

What is the Harm Reduction Approach and What Does it Mean for Defense Lawyers

Kate Boulton, JD, MPH

Vital Strategies Overdose Prevention Program

Visit www.vitalstrategies.org

Agenda

- **Brief Overview of Vital Strategies**
- **What is “Harm Reduction”?**
- **Examples of a Harm Reduction Approach**
 - **Syringe Services Programs**
 - **Naloxone**
- **Harm Reduction for Defense Lawyers—Spotlighting Key Issues**
 - **(In)Voluntary Treatment**
 - **Drug-Related Technical Violations**
 - **UDS and Abstinence Requirements**
 - **Medication Access**
 - **Synergy with other common criminal legal issues**
- **Why now?**

Overview of Vital Strategies and the Overdose Prevention Program



Vital Strategies Overdose Prevention Program

- **Vital Strategies** is a global health organization that believes every person should be protected by a strong public health system.
- The **Overdose Prevention Program** is the lead implementation partner for state-focused work in the Bloomberg Overdose Prevention Initiative.
- We bring a **comprehensive approach to equitably and sustainably reduce overdose deaths** in seven states where fatalities are among the highest in the country: Kentucky, Michigan, New Jersey, New Mexico, North Carolina, Pennsylvania, and Wisconsin.

Visit www.vitalstrategies.org/overdose-prevention/

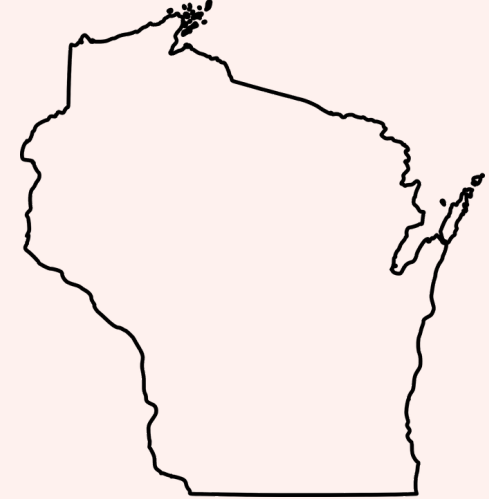


Goal: Achieve and Equitable and Sustainable Reduction in Overdose

Implementation categories and examples:

- Make medications accessible
 - MOUD for people at heightened vulnerability to OUD
 - Naloxone for PWUD and their networks
- Engage communities
 - Mobilization in marginalized communities
 - Expand and strengthen harm reduction services
- Support, don't punish
 - Prevent the criminalization of PWUD
 - Eliminate coercion and strengthen a supportive response in healthcare

Lead for WI-based efforts:
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Highlighting Select WI- Based Projects



Harm Reduction Legal Services

People who use(d) drugs may need legal help to find and maintain safe and affordable housing, remove barriers to employment, receive public benefits, or resolve consumer debt issues.

Legal Action advocates are trained to address the unique and wrap around needs of this community to reduce the harm of Opioid Use Disorder (OUD) and Substance Use Disorder (SUD).

These services, focused in Milwaukee County, include:

- Driver's License Recovery
- Housing issues
- Pardons and Expungements
- Bedbugcare
- Public Benefits applications
- Medical debt recovery
- Consumer debt



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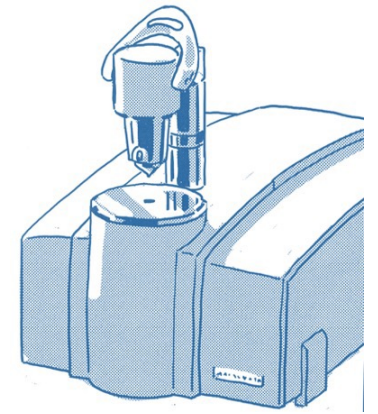
YOUR
WAY
FORWARD

Partnership with Legal Action of Wisconsin to support civil legal needs of PWUD who have experienced discrimination due to substance use



VOICES survey in Milwaukee County among PWUD to understand perceived risk of overdose, and needs, wants, barriers, facilitators to accessing harm reduction/treatment

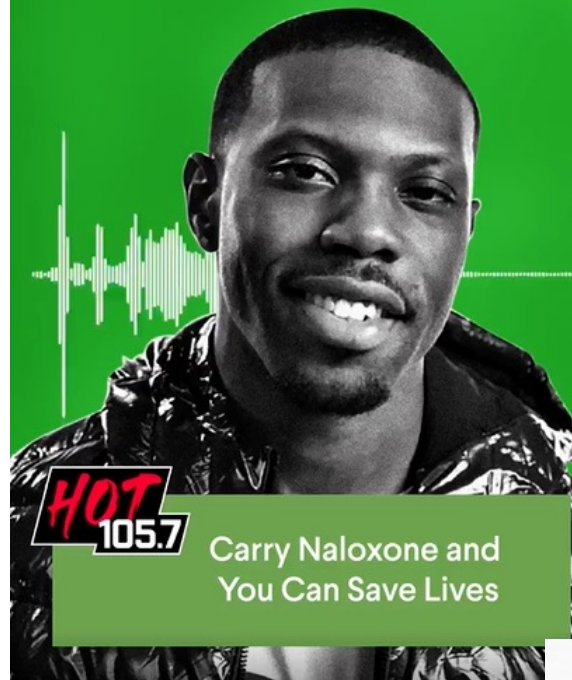
Landscaping and readiness assessment for drug checking program for PWUD



Bad River tribe's harm reduction program has expanded to include mail-order service for naloxone and other harm reduction supplies in partnership with NEXT Distro



Highlighting Select WI- Based Projects



Partnership with local radio hosts in Milwaukee to share harm reduction and overdose awareness messaging to reach the Black community, including information on where to access naloxone and FTS in the city

Northside Harm Reduction Coalition in Milwaukee developed a strategy document that outlines harm reduction priorities and treatment needs in the Black community in Milwaukee



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Harm
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What is “Harm Reduction”?

What do we mean by “harm reduction”?

WISCONSIN EXAMINER 

POLITICS & GOVERNMENT WORK & THE ECONOMY EDUCATION ENVIRONMENT CIVIL RIGHTS & IMMIGRATION

HEALTH CARE POLITICS & GOVERNMENT

BRIEF

11 overdose reduction vending machines deployed in Milwaukee

BY: ISIAH HOLMES - AUGUST 8, 2023 5:55 AM



Image Credit: Isiah Holmes.

When you hear “harm reduction,” what is the first thing that comes to mind?

How would you explain this concept to someone in your own words?

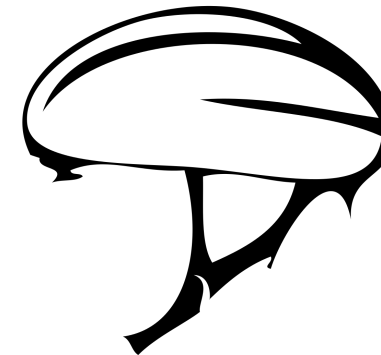
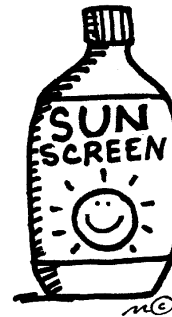
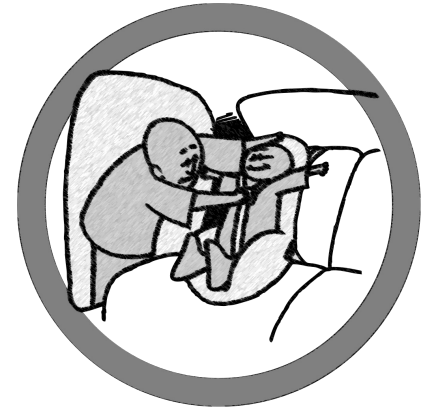
Have you heard this term before? If so, where:

- Your work
- Media coverage
- Policy discussions
- Other examples?

What do we mean by harm reduction?

Pragmatic public health approaches to

- minimize risk
- take precautions
- reduce negative consequences



What do we mean by a harm reduction approach for drug use?

Pragmatic public health approach to **drug use**

- minimize risk
- take precautions
- reduce negative consequences



Harm reduction principles guide

harm reduction objectives

- **Minimize harm**
Keep people alive, Minimize injury and infection, Reduce harmful practices
- **Recognize a continuum of use**
Wide variation in drug use behavior
- **Holistic**
Person-centered, Inclusive
- **Dignity**
Compassion, Autonomy, Agency
- **Advocacy**
Engagement, Mobilization



National Harm Reduction Coalition Principles

- 8 core principles
- Variety of trainings, such as
 - Foundations of Harm reduction
 - Engaging People Who Use Drugs
 - Understanding Drug-Related Stigma

PRINCIPLES OF HARM REDUCTION

Harm reduction is a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use.

Harm Reduction is also a movement for social justice built on a belief in, and respect for, the rights of people who use drugs.

FOUNDATIONAL PRINCIPLES CENTRAL TO HARM REDUCTION

Harm reduction incorporates a spectrum of strategies that includes safer use, managed use, abstinence, meeting people who use drugs “where they’re at,” and addressing conditions of use along with the use itself. Because harm reduction demands that interventions and policies designed to serve people who use drugs reflect specific individual and community needs, there is no universal definition of or formula for implementing harm reduction.

However, National Harm Reduction Coalition considers the following principles central to harm reduction practice:

Accepts, for better or worse, that licit and illicit drug use is part of our world and chooses to work to minimize its harmful effects rather than simply

Understands drug use as a complex, multi-faceted phenomenon that encompasses a continuum of



Take a look at your handout of the NHRC principles.

- Do any of these principles speak to your day-to-day work?
- Are there any principles that stand out as especially challenging?

Image from Vital Strategies website. Staff at Detroit Action serving a client.

Examples of a Harm Reduction Approach

Image is from the Vital Strategies Love & Dignity Campaign. Jenna Mellor is the Executive Director of the NJ Harm Reduction Coalition.

<https://lovedignity.org/stories/jenna/>



Numerous Examples of Harm Reduction

Naloxone distribution (the overdose reversal reversal medication)

Syringe Access Programs (also commonly referred to as Needle Exchanges)

Peer programs and community mobilization that are led by current and former drug users

Medication First Models for the treatment of OUD

Low Barrier and comprehensive services (i.e., do not require abstinence, address other important needs like housing)

Drug Checking (e.g., fentanyl test strips)

- SSPs are proven and effective intervention with a decades-long track record
- Safe and cost-saving, not linked to increases in illicit drug use or crime
- Major positive health impacts
 - Preventing transmission of HIV, HCV and other infections
 - SSP participants 5x more likely to enter treatment
 - Can reduce OD deaths by teaching participants how to prevent and respond to OD + naloxone distro
- Address concerns among first responders about needlesticks and reduce community presence of needles

Centers for Disease Control and Prevention, Summary of Information on the Safety and Effectiveness of SSPs (January 2023), available at <https://www.cdc.gov/ssp/syringe-services-programs-summary.html>

Syringe Services Programs



Image from Vital Strategies website. Detroit Recovery Project Street Team (syringe services provider). More information at <https://www.recovery4detroit.com/services/>

Naloxone (often referred to via brand-name Narcan®) is a life-saving overdose reversal medication.

- Safe and easy to use
 - FDA approved for OD reversal for 50+ years but only this year that some formulations became OTC
- Evidence-based harm reduction strategy but gaps in access persist
 - PWUD and their networks
 - People at elevated risk of OD, e.g., those leaving jail
 - Cost and insurance
 - Policy and practice roadblocks
- Racial disparities in naloxone access, education, and use continue to be a problem

Naloxone



Image from Vital Strategies website. Pictured is Harm Reduction advocate, Roz, doing a naloxone training for a community member in Philadelphia, Pennsylvania

Vital Strategies OTC Naloxone FAQ (2023), available at https://www.vitalstrategies.org/wp-content/uploads/Over-The-Counter-Naloxone_FactSheet_v2_FINAL.pdf

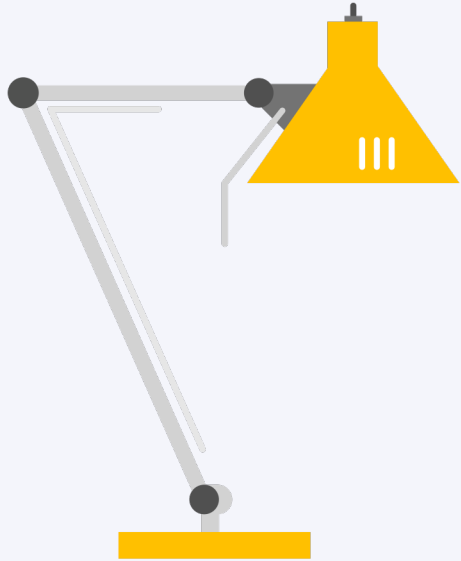
Vital Strategies Fact Sheet, *Access to Naloxone to Reduce Overdose Deaths*, https://www.vitalstrategies.org/wp-content/uploads/Access-Naloxone_OPP_OnePager_pdf.pdf

Harm Reduction for Defense Lawyers

Image is from PA defender training in November 2019. Pictured is Dr. Jasmine Drake, presenting on chemistry and toxicology in the context of DIH prosecutions.

Find more at <https://www.nacdl.org/Media/DDRD-Charges-in-Context-Overdose-Pub-Health-Prosec>





Spotlight: (In)Voluntary Treatment

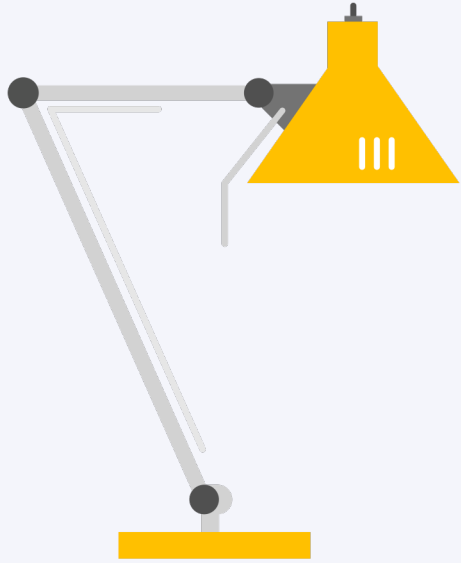
Consider: how frequently is mandatory *drug treatment* something you see as part of your clients' pretrial conditions, sentencing, or probation supervision?

- Ample evidence that voluntary treatment is the most effective.
- Mandatory treatment is deeply antithetical to a harm reduction approach.
- Not all substance use necessitates treatment
 - Key to address material needs and social determinants of health (SDoH)
 - Mandatory treatment—especially inpatient treatment or “rehab”—is a substantial deprivation of liberty.



Reading recommendation: *Prison by Any Other Name: The Harmful Consequences of Popular Reforms*, by Mara Schenwar and Victoria Law

D Werb et al., *The effectiveness of compulsory drug treatment: a systematic review*, 28 Intl Journal of Drug Policy 1-9 (2016), <https://pubmed.ncbi.nlm.nih.gov/26790691/>



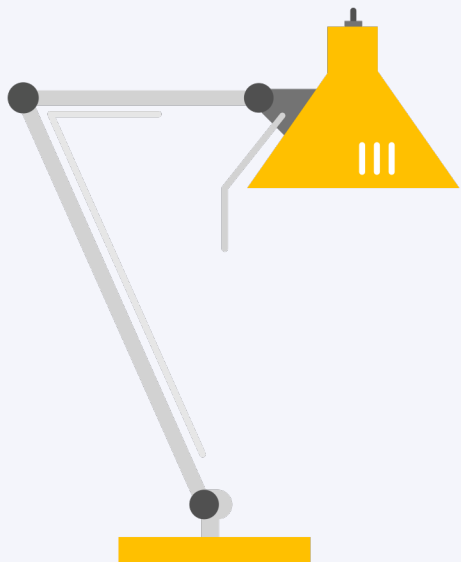
Spotlight: Drug-Related Technical Violations

Consider: to what extent do drug-related technical violations (e.g., positive drug screens, missed appointments) impact your clients? How?

- Nationally and in WI, substance-related supervision violations, sanctions, and revocations are a major driver of incarceration.
- HRW report from 2020 describes how drug use was the most common supervision violation leading to sanctions up to and including incarceration.
 - Drug use = 1 in every 5 violations from 2017-2019 (>27,000 violations)
 - Drug use and violating mandated treatment rules responsible for > 15% of the violations leading to incarceration during that same time period.
- Joint Legislative Audit Committee—Jan 2019-March 2022, there were >100K noncriminal violations for using drugs or alcohol.

Human Rights Watch, *Revoked: How Probation and Parole Feed Mass Incarceration in the U.S.* (2020), available at <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>

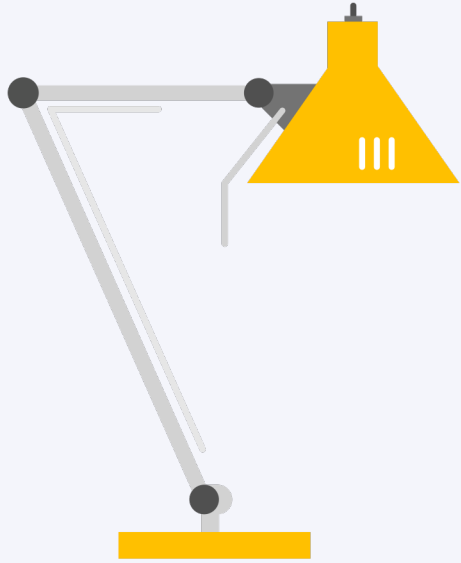
State of WI Legislative Audit Bureau, Community Corrections Program (Apr. 2023), available at https://legis.wisconsin.gov/lab/pdfs/viewer.html?file=/media/3585/23-5full_149466_2.pdf#B16



Spotlight: Drug-Related Technical Violations cont'd

Consider: have you seen any shift after policy change from DOC on substance use and revocation? What's missing?

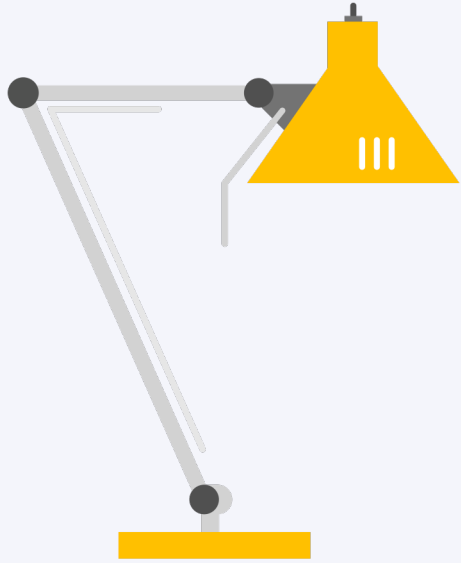
- In January 2021, DOC modified its policies to indicate that if an individual has used drugs or alcohol but not violated any other law or supervision rules, DCC agents can consider revocation only after attempting all treatment options.
 - Yet, ~30% of prison admissions in 2022 were for revocations.
 - What distinguishes “attempting” treatment from “mandating treatment” in practice?
- Bigger picture, is revocation the only thing we're concerned about?
 - Jail holds
 - Increased supervision
 - Short-term sanctions
 - Electronic monitoring and geographic restrictions
 - More rules (e.g., curfew)



Spotlight: UDS and abstinence requirements

Consider: what does drug screening look like where you are? *Therapeutic vs Punitive?*

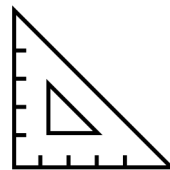
- UDS a ubiquitous feature of the criminal legal system—a frequent basis for surveillance, violations, and sanctions.
 - Costly, intrusive on day-to-day life
- Typically, the expectation is strict abstinence.
- Lack of research to support that drug testing necessarily reduces recidivism or improves behavioral health.
- The American Society of Addiction Medicine says that “[d]rug testing should be used as a tool for supporting recovery rather than exacting punishment.”



Spotlight: Medication Access

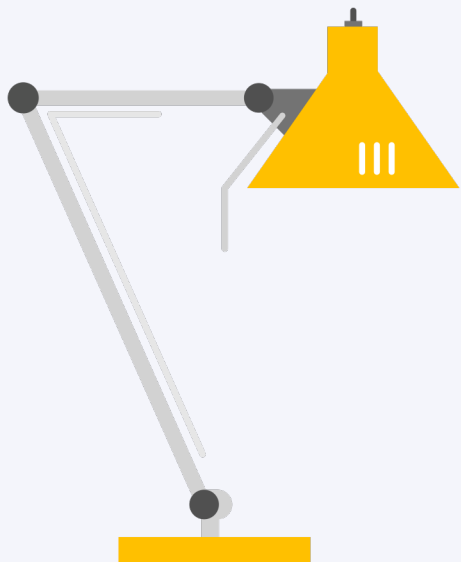
Consider: people who have been incarcerated are up to 129x more likely than the general public to die of OD in the weeks following release.

- 2022 data from the WI DOC showed that 72% of people on supervision in the state had a need for substance use treatment.
- Often, people who are justice-involved (incarceration, drug court, community corrections, etc.) do not have access to evidence-based medications for opioid use disorder (methadone and buprenorphine) that can dramatically decrease risk and improve quality of life.
 - Increased attention to how these practices can violate federal law
- Restricting or denying access to these medications is medically and legally indefensible.



Luckily, there are tools available for you on this!
Check out Legal Action Center's *Attorney's Guide: Addiction Medication and Your Client*.

WI Dept of Corrections, Corrections at a Glance—FY 2022, available at <https://doc.wi.gov/DataResearch/DataAndReports/DCCAtAGlance.pdf>
Legal Action Center, *Attorney's Guide: Addiction Medicine and Your Client* (2022), available at https://www.lac.org/assets/files/AttorneysGuideAddictionMedication_FINAL.pdf



Spotlight: Synergy with other common criminal legal issues

Consider: how do you see intersections in your practice between the criminalization of PWUD and other common criminal offenses and stigmatized communities?

- Sex work
- The criminalization of poverty
 - Panhandling and other “qualify of life” offenses
 - Homelessness and housing instability, criminal trespass to state land/camping
 - Retail theft
- LGBTQ+ communities
- People with disabilities

Across the board, we see disproportionate harm to BIPOC communities.



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Why now?

The U.S. Overdose Crisis

- U.S. again topped 100,000 overdose deaths last year.¹
- Racial disparities in overdose are intensifying—from 2019 to 2020, overdose death rates increased by 44% and 39% among Black and AI/AN individuals, respectively.²
- Criminalization and incarceration of PWUD are at direct odds with a public health approach and needed harm reduction strategies.

¹ Centers for Disease Control and Prevention, Provisional Data Shows U.S. Drug Overdose Deaths Top 100,000 in 2022 (May 18, 2023), available at <https://blogs.cdc.gov/nchs/2023/05/18/7365/>.

² Centers for Disease Control and Prevention, MMWR: Drug Overdose Deaths, by Selected Sociodemographic and Social Determinants of Health Characteristics—25 States and the District of Columbia, 2019-2020 (July 22, 2022), available at <http://dx.doi.org/10.15585/mmwr.mm7129e2>.

The Urgency of Overdose in Wisconsin

- In 2021, almost 1800 people died from overdose in Wisconsin. This is about 5 people *every day*.¹
- In WI, the overdose death rate increased from 2019 to 2021 by 114% and 78% among Black and Indigenous individuals, respectively.²
- Overdose deaths are preventable. It doesn't have to be this way.
 - "Every overdose death is a culmination of a long series of policy failures and lost opportunities for harm reduction."³

1. Centers for Disease Control and Prevention, Drug Overdose Mortality by State, 2021, https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm

2. Wisconsin Department of Health Services (Updated September 1, 2023). <https://www.dhs.wisconsin.gov/opioids/deaths-county.htm>.

3. JN Park et al., *Situating the Continuum of Overdose Risk in the Social Determinants of Health: A New Conceptual Framework*, 98 Millbank Quarterly, 700-46 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7482387/pdf/MILQ-98-700.pdf>

Defense Lawyers are Poised to Make a Difference!

- Deepen your understanding and practice of harm reduction principles
- Review available resources (suggestions at end of presentation)
- Connect with and support harm reduction programs in your community
- Challenge the policies and practices that harm your clients
- Use your voice! Defense lawyers have unique insights to share on the failure of our prevailing approach to PWUD.

Image courtesy of Vital Strategies. Pictured is Tahira Malik, founder of Samad's House in Milwaukee, WI.



Call for Interested Attorneys—Support PULSE

Who is PULSE? PULSE is a pending organization for and run by PWUD in WI who advocate for harm reduction, safe supply access, and drug law reform, empowering all who use drugs through education, engagement, and policy change. PULSE strives to reduce harms, challenge stigma, and create a more just society. Learn more at <https://www.people4pulse.org/home>. Other states have drug user unions with similar aims, but this will be the first in WI.

Why does PULSE need support? Members of PULSE may be targeted, surveilled, and at increased risk of arrest based on the nature of a user's union, as well as the diverse ways in which PWUD are criminalized in WI. In addition, it is possible PULSE or its members may be targeted in order to undermine community mobilization, advocacy, and demonstration efforts.

The Ask: Consider adding your name and contact to the list being circulated to indicate willingness to receive infrequent email communications about potential opportunities to provide pro bono assistance. A follow-up e-mail after this training will provide another opportunity to indicate your interest.

A Few Recommended Resources

Overdose Crisis

1. Article in AJPH: [*Opioid Crisis: No Easy Fix to Its Social and Economic Determinants*](#) (Feb. 2018)
2. Leo Beletsky in the Utah Law Review, [*America's Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis*](#) (Sept. 2019)
3. WI Department of Health Services, [numerous overdose resources](#)
4. [Vital Strategies OPP Brochure](#)

MOUD access

1. [USDOJ Guidance on ADA and OUD](#)
2. [Legal Action Center MOUD Advocacy Toolkit](#)
3. Article in NACDL's The Champion®: [*Defense Lawyers and the Opioid Epidemic: Advocacy for Medication*](#) (Aug. 2018)

Harm Reduction

1. National Harm Reduction Coalition [various materials](#)
2. NYT, [*One Year Inside a Radical New Approach to America's Overdose Crisis*](#) (Feb. 2023)
3. CCI, [*A Practitioner's Guide to Harm Reduction in Drug Courts*](#) (Aug. 2021)
4. [Urban Survivor's Union](#)

Thank you!

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