in the state, but generally fails to provide SUD treatment. County jails routinely detain people who experience SUD, but rarely offer any form of treatment. People who are incarcerated who are opioid dependent are forced to inhumanely withdraw without appropriate medical care. Following detox, they are offered limited, if any, treatment or recovery services. The failure of the correctional system to provide healthcare commensurate with modern medical standards and of a quality acceptable within prudent professional standards is unconstitutional, a violation of the Americans with Disabilities Act, and compounds the harms of the overdose crisis.

Opioid agonist treatment has a demonstrated track record of success and can be safely administered in the correctional setting.ⁱⁱ Yet, despite years of proven efficacy, because of long discredited attitudes towards these medications, many US jails and prisons still fail to provide medications to incarcerated individuals who experience opioid dependency.ⁱⁱⁱ The evidence is now overwhelming that these medications can safely be administered in a correctional setting.^{iv} Rikers Island has offered medications for opioid use disorder (OUD) for over 30 years and Rhode Island has done so, with great success, for nearly two years. Furthermore, prolonged advocacy and effective pilot programs are gradually shifting the opinions of correctional staff that have historically been

overwhelmingly opposed towards providing medication assisted treatment (MAT). As a result, more and more jail and prison systems across the nation are beginning to provide these medications.

In addition to the numerous positive outcomes of providing medications during the period that a person is incarcerated, access to these medications is especially essential because newly released individuals are especially vulnerable to fatal overdose if they resume use post-release. A recent study found that in the first two weeks following release, formerly incarcerated individuals were 40 times more likely to die of a fatal overdose.^v States that have embraced jail and prison-based MAT (such as Rhode Island, the first state incorporate to MAT throughout its unified state correctional facility) are already experiencing a decrease in fatal overdoses within the formerly incarcerated population – which has led to a reduction in the state’s overall overdose rate.^{vi} The success achieved in Rhode Island is a product of the state’s sound investment in correctional healthcare which emphasized increasing the number of people receiving MAT.^{vii} Jurisdictions that have failed to initiate MAT programs in correctional settings are now contending with lawsuits, including in New York State. On November 26, 2018, the U.S. District Court of Massachusetts granted a preliminary injunction finding that the Essex County jail’s refusal to provide methadone treatment is likely to violate both the Americans with Disabilities Act (ADA) and the 8th Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. Similar lawsuits have been brought in Maine and Massachusetts, and most recently here in New York.^{viii}

A.533/S.1795 requires all prisons jails in New York provide access to methadone and buprenorphine, and that people can opt into treatment at any point of their incarceration, receive treatment for the entirety of their incarceration, and receive a collaborative reentry strategy to continue their treatment as they transition back into the community. Allowing appropriate treatments in the criminal legal system is one area where we can make a dent in our devastating overdose statistics. For these reason, Legal Action Center **urges the legislature to pass A.533/S.1795 to mandate jail and prison-based treatment for substance use disorder that uses medication-assisted treatment.**

ⁱ Identified Substance Abusers Under Custody By Gender, NYS DOCCS (2017)

ⁱⁱ “Prisoners as Patients: The Opioid Epidemic, Medication-Assisted Treatment, EBSCOhost.” Columbia.Edu, 1 Jan. 2015,

<http://web.b.ebscohost.com.ezproxy.cul.columbia.edu/ehost/pdfviewer/pdfviewer?vid=1&sid=4e1773c9-540e-4273-b924-6c33aad875c6%40sessionmgr101>. Accessed 13 Dec. 2018.

ⁱⁱⁱ “Opioid Users Are Filling Jails. Why Don’t Jails Treat Them?” The New York Times, 4 Aug. 2017,

<https://www.nytimes.com/2017/08/04/us/heroin-addiction-jails-methadone-suboxone-treatment.html>. Accessed 3 Dec. 2018.

^{iv} Jail-Based Medication-Assisted Treatment Promising Practices, Guidelines, and Resources for the Field. 2018.

^v “The American Journal of Public Health (AJPH) from the American Public Health Association (APHA) Publications.” American Public Health Association (APHA) Publications, 1 Jan. 2018,

<https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2018.304514>. Accessed 3 Dec. 2018.

^{vi} Green TC, Clarke J, Brinkley-Rubinstein L, et al. Post incarceration Fatal Overdoses After Implementing Medications for Addiction Treatment in a Statewide Correctional System. *JAMA Psychiatry*. 2018;75(4):405–407. doi:10.1001/jamapsychiatry.2017.4614

^{vii} Rhode. “Track Our Action Plan – Prevent Overdose RI.” Preventoverdoseri.Org, 1 Jan. 2016,

<http://preventoverdoseri.org/track-our-action-plan/>. Accessed 3 Dec. 2018.

^{viii} <https://www.aclu.org/press-releases/lawsuit-ny-jails-life-threatening-ban-methadone-treatment-discriminatory-and>