



OVERVIEW

**Substance Use Disorders and
Advocacy in the Criminal Legal System**

Defending Drug Overdose Homicide Cases

**Lisa Newman-Polk, Esq., LCSW
NACDL, Jan. 28, 2021**

Language is important!

NO!

- **Substance Abuse**
- Clean vs. Dirty
Passed vs. Failed
- Drug of “Choice”
- Addict, Junkie, Drunk

YES!

- **Substance Use Disorder**
Substance misuse
- Positive vs. Negative
- Drug of addiction
- A person...
 - with a substance use disorder
 - who uses
 - - who is addicted



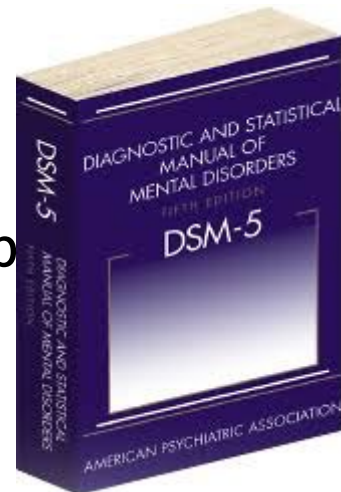
What is ADDICTION **(i.e. Severe Substance Use Disorder)?**

- ✓ **Intense cravings and compulsive use that continues *despite negative consequences*.**
- ✓ **Physical and mental tolerance that drive the person to use the drug of addiction as if life depends upon it.**

Diagnostic and Statistical Manual of Mental Disorders, 5th Ed. (DSM 5)

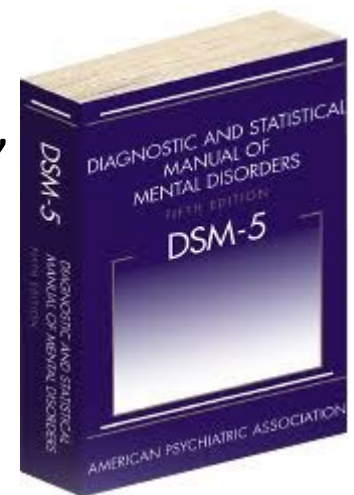
Substance Use Disorder (SUD) is... (p. 483):

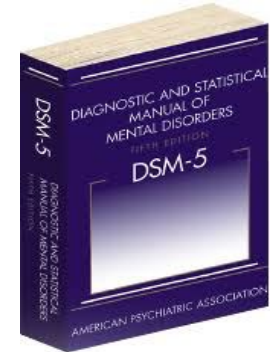
- a “cluster of cognitive, behavioral, and physiological symptoms indicating that the individual **continues using the substance despite significant substance-related problems.**”
- “An important characteristic of substance use disorders is an underlying **change in brain circuits** that may persist beyond detoxification, particularly in individuals with severe disorders.”
- “The behavioral effects of these brain changes may be exhibited in the **repeated relapses** and intense drug cravings when the individuals are exposed to drug-related stimuli...”



SUDs are separated by classes of drugs in the DSM 5

- Opioid Use Disorder
- Alcohol Use Disorder
- Cannabis Use Disorder
- Hallucinogen-Related Disorders (e.g. *mescaline*, *MDMA*)
- Inhalants Use Disorders
- Sedative-, Hypnotic-, or Anxiolytic-Related Disorders (e.g. *benzodiazepines*)
- Stimulant Use Disorders (e.g. *cocaine*, *amphetamines*, *methamphetamine*)
- Tobacco Use Disorder
- Caffeine Use Disorder





A problematic pattern of use = significant impairment or distress.

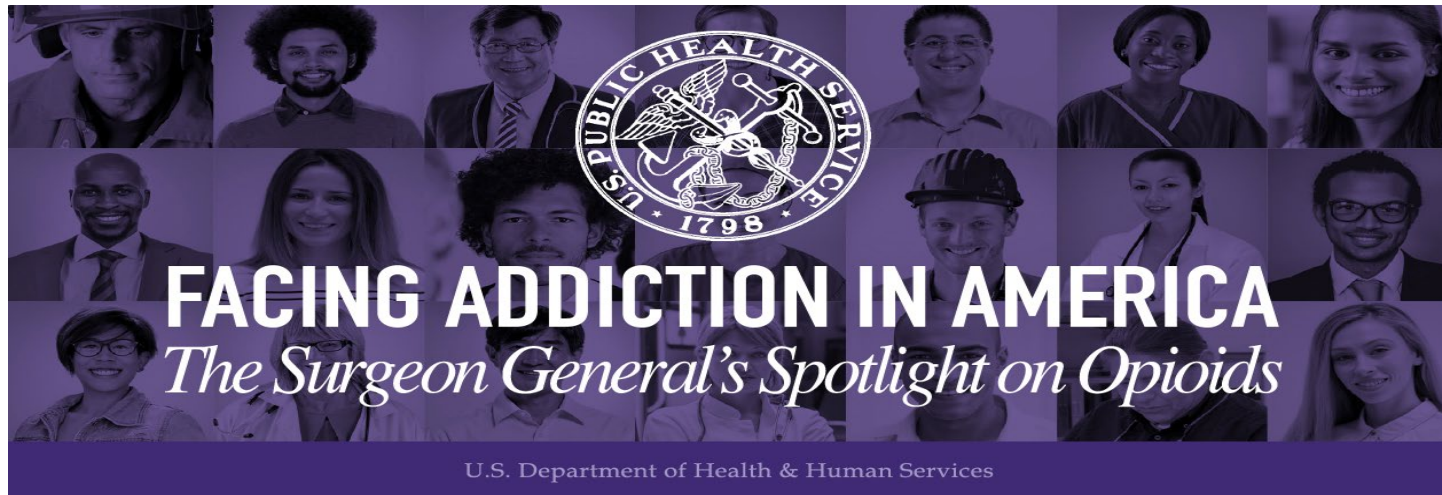
At least two of the following, occurring within a 12-month period.

1. Substance taken in larger amounts or over a longer period than was intended.
2. Persistent desire or unsuccessful efforts to cut down or control use.
3. A great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
4. Craving, or a strong desire or urge to use.
5. Recurrent use resulting in failure to fulfill major role obligations at work, school, or home.
6. Continued use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of opioids.
7. Important social, occupational, or recreational activities are given up or reduced because of use.
8. Recurrent use in situations in which it is physically hazardous.
9. Continued use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.
10. Tolerance
11. Withdrawal

Mild (2-3 symptoms) → Moderate (4-5 symptoms) → Severe (6 or more)

2016 Surgeon General Report

www.addiction.surgeongeneral.gov



“Scientific breakthroughs have revolutionized the understanding of substance use disorders. For example, severe substance use disorders, commonly called *addictions*, were once viewed largely as a moral failing or character flaw, but are now understood to be chronic illnesses characterized by clinically significant impairments in health, social function, and voluntary control over substance use.” P. 2-1.

MEDICAL CONSENSUS

Surgeon General: "[a]ddiction...[is] a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use, despite harmful consequences."

American Medical Association: "addiction is a chronic disease and must be treated as such."

American Society of Addiction Medicine: "chronic disease of brain reward, motivation, memory and related circuitry....Like other chronic diseases, addiction often involves cycles of relapse and remission."

American Psychiatric Association: "Addiction is a complex condition, a brain disease that is manifested by compulsive substance use despite harmful consequences. . . . Changes in the brain's wiring are what cause people to have intense cravings for the drug and make it hard to stop using."

World Health Organization: "substance dependence is as much a disorder of the brain as any other neurological or psychiatric illness. . . . [T]he motivation to use psychoactive substances can be strongly activated by stimuli (environments, people, objects) associated with substance use, causing the desire or craving that can overwhelm people and cause relapse to substance use, even after long periods of abstinence."



Other Mental
Disorders

Early Use



Genetics

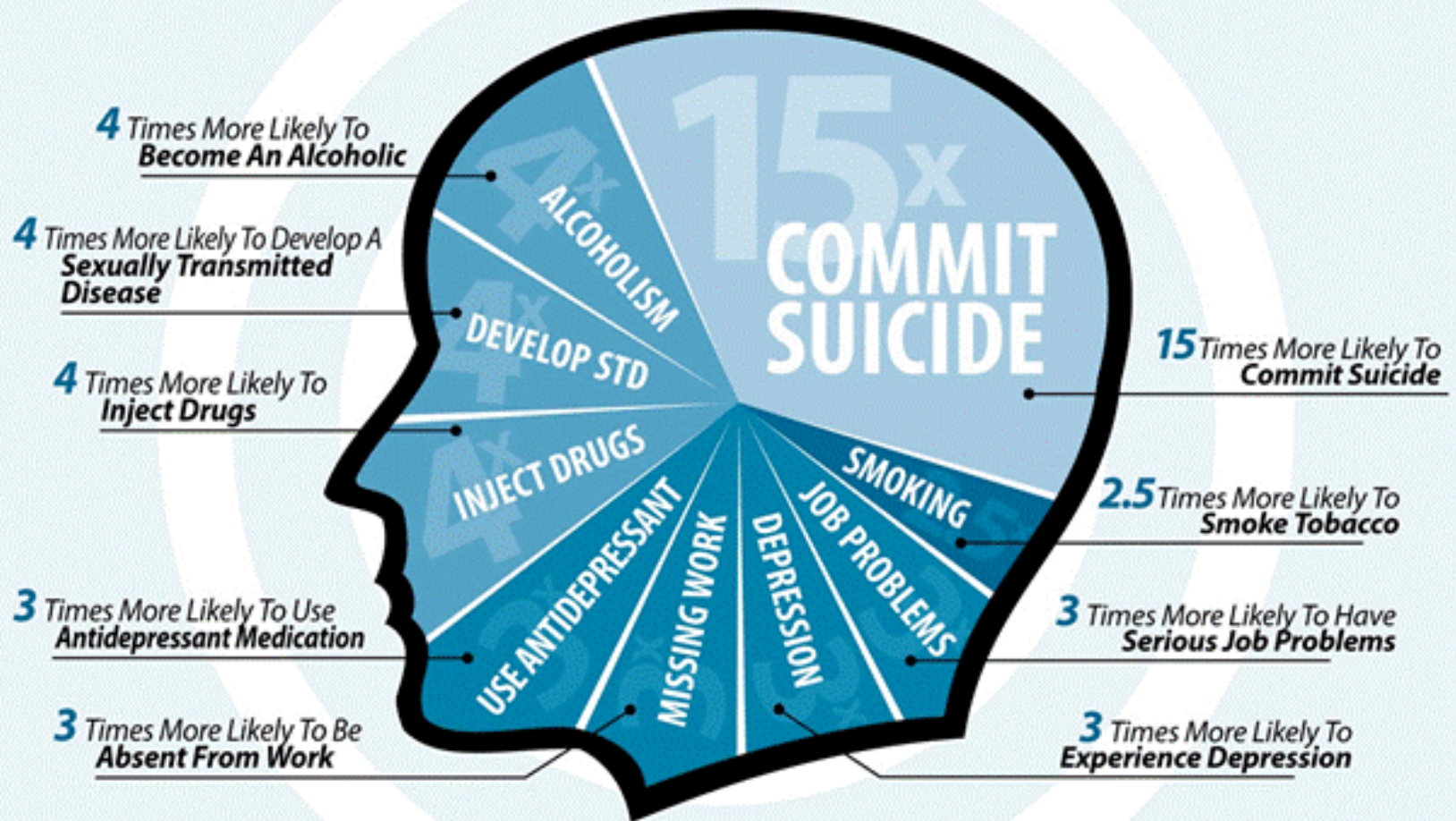
TRAUMA

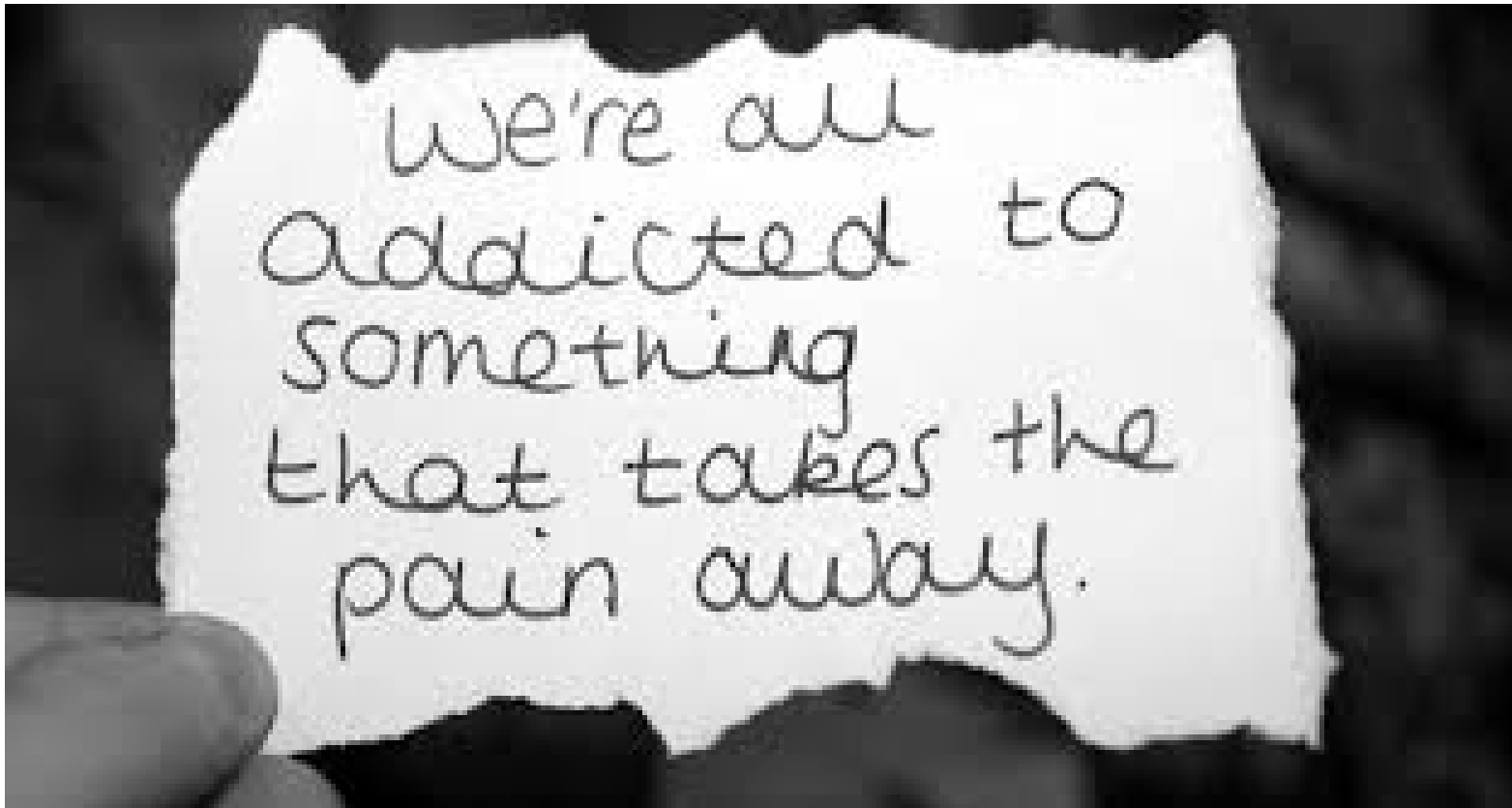
RISK
FACTORS

Environment

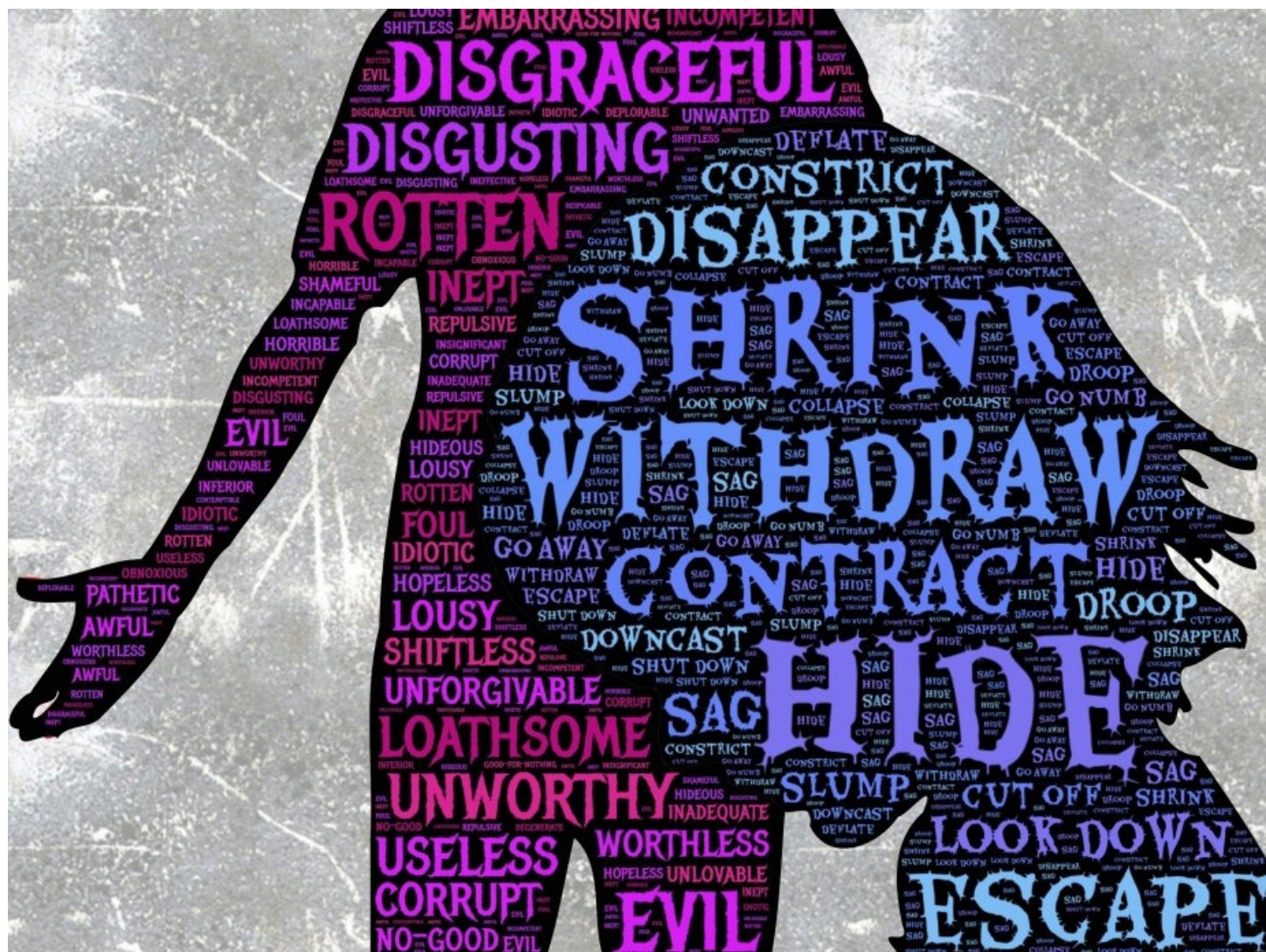
Social risk factors

PEOPLE WHO HAVE EXPERIENCED TRAUMA ARE:



A black and white photograph showing a hand holding a piece of torn, white paper against a dark, textured background. The paper has jagged, torn edges. Handwritten in black ink on the paper is the text: "We're all addicted to something that takes the pain away." The handwriting is in a casual, cursive style.

We're all
addicted to
something
that takes the
pain away.



HIJACKING THE BRAIN

New research suggests that the brain's reward system has different mechanisms for craving and pleasure. Craving is driven by the neurotransmitter dopamine. Pleasure is stimulated by other neurotransmitters in "hedonic hot spots." When the craving circuitry overwhelms the pleasure hot spots, addiction occurs, leading people to pursue a behavior or drug despite the consequences.

PATHWAYS TO CRAVING

Desire is triggered when dopamine, which originates near the top of the brain stem, travels through neural pathways to act on the brain. Drugs increase the flow of dopamine.

Ventral tegmental area (VTA)

Dopamine is produced here and flows outward along neurons distributed throughout the brain's reward system.

Brain stem

Basic visceral sensations and reactions to pleasure, such as smiling, originate from this hot spot.

Ventral pallidum

Animal experiments show that damaging this hot spot can turn something that once gave pleasure into a source of disgust.

Dorsal striatum

Neurons here help form habits by identifying enjoyable patterns, such as the anticipation of buying drugs.

Prefrontal cortex

The amino acid glutamate, produced here, interacts with dopamine to spark visualizations that cue cravings.

Amygdala

Neurons here are stimulated by learned emotional responses, such as memories of cravings and pleasure.

Orbitofrontal cortex

This hot spot gives a sense of gratification but is also the first to shut down if a person has indulged too much.

Nucleus accumbens

A hot spot within this key part of the craving circuitry amplifies the response to pleasure.

PLEASURE HOT SPOTS

A system of small hedonic hot spots, unrelated to dopamine, provides temporary sensations of pleasure and forms a feedback loop with the reward system that controls desire.



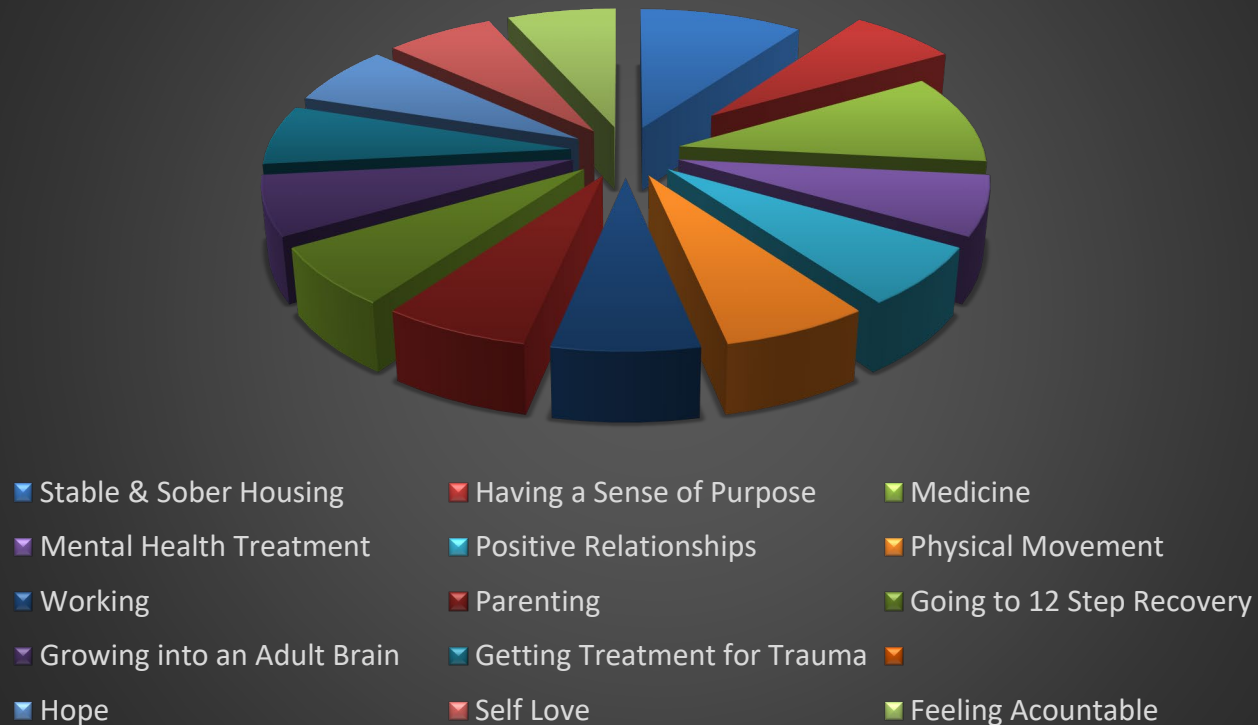
Rebuild the Brain's Broken Dopamine System

- **Positive relationships** (e.g., restoring relationships, falling in love, or having a pet)
- **Exercise** (physical movement)
- **Mental health treatment**
- **Medications**
- **Constructive activities** (e.g., working or going to school)
- **Sense of purpose** (e.g., investment in a community)
- **Accountability**
- **Self-respect**
- **Adult brain**



Recovery is not one size fits all.

What It Takes To Get Better



Graph by Ruth Potee, MD



Components of Comprehensive Addiction Treatment

- ***Individual counseling*** with a licensed clinician trained in addiction
- ***Evidence based-therapies:*** CBT, MET, DBT, EMDR, ACT
- ***Medications for Addiction Treatment*** (MAT): suboxone, methadone, vivitrol
- ***Case Management:*** homelessness, unemployment, co-occurring disorders
- ***Mutual peer support:*** 12-step, recovery coaches, SMART Recovery)
- ***Family therapy:*** CRAFT, Learn2Cope, Al-Anon





Rhode Island DOC, minimum security



MCI-Cedar Junction/Walpole

Boston Globe File Photo/1993



Souza-Baranowski Correctional Center, Massachusetts



Souza-Baranowski Correctional Center, Massachusetts
“Recreation deck”



San Quentin, California
"Therapeutic Modules"

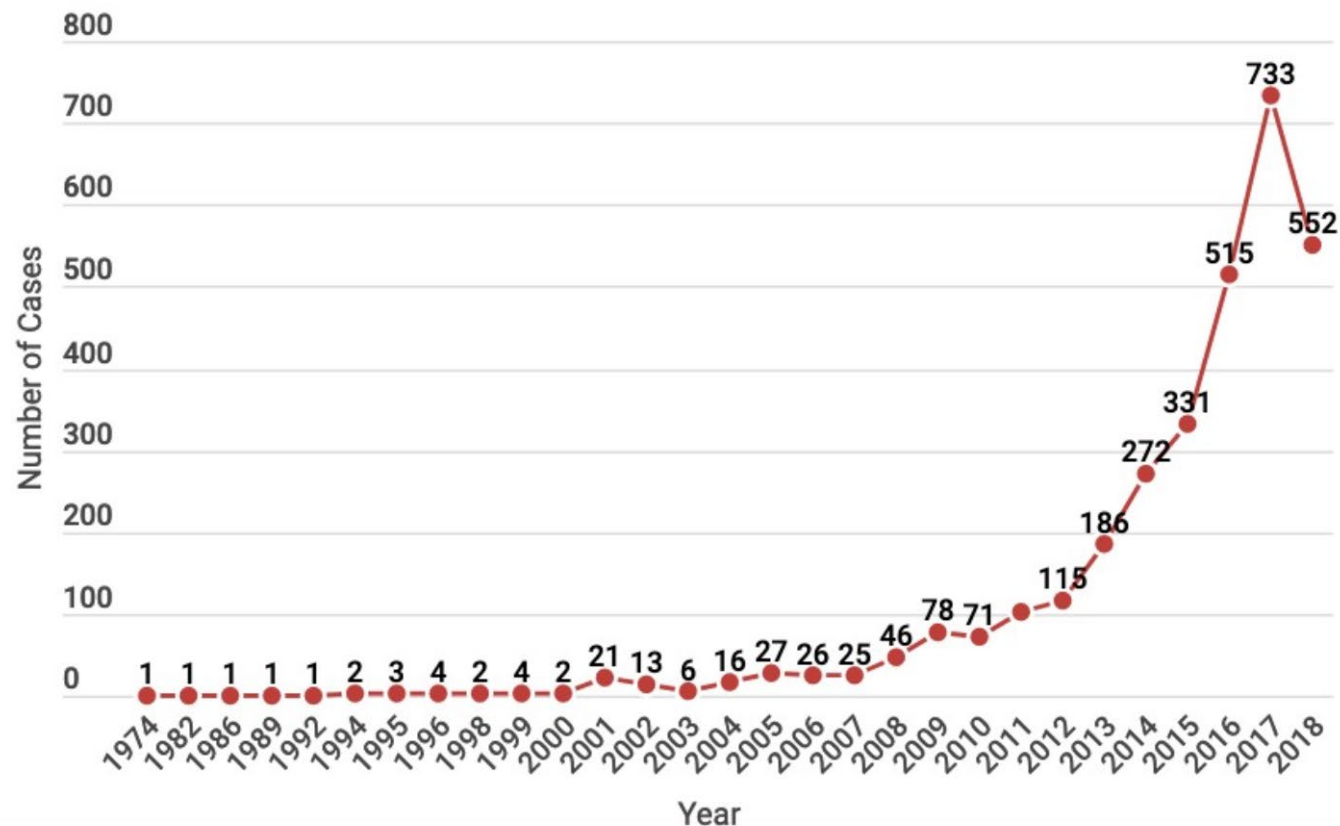


Federal Bureau of Prison, RDAP (“Residential Drug Abuse Program”)

Drug Overdose Homicide Cases (aka Drug Delivery Resulting in Death/DDRD)

Surge of DDRD Charges Over Time

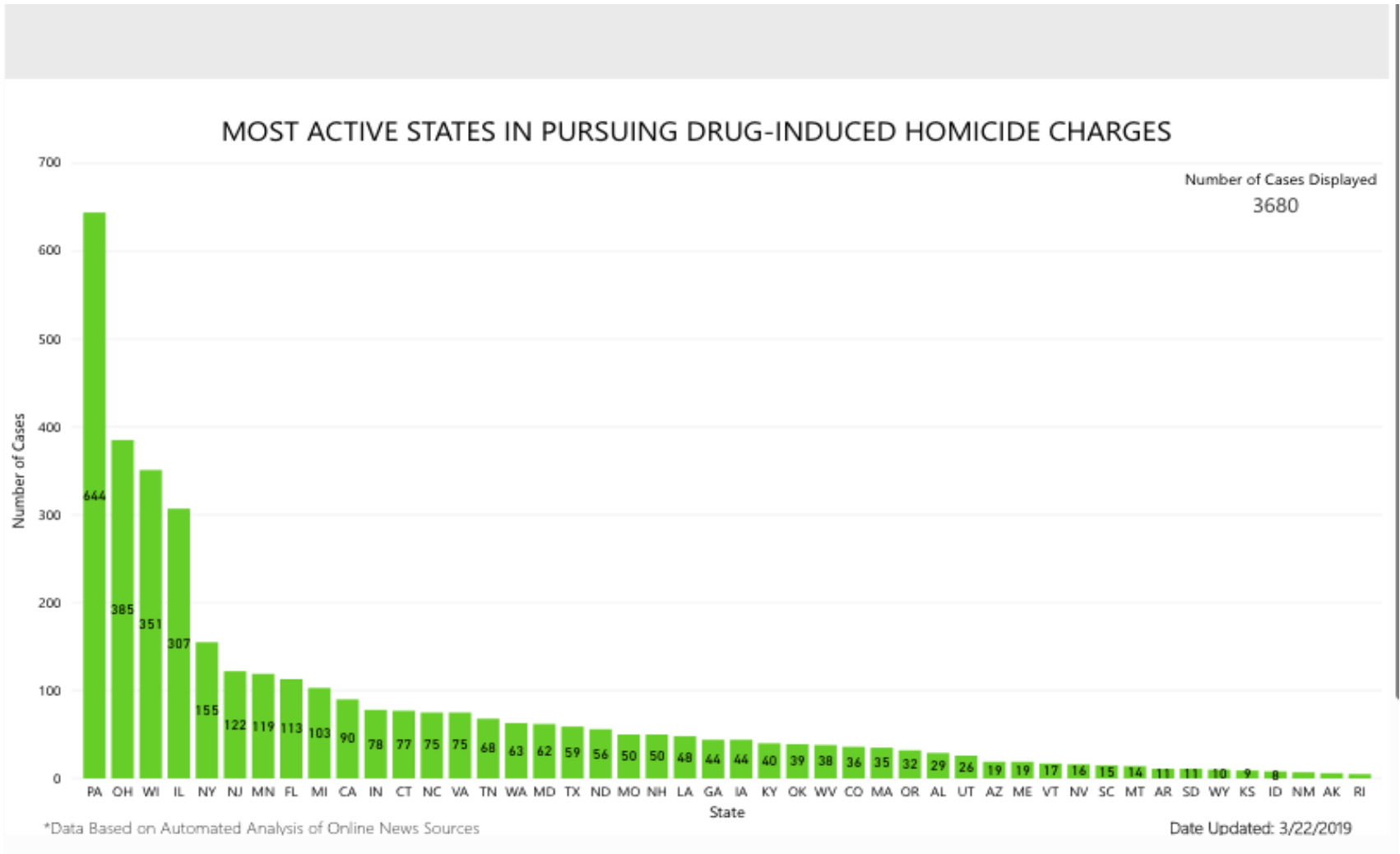
DIH Charges by Year



Source: <http://healthinjustice.org/drug-induced-homicide>

Slide credit: Jeremiah Goulka and Leo Beletsky,
Health in Justice Action Lab at Northeastern University School of Law

Most Active States Pursuing Charges as of 3/22/2019



Source: <http://healthinjustice.org/drug-induced-homicide>

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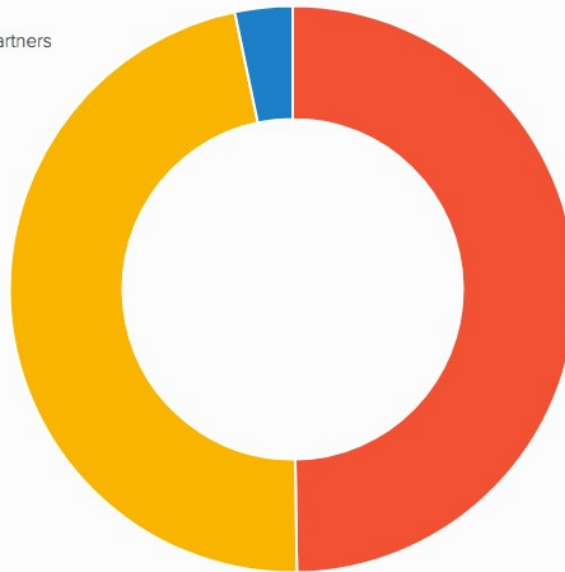
Enforcement Discretion: The Myth of the “Dealer”

HEALTH IN JUSTICE

HOME PROJECTS ABOUT US PARTNERS CONTACT US PRESS

RELATIONSHIP BETWEEN ACCUSED AND VICTIM

- Caretaker/Family/Friends/Partners
- “Traditional” Dealer/Buyer
- Patient/Doctor



RELATIONSHIP BETWEEN
ACCUSED AND VICTIM

Majority of cases represent charges being filed against individuals who cannot be defined as “drug dealers,” but are instead family members, partners, or other actors.

Source: Online News Articles (2000-2017)

Source: <http://healthinjustice.org/drug-induced-homicide> 9

Slide credit: Jeremiah Goulka and Leo Beletsky,
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Drug Overdose Homicide Cases

POLICY PROBLEMS

- Ensnares the **lowest hanging fruit** (i.e., addicted friends and family)
- Undermines **911 Good Samaritan** laws designed to incentivize help-seeking behavior among overdose witnesses
 - Interferes with the **timely administration of naloxone** to reverse overdoses
- At odds with **harm reduction efforts** to reduce isolation among those who use opioids.
- Does **not deter** drug sales or drug use



If the defendant suffers from addiction and provides drugs to a fellow user who then overdoses and dies...

The defendant's purchase of opioids for a fellow addicted person is not reckless in view of the science of addiction.

A person struggling with drug addiction typically **ingests multiple times daily** in a desperate effort to feel normal and stave off withdrawal.

Using an opioid when addicted is **required to feel stable and normal.**



Commonwealth v. Carrillo, 483 Mass. 269 (2019)

AMICUS BRIEF by Lisa Newman-Polk, Jeremiah Goulka, & Leo Beletsky

**MA Committee for Public Counsel Services &
the Health in Justice Action Lab at Northeastern University School of Law**

- i. Severe substance use disorder is a chronic illness in which changes in brain circuitry and physical tolerance to the drug, drive a person to **daily, compulsive use as if life depends upon it.**
- ii. The defendant and decedent both suffered from opioid addiction, and thus the defendant's **purchase of opioids** from his known supplier for the decedent was not "wanton or reckless," but rather **an act to manage the illness.**



If it worked to punish people
for addiction and relapse,
we would have a cured nation.

