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## If not us, then who: Advocating for Change to Louisiana's Drug Court Program

Dalton J. DeLong

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# If not us, then who: Advocating for Change to Louisiana’s Drug Court Program

*Dalton J. DeLong\**

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## INTRODUCTION

Across the United States, drug court programs are being implemented as a form of alternative sentencing for individuals with substance use disorders. The goal of these programs is to assist individuals in overcoming their disorders and ultimately reduce recidivism rates. While the efforts of states to implement drug court programs are commendable, many programs are plagued with a variety of issues. Many drug court programs are underfunded, understaffed, and impose burdensome requirements which discourage eligible individuals from participating.<sup>1</sup> Furthermore, efforts to supplement funding have been shot down in state legislatures.<sup>2</sup> It is essential that these programs be reformed, as American communities are continually wounded by the opioid epidemic in the form of increased homelessness, mass overdose deaths, and rising crime rates.

Part I of this comment will argue that drug court programs are the best solution to combating the opioid epidemic, as standard imprisonment ultimately does nothing to address an inmate's substance use disorder nor reduces recidivism rates.<sup>3</sup> It will detail the origins of the opioid epidemic in the United States and provide information regarding its consequences across the nation and particularly in Louisiana. Part II will highlight the common elements of state drug court programs, provide historical background regarding the development of drug court programs in America, and give an in-depth look into the structure and function of the program currently implemented in Louisiana. Part III will be a detailed examination of the benefits and drawbacks of the Louisiana state drug court program. Part IV of this comment will construct a theoretical, model program that has the greatest potential to efficiently produce better outcomes for individuals with substance use disorders. The model will seek to be both economically feasible and easily implemented by most of the states. Finally, Part V will advocate that the model program be introduced in Louisiana.

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1. Christine Mehta, *How Drug Courts are Falling Short*, OPEN SOCIETY (June 7, 2017), <https://www.opensocietyfoundations.org/voices/how-drug-courts-are-falling-short> [https://perma.cc/J6LD-YEVR].

2. Governor John Bel Edwards, Veto of Senate Bill 145 of the 2021 Regular Session (2021).

3. Adam Gelb et al., *More Imprisonment Does Not Reduce State Drug Problems*, PEW CHARITABLE TR. (Mar. 8, 2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems> [https://perma.cc/CCU4-YXHJ].

I. THE OPIOID EPIDEMIC: ITS ORIGINS AND CONSEQUENCES IN  
LOUISIANA AND ABROAD

A. *Origins*

The opioid epidemic was the third drug crisis to impact the United States, preceded by the crack cocaine epidemic (1980's) and the methamphetamine epidemic (1990's).<sup>4</sup> Most scholars credit the opioid epidemic's origins in the 2000s' to the over-prescription of Oxycontin by healthcare professionals to treat pain.<sup>5</sup> This is likely the result of pharmaceutical companies originally advertising the drug as non-addictive. This advertising campaign began in 1996 and pushed Oxycontin as a universal painkiller with a clinical addiction rate of less than 1%.<sup>6</sup> Within a period of ten years, the number of opioid prescriptions quadrupled.<sup>7</sup> Since 2010, there has been more than \$21 billion worth of Oxycontin sold in the United States.<sup>8</sup> Some experts suggest that the commercial success of fentanyl is also to blame. Fentanyl was originally prescribed to cancer patients as a medication to reduce pain.<sup>9</sup> However, the medication was thereafter prescribed at exponentially higher rates and to non-cancer patients. As of 2018, the United States consumes more than thirty times more fentanyl than it did before the 1996 Oxycontin marketing campaign.<sup>10</sup> Worse still, the illegal drug trade in the United States capitalized on the growth in Fentanyl prescription and addiction by introducing homemade fentanyl into the street supply.<sup>11</sup> The DEA has found counterfeit pills that contain Fentanyl content ranging from .02 to 5.1 milligrams.<sup>12</sup> The ordinary prescribed dosage of fentanyl for adult patients in the United States is 0.05 milligrams.<sup>13</sup> This places users in

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4. Robbie Wright, *The Opioid Epidemic: Returning to the Basics*, 70 MERCER L. REV. 525, 526-9 (2018).

5. *Id.* at 527.

6. *Id.*

7. *Id.*

8. Jeffrey Juergens, *Oxycodone Addiction and Abuse*, ADDICTION CTR. (last updated Nov. 23, 2021), <https://www.addictioncenter.com/opiates/oxycodone/> [https://perma.cc/SPL9-LDXP].

9. See Wright, *supra* note 4, at 527.

10. *Id.* at 528.

11. *Id.* at 529.

12. *Facts About Fentanyl*, U.S. DEPT. OF JUST., DRUG ENF'T ADMIN. (last visited Oct. 19, 2021), <https://www.dea.gov/resources/facts-about-fentanyl> [https://perma.cc/D2GT-HWPQ].

13. *Fentanyl (Rx)*, MEDSCAPE (last visited March 7, 2022), <https://reference.medscape.com/drug/sublimaze-fentanyl-343311> [https://perma.cc/Q6EQ-MRXS].

extreme danger, as a dose of as little as 2 milligrams can kill depending on size, tolerance, and past use.<sup>14</sup>

The massive increase in opioid prescriptions is significant. Data suggests most substance use disorders begin at the doctor's office rather than on a street corner.<sup>15</sup> Most victims of the opioid epidemic developed their substance use disorders because of prescription medication, whether it be their own prescription, a family member's, or a friend's.<sup>16</sup> Although opioid prescriptions have continually decreased since their peak in 2012 (a dispensing rate of 80.3 per 100 persons)<sup>17</sup>, the damage has already been done. Millions of Americans now either suffer from a substance use disorder themselves or have lost a loved one because of an overdose.

### *B. Consequences*

The opioid epidemic has hit the United States hard. In 2017, the estimated costs absorbed by the United States because of the opioid epidemic totaled \$1,021 billion.<sup>18</sup> Included in this figure are costs resulting from substance use disorders (\$471 billion) and costs associated with fatal opioid overdoses (\$550 billion).<sup>19</sup> State governments have also suffered losses. Data suggests that the states have contributed substantial resources to hiring additional emergency services personnel and prosecutors, as well as spending

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14. *Id.*

15. *Prescription Opioid Use is a Risk Factor for Heroin Use*, NAT'L INST. ON DRUG ABUSE (Jan. 2018), <https://www.drugabuse.gov/publications/research-reports/prescription-opioids-heroin/prescription-opioid-use-risk-factor-heroin-use> [<https://perma.cc/4JWC-8G3S>] (stating that 86% of heroin users had used prescription painkillers prior to using heroin).

16. *Id.*

17. *U.S. Opioid Dispensing Rate Maps*, CTR. FOR DISEASE CONTROL (last visited Nov. 10, 2021), <https://www.cdc.gov/drugoverdose/rxrate-maps/index.html> [<https://perma.cc/23Y2-NNKA>].

18. Feijun Luo et al., *State-Level Economic Costs of Opioid Use Disorder and Fatal Opioid Overdose – United States, 2017*, CTR. FOR DISEASE CONTROL (Apr. 16, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7015a1.htm> [<https://perma.cc/NN2N-8K9L>].

19. *Id.*

to expand jails and morgues<sup>20</sup>, to deal with the opioid epidemic.<sup>21</sup> This substantial economic loss is not limited to public health issues caused by opioid abuse. There is also a clear correlation between substance use disorders and criminal activity. A study of crime and substance use disorders conducted in Miami in 1991 revealed that 573 heroin users were responsible for 215,105 crimes during a one-year period, an average of 375 crimes per person.<sup>22</sup> This same study also showed that drug distribution and the purchase of illegal drugs were the two most frequent offenses.<sup>23</sup>

### C. Louisiana Impacts

Louisiana is among the states that have suffered the most from the opioid epidemic. In 2018, Louisiana experienced 1,140 drug overdose deaths, 40% of which were opioid overdoses.<sup>24</sup> That same year, Louisiana providers wrote 79.4 opioid prescriptions per 100 persons compared to the average United States rate of 51.4.<sup>25</sup> This placed the state in the top five of states with the highest opioid prescription rates.<sup>26</sup> Louisiana has a storied past when it comes to drug related crime. The New Orleans Police Department estimated that 75% of the 120 murders committed in New Orleans in the first six months of 2000 were drug related and that rising murder rates in the city could be largely attributed to turf wars between heroin

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20. Ashley Welch, *Drug Overdoses Killed More Americans Last Year than the Vietnam War*, CBS NEWS (last updated Oct. 17, 2017), <https://www.cbsnews.com/news/opioids-drug-overdose-killed-more-americans-last-year-than-the-vietnam-war/> [<https://perma.cc/PRL6-ENSM>] (In 2019, 70,000 Americans died from drug involved overdoses, more than the American death tolls for the entire Vietnam war at 58,200).

21. Jonathan P. Novak, *Bootstrapping the Opioid Epidemic*, 52 MD. B.J. 57, 58 (Spring 2019).

22. David N. Nurco et al., *Recent Research on the Relationship between Illicit Drug Use and Crime*, 9 BEHAV. SCI. & L. 221, 223 (1991).

23. *Id.*

24. *Louisiana: Opioid-Involved Deaths and Related Harms*, NAT'L INST. ON DRUG ABUSE (Apr. 3, 2020), <https://www.drugabuse.gov/drug-topics/opioids/opioid-summaries-by-state/louisiana-opioid-involved-deaths-related-harms> [<https://perma.cc/G97H-KD5C>].

25. *Id.*

26. *Id.*

distributors.<sup>27</sup> This problem is not relegated to the past, nor is it limited to Orleans Parish. Baton Rouge is one area of Louisiana that was included in a new DEA initiative called “Operation Overdrive”.<sup>28</sup> This initiative, which was introduced on February 1st of 2022 utilizes national crime statistics and CDC data to identify areas with significant amounts of drug-related violence and overdose deaths.<sup>29</sup> New Orleans was also listed among the locations identified in this initiative.<sup>30</sup> Even without considering the impact of the opioid epidemic, Louisiana has the highest incarceration rate in the United States.<sup>31</sup> In 2000, 30% of Louisiana prisoners were imprisoned for drug-related crimes.<sup>32</sup> This rate was second only to individuals imprisoned for violent crimes (38%), which often had root causes in drug abuse or distribution.<sup>33</sup> Considering that 85% of America’s prison population either suffers from an active substance use disorders or was arrested for a crime involving drugs or drug use, it is highly likely that most of Louisiana’s prisoners can name drugs as the root cause of their incarceration.<sup>34</sup>

#### *D. The Criminal Justice System as a Vehicle for Healing*

Americans have suffered because of the opioid epidemic. The data reveals that public health has been adversely impacted to the tune of thousands of overdose deaths. American families have lost loved ones, and little can be done to remedy the devastation they have suffered. However, this does not mean that Americans should

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27. *La. Drug Threat Assessment*, NAT’L DRUG INTELLIGENCE CTR. (May 2001), <https://www.justice.gov/archive/ndic/pubs0/666/overview.htm> [https://perma.cc/5CEE-KE4J].

28. Allison Bruhl, *Baton Rouge listed in DEA’s New Initiative to Fight Drug-related Crime, Overdose Rates*, BRPROUD (Feb. 7, 2022), <https://www.brproud.com/news/local-news/baton-rouge-listed-in-deas-new-initiative-to-fight-drug-related-crime-overdose-rates/> [https://perma.cc/53TD-PB4N].

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Criminal Justice DrugFacts*, Nat’l Inst. on Drug Abuse (June 2020), <https://www.drugabuse.gov/publications/drugfacts/criminal-justice> [https://perma.cc/5SD3-9HMZ].

resign themselves to hopelessness and accept defeat at the hands of the opioid crisis. While rising crime rates and increased interaction between individuals with substance use disorders and the criminal justice system present a problem, they also present a golden opportunity. The criminal justice system already interacts with a substantial number of individuals with substance use disorders.<sup>35</sup> It is through the system that lawmakers can attack the root of the problem and provide help to individuals who need it.

The carrot and stick approach of drug court programs is one of the most effective vehicles for combating the opioid epidemic. An individual with a substance use disorder that is outside the reach of the criminal justice system must actively make the choice to get well (many of which may not have a support group encouraging and assisting them)<sup>36</sup>. In states with drug court programs, an individual with a substance use disorder within the criminal justice system still has that choice, but it is heavily weighted in favor of seeking treatment. That individual can choose to risk being imprisoned for up to two years<sup>37</sup> or participate in a comprehensive program designed to rehabilitate and keep them out of the system. Through these programs, the criminal justice system can provide treatment to individuals who either have no access to treatment or are unable to overcome their substance use disorder of their own volition.

## II. DRUG COURTS OF AMERICA; THEIR BEGINNINGS, ELEMENTS, AND LOUISIANA'S MODEL

### A. *Beginnings and First Iterations*

The first American drug court was established in New York City in 1974.<sup>38</sup> Experts credit the establishment of this drug court program to the Rockefeller drug laws of 1973, which vastly

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35. *Id.*

36. *Drug and Substance Abuse Statistics*, AM. ADDICTION CTR. (last updated Nov. 19, 2021), <https://americanaddictioncenters.org/rehab-guide/addiction-statistics> [<https://perma.cc/KMD3-FD38>]. (In 2017, it was estimated that 20 million people needed treatment for a substance use disorder but only 4 million received treatment).

37. LA. STAT. ANN. § 40:967 (2018).

38. Arthur J. Lurigio, *The First 20 Years of Drug Treatment Courts: A Brief Description of their History and Impact*, 72 FED. PROB. J. 15, 16 (2008).

increased the number of felony drug offenses in New York and quickly overwhelmed the state's judiciary.<sup>39</sup> However, most experts agree that the modern drug court program in the United States can be largely traced to the Miami-Dade program established in 1989.<sup>40</sup> The model implemented in Florida was crafted so that individuals could be kept in treatment long-term and the problem of relapse could be addressed.<sup>41</sup> Drug court judges closely monitored a participant's progress and imposed sanctions for any transgressions.<sup>42</sup> It is from this first iteration in Florida that more than 200 drug court programs in operation in the United States can trace their roots.<sup>43</sup> Early studies on the effectiveness of drug courts performed in the 1990s led many states to implement their own versions of this program.<sup>44</sup> Today, there are over 3,500 active drug court programs in the United States.<sup>45</sup> These programs have greatly diversified from the Miami-Dade model to address specific problems and assist several target populations. There are now juvenile, family, veteran, and tribal drug courts, to name only a few of the various types.<sup>46</sup>

### *B. Common Elements*

Although no drug court is exactly alike, most follow similar operating patterns and share a common structure. First, almost all American drug courts are divided into graduated phases.<sup>47</sup> As the participant progresses through the program and successfully completes steps of their treatment plan, the burdens and requirements imposed by the court are gradually lessened. For example, a participant one-month into the program may be required

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39. *Id.*

40. Hon. William P. Keesley, *Drug Courts*, 10 S.C. LAW. 33, 35, 37 (1998).

41. *Id.*

42. *Id.*

43. *Id.* at 35.

44. *Id.* (Drug court programs showed reduced recidivism and retention rates of around 70%).

45. *Drug Courts*, U.S. DEPT. OF JUST. (August 2021), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/drug-courts.pdf> [<https://perma.cc/G7TK-W5J4>].

46. *Id.*

47. See Keesley, *supra* note 40, at 35.

to attend four Narcotics Anonymous meetings per week, whereas a participant who is close to graduation may only need to attend one. Whereas successes are rewarded with gradually reduced burdens, failures are punished with gradually increasing sanctions. The most common sanctions employed by American drug courts are increased court appearances, more intensive treatment, demotions to earlier treatment stages, and “shaming” sanctions (which usually consists of a tongue lashing from the drug court judge).<sup>48</sup> Ultimate failure is punished by alternative termination sentences and may result in the reinstatement of the participant’s original sentence.<sup>49</sup> Successful completion of the program results in either a dismissal of all charges or no-time sentences on reduced charges.<sup>50</sup>

Second, treatment programs employed by the courts are usually long-term and outpatient.<sup>51</sup> By far, the most common treatment program employed by drug courts is a combination of the Narcotics Anonymous 12-step program and group therapy for any accompanying mental health issues that may exist.<sup>52</sup> Drug court judges take an active role in the participant’s treatment and rehabilitation. Participants make frequent court appearances in which their progression through the program is reviewed by the judge. The participant also must submit to and pass a weekly drug test in most programs. Defense counsel and prosecutors, who usually serve as gatekeepers for the program<sup>53</sup>, come together with the goal of curing the participant’s substance use disorder. Although drug court policies vary based on a jurisdiction’s particular needs and resources, American drug courts generally share this structure.<sup>54</sup>

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48. Josh Bowers, *Contraindicated Drug Courts*, 55 UCLA L. REV. 783, 784-5 (2008).

49. *Id.*

50. *Id.*

51. *Id.*

52. Barbara Andraka-Christou, *Improving Drug Courts through Medication-Assisted Treatment for Addiction*, 23 VA. J. SOC. P. 179, 183-189 (2016) (over 90% of inpatient rehabilitation settings employ the 12-step program as their primary form of treatment).

53. LA. STAT. ANN. § 13:5304 (1997) (the District Attorney can propose that an individual be screened for eligibility for the program); See also W. VA. CODE § 62-15-4 (2013) (participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement).

54. See Keesley, *supra* note 40, at 35.

However, there are some major differences that vary from jurisdiction to jurisdiction. Some programs are pre-trial, and some are post-plea.<sup>55</sup> Some programs accept higher-risk defendants whereas some do not. For example, a violent offender is not eligible for participation in Louisiana's drug court program.<sup>56</sup>

### C. Medication Assisted Treatment and Drug Courts

While most American drug courts primarily utilize Narcotics Anonymous meetings and the 12-step program as their primary method of treatment, medication assisted treatment (MAT) is becoming the most popular method of treating substance use disorders in other circles.<sup>57</sup> MAT is a treatment method which utilizes FDA approved medications designed to cure substance use disorders.<sup>58</sup> The three primary medications used in MAT to treat opioid dependency are buprenorphine, methadone, and naltrexone.<sup>59</sup> These medications block the euphoric effects of opioid use, reduce cravings for opioids, and lessen the severity of withdrawal effects.<sup>60</sup> The U.S. Department of Health and Human Services and the World Health Organization agree that MAT is the most effective form of treatment available to combat opioid dependency.<sup>61</sup> It is important to note that, despite MAT being the best form of treatment for opioid dependency, only 53% of drug court programs in 2013 allowed their participants to receive MAT as part of their treatment program.<sup>62</sup>

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55. *Id.* at 37.

56. LA. STAT. ANN. § 13:5304 (1997).

57. See CY 2022 Methadone Payment Exception, 42 C.F.R. § 410 (2021) (From 2016 to 2019, Medicare Part D saw a steady decline in opioid use, along with an increased use of drugs for treatment of opioid use disorder).

58. See Andraka-Christou, *supra* note 52, at 188.

59. *Medication-Assisted Treatment (MAT)*, SUBSTANCE ABUSE AND MENTAL HEALTH SERV. ADMIN. (last updated Oct. 13, 2021), <https://www.samhsa.gov/medication-assisted-treatment> [<https://perma.cc/F6VZ-DFVL>].

60. Page M. Smith, *Implementing Medicaid Health Homes to Provide Medication Assisted Treatment to Opioid Dependent Medicaid Beneficiaries*, 106 KY. L.J. 111, 124-126 (2018).

61. See Andraka-Christou, *supra* note 52, at 188.

62. *Medication-Assisted Treatment (MAT) in the Criminal Justice System: Brief Guidance to the States*, SUBSTANCE ABUSE AND MENTAL HEALTH SERV. ADMIN. (2019), [https://opioidresponsenetwork.org/documents/MOUDConference2021/Resources/SAMHSA%20\(2019\)%20MAT%20in%20the%20criminal](https://opioidresponsenetwork.org/documents/MOUDConference2021/Resources/SAMHSA%20(2019)%20MAT%20in%20the%20criminal)

Perhaps even more alarming, a 2016 study showed that only 3 states had the resources required to make MAT available to residents with substance use disorders.<sup>63</sup>

If MAT has been recognized as the most effective form of treatment for substance use disorders, why this lack of funding and implementation in American drug courts? Most scholars believe that the problem lies with Narcotics Anonymous.<sup>64</sup> Although Narcotics Anonymous is the tried and tested method of treatment for most drug courts<sup>65</sup>, there are elements of NA which make it incompatible with MAT. Several studies indicate and the consensus among NA participants is that the program discourages use of MAT drugs to treat substance use disorders.<sup>66</sup> Since Narcotics Anonymous is a program that places a strong emphasis on complete abstinence, many of its groups view MAT as replacing one drug for another.<sup>67</sup> Another element of NA which may discourage use of MAT is the philosophical approach that NA takes towards substance dependency. This approach is one of powerlessness, surrender, and submission to a higher power.<sup>68</sup> As a result, a participant in NA is likely to view MAT as Sisyphean endeavor – one in which a drug addict with uncontrollable urges is trying to control those urges with a drug and will inevitably relapse.

NA's opposition to MAT and the mindset which it cultivates in its participants ultimately discourages individuals from receiving what has been hailed as the most effective form of treatment for opioid dependency. When one considers that group therapy and MAT have been found to have a natural synthesis which greatly

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%20justice%20system-Brief%20guidance%20to%20the%20states.pdf [https://perma.cc/U3MD-HPSS].

63. See Smith, *supra* note 60, at 124.

64. See Andraka-Christou, *supra* note 52, at 186.

65. William White et al., *We Do Recover: Scientific Studies on Narcotics Anonymous*, 11 (2020) (studies indicate that NA dropout rates are comparable to those of AA, which are 40% at the one year follow up, suggesting NA may not be very effective despite its widespread utilization).

66. *Id.*

67. *NA Groups & Medication*, NARCOTICS ANONYMOUS (2007), [https://www.na.org/admin/include/spaw2/uploads/pdf/servicemat/Dec2011\\_NA\\_Groups\\_and\\_Medication.pdf](https://www.na.org/admin/include/spaw2/uploads/pdf/servicemat/Dec2011_NA_Groups_and_Medication.pdf) [https://perma.cc/J8UE-UY6F].

68. See White, *supra* note 65, at 11.

enhances the effects of both<sup>69</sup>, the incompatibility of NA and MAT is truly disappointing.

#### *D. The Louisiana Drug Court Program*

The statutory basis for the Louisiana state drug court program is found in La. Rev. Stat. Ann. § 13:5301-5 (1997). The statute authorizes Louisiana district courts to develop their own drug division and probation program.<sup>70</sup> Like in many other states, the district attorney serves as the gatekeeper of the program. They make the initial proposal that an individual be screened for eligibility for the program. However, several criteria must be met before the individual can be considered for participation. First, the individual must be charged with a drug crime or a crime that has a connection to or stems from drug or alcohol addiction.<sup>71</sup> However, the candidate cannot have a prior conviction for a crime defined as homicide, a crime of violence as defined by RS § 14:2(B) (except a first conviction of an offense with a max sentence of 10 years or less that was not an instance of domestic violence), charges of a crime of violence cannot be currently pending against the defendant, and the crime before the court cannot be a DUI that resulted in someone's death. Second, the district attorney must have reason to suspect that the individual suffers from a substance use disorder.<sup>72</sup> This must later be confirmed by the court's designated treatment professional. Finally, it must be "in the best interest of the community and in the interest of justice" that the individual be treated rather than incarcerated.<sup>73</sup> If the district attorney can make these findings, he can propose that the individual be screened for participation.

If the defendant is accepted, he or she must waive the right to a trial, enter a plea of guilty to the charge (with the stipulation that sentencing be deferred or imposed but suspended), and agree to be placed under the usual conditions of probation in addition to special conditions related to substance use disorder treatment.<sup>74</sup> The

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69. See Andraka-Christou, *supra* note 52, at 189.

70. LA. STAT. ANN. § 13:5304 (1997).

71. See § 13:5304.

72. *Id.*

73. *Id.*

74. *Id.*

Louisiana drug court program has a minimum treatment period of 12 months, and its participants may be confined to a treatment facility or released on a probationary period for treatment in the community at the presiding judge's discretion. §13:5304 authorizes the judge to impose any conditions related to the complete rehabilitation of the participant. The default rule in Louisiana, as it is in many other states, is that the participant pays for the cost of treatment and drug testing. However, if the participant is found indigent, the court has several options to ensure that they are treated.<sup>75</sup> If at any time the participant is found to be violating conditions of his probation or performing unsatisfactorily in terms of treatment, the participant can be reprimanded, sanctioned, or removed from the program.<sup>76</sup> The court also has the option to change elements of the treatment program to better suit the participant. If the individual successfully completes their treatment program, their conviction will be set aside, or they will be released from supervision if they entered the program post-conviction. If the individual fails to complete the program, the judge may revoke probation and impose a sentence or reinstate a previously imposed one.

By examining the drug court program currently implemented by Louisiana's 22nd and 9th Judicial Districts, one can see that the Louisiana program follows the general operating patterns ascribed to most American programs. The program is broken up into graduated phases, a participant must attend weekly treatment sessions, there are frequent court appearances in which the judge reviews a participant's progression, and every participant must submit to a weekly drug test.<sup>77</sup> Louisiana programs are also similar in that they employ Narcotics Anonymous and the 12-step program

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75. *Id.* (The court can commit the participant to a state or federally funded treatment program or can order the participant to perform community service in lieu of paying all or part of their treatment costs).

76. *Id.*

77. See generally *Adult Drug Court*, 22d JUD. DIST., DIST. ATT'Y OFF. (last visited Oct. 31, 2021), [https://damontgomery.org/specialty-courts/adult\\_drug\\_court-2/](https://damontgomery.org/specialty-courts/adult_drug_court-2/) [<https://perma.cc/6R5Z-T4B4>]; see also *Adult Drug Court*, 9TH JUD. DIST., J. OFF. (last visited Oct. 31, 2021), <https://9thjdc.org/drug-court/> [<https://perma.cc/VU8U-GCV9>].

as the primary form of treatment.<sup>78</sup> It is of note that this may conflict with the Louisiana legislature's recent strides in expanding accessibility to MAT across the state.<sup>79</sup> Although several individuals with SUDs outside of the criminal justice system may now begin to receive MAT, drug court participants who are required to attend NA will likely receive no benefit.

The Louisiana drug court program is primarily run by and funded through the Louisiana Supreme Court Drug and Specialty Court Office (SCDSCO).<sup>80</sup> Funds for the program are awarded annually and the SCDSCO monitors performance throughout the year. As of 2018, there were 75 operational specialty court programs in Louisiana, 50 of which were drug court programs.<sup>81</sup> Since the program's inception, 15,167 participants have successfully graduated.<sup>82</sup> Of the 2015 graduates, 90.1% of them remained free from additional convictions for 3 years after graduating, making the recidivism rate for this class 9.9%.<sup>83</sup> However, these positive results do not mean that the Louisiana program is without problems. The primary issues faced by Louisiana drug court programs are their woeful underdevelopment and a resistance in the legislature to any further expansion. Today, there are 21 parishes without an adult drug court program.<sup>84</sup> Among these are Jefferson Davis Parish, which has a drug overdose death rate of 22.5, and Evangeline Parish, which has a drug overdose death rate of 18.9.<sup>85</sup>

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78. *Id.*

79. Beth Connolly, *Louisiana Expands Access to Addiction Treatment*, PEW CHARITABLE TR. (Aug. 27, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/08/27/louisiana-expands-access-to-addiction-treatment> [https://perma.cc/72XY-SH9B] (HB 250 required all Louisiana treatment facilities to provide at least two forms of MAT by 2021).

80. *Louisiana Supreme Court Drug and Specialty Court Program*, LA. SUP. CT. (2021), [https://www.lasc.org/court\\_managed\\_prog/SCDCO\\_Brochure.pdf](https://www.lasc.org/court_managed_prog/SCDCO_Brochure.pdf) [https://perma.cc/S4GH-TMGC].

81. *Drug and Specialty Courts*, LA. SUP. CT. (2021), [https://www.lasc.org/Drug\\_Courts](https://www.lasc.org/Drug_Courts) [https://perma.cc/HP4J-MGKT].

82. *Id.*

83. *Id.*

84. *SCDCO Map*, LA. SUP. CT. (2021), [https://www.lasc.org/court\\_managed\\_prog/SCDCO\\_MAP.pdf](https://www.lasc.org/court_managed_prog/SCDCO_MAP.pdf) [https://perma.cc/2TLJ-3WPT].

85. Bipartisan Pol'y Ctr., *State Case Studies Louisiana*, 5 (2019) (death rates are calculated according to the number of deaths attributed to drug overdoses per

Efforts to expand drug court programs in Louisiana have been left dead in the water. Take for example SB 145 (proposed in the 2021 regular session by Senator Rick Ward). The bill would've created a Drug and Specialty Court Fund in the Louisiana state treasury to be used for the expansion and maintenance of drug courts.<sup>86</sup> The monies in this fund would consist of settlement proceeds from litigation against the opioid industry.<sup>87</sup> SB 145 passed unanimously through both houses of the Louisiana Legislature, but was ultimately vetoed by Governor John Bel Edwards.<sup>88</sup> Louisiana Attorney General Jeff Landry recently announced a potential agreement with local governments by which \$325 million in opioid settlement funds will be distributed and spent on addiction treatment.<sup>89</sup> As part of this agreement, an opioids abatement council and the legislative auditor will review spending to insure the money is put towards treatment.<sup>90</sup> It is evident that, despite the veto of SB 145, many individuals in Louisiana government are not opposed to expansion of the state's drug court program.

### III. NEGATIVES AND POSITIVES OF THE LOUISIANA PROGRAM

#### A. *The Funding Problem*

As in most states, the Louisiana drug court program is run by and funded through the state's supreme court. A result of this structural element is that Louisiana drug courts receive funding that flows from the state budget. The Louisiana legislature allocates a sum to the judicial branch and that money is then spent according to

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100,000 residents; in 2015-2017, Washington Parish had an overdose death rate of 57.5).

86. *Louisiana Lawmakers Back Bill to Widen State's Drug Courts*, AP NEWS (May 31, 2021), <https://apnews.com/article/louisiana-bills-courts-government-and-politics-a4ef84a0d5bd84a41f330939a0420ce1> [<https://perma.cc/79R8-EUT5>].

87. *Id.*

88. Governor John Bel Edwards, Veto of Senate Bill 145 of the 2021 Regular Session (2021).

89. *Louisiana Opioid Settlement Money to go to Local Governments*, AP NEWS (Oct. 6, 2021), <https://apnews.com/article/business-louisiana-addiction-treatment-opioids-police-f30e6d7244aeb1b84496809a3b42a720> [<https://perma.cc/7VTS-Q8YE>].

90. *Id.*

the needs of the judiciary. This presents a significant problem to drug court programs in the state. The judiciary is only allocated so much money every year and this sum can fluctuate by several million dollars with each new budget.<sup>91</sup> Naturally, the Louisiana judiciary may be required to redirect funds away from drug court programs to maintain its other needs. This is likely the reason why Louisiana drug court participants are required to pay for their own treatment and drug testing unless shown to be indigent. The judicial branch cannot pay for the treatment of all its drug court participants without potentially exposing itself to a significant financial risk and the prospect of a lack of funding in other necessary areas. The Louisiana legislature should consider remedying this dilemma, especially after the advent of COVID-19.

When one examines the consequences of the pandemic in context with the statutory structure of Louisiana drug court programs, a rude awakening could be at hand for the state. A study conducted in June 2020 revealed that 13% of Americans started using or increased their consumption of a substance to deal with the negative impacts of the pandemic.<sup>92</sup> Even more alarming, the first months of the pandemic brought with them an 18% rise in overdoses across the United States, and more than 40 states have seen a rise in opioid related deaths.<sup>93</sup> Property and drug crime saw a downturn at the start of the pandemic.<sup>94</sup> However, violent crime and homicides skyrocketed in the summer of 2020.<sup>95</sup> This uptick of violent crime does not seem to be dissipating as we proceed into 2022.<sup>96</sup> Baton

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91. Commission of Administration, Louisiana State Budget (2019).

92. Ashley Abramson, *Substance Use During the Pandemic*, AM. PSYCH. ASS'N (Mar. 1, 2021), <https://www.apa.org/monitor/2021/03/substance-use-pandemic> [<https://perma.cc/43R7-DAVU>].

93. *Id.*

94. David S. Abrams, *Crime in the Time of COVID*, ECONOFACT (Mar. 30, 2021), <https://econofact.org/crime-in-the-time-of-covid> [<https://perma.cc/2KCS-EP83>].

95. *Id.*

96. Jacqueline Howard, *U.S. Records Highest Increase in Nation's Homicide Rate in Modern History, CDC Says*, CNN (last updated Oct. 6, 2021), <https://www.cnn.com/2021/10/06/health/us-homicide-rate-increase-nchs-study/index.html> [<https://perma.cc/K85Y-2NMJ>].

Rouge, which had set a record for homicides in 2020, broke that record the very next year.<sup>97</sup>

Financially, the pandemic has impacted Louisianans harder than most. As of September 2021, the unemployment rate in Louisiana was 5.8% whereas the national unemployment rate was 4.8%.<sup>98</sup> As more Louisianans find themselves struggling financially, more will turn to substances to cope with the emotional burden. As more Louisianans turn to substances, more will turn to crime. Naturally, the Louisiana judiciary may soon be bombarded with a litany of drug offenses and crimes that stem from substance use. Legislators must soon determine whether they wish to lump these people into an already burgeoning prison population or refer them to a rehabilitating drug court. The answer seems rather obvious, but the financial obstacles presented by the funding structure of Louisiana drug courts may stand in the way. A fluctuating stream of funding and a growing number of indigent individuals could leave many people with substance use disorders without viable treatment options.

Any efforts on the part of Louisiana legislators to remedy this issue are likely to flounder upon the capitol building's floors, given that Governor Edwards seems resistant to attempts to establish a dedicated stream of funding for drug court programs. The failure of SB 145, its near non-existent coverage by Louisiana media, and the lack of concern on the part of the public all signal trouble for the state. Despite the bill being passed unanimously through both houses of the Louisiana legislature, Governor Edwards has vetoed SB 145 with rather underwhelming justifications.

In his veto message for SB 145, Governor Edwards provided two primary justifications for refusing to sign the bill. First, he indicated his concern with the administrative structure of the Drug and Specialty Court Fund.<sup>99</sup> He claims that it leaves too much discretion to the Office of the Attorney General in distributing

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97. Bill Hutchinson, *'It's just crazy': 12 major cities hit all-time homicide records*, ABC (Dec. 8, 2021), <https://abcnews.go.com/US/12-major-us-cities-top-annual-homicide-records/story?id=81466453> [<https://perma.cc/VML5-XSYV>].

98. *Louisiana Unemployment*, DEPT. OF NO. (last visited Oct. 31, 2021), <https://www.deptofnumbers.com/unemployment/louisiana/> [<https://perma.cc/9N5Y-C5TE>].

99. See Edwards, *supra* note 88, at 1.

monies.<sup>100</sup> He contends that there are no practical safeguards and restrictions as to how the money is spent, as the bill does not define with particularity *who* is eligible to receive money from the Drug and Specialty Court Fund.<sup>101</sup> Second, he was concerned with the bill's lack of specificity as to *what* that money could be spent on.<sup>102</sup> SB 145 includes a list of things to which fund money will be put towards (drug testing, drug court expansion and maintenance, drug treatment costs, etc.), but that list is non-exhaustive. Governor Edwards is concerned that "acceptable uses of the money in the fund are without limitation."<sup>103</sup> However, these two concerns are likely unfounded.

As to who will receive money from the fund, the Attorney General had testified in a Senate Committee hearing that money would go to the Louisiana Commission on Law Enforcement (LCLE) and the Louisiana Supreme Court Drug and Specialty Court Office (LSCDSCO).<sup>104</sup> The Office of the Attorney General would serve a purely administrative role by facilitating disbursement to these two entities.<sup>105</sup> The veto message itself acknowledges that this testimony was given.<sup>106</sup> It seems that Governor Edwards is less concerned with the bill's lack of bright-line definitions and more concerned with the credibility of Attorney General Jeff Landry.<sup>107</sup> Unless the Attorney General was lying in his testimony, it is unlikely that the Office of the Attorney General would've distributed monies to authorities other than the LCLE and LSCDSCO. As to what the money will be spent on, it is true that the list of fund uses is not determinative. However, this is not a weakness of the bill as the governor suggests. Rather, it significantly adds to the bill's strength.

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100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Rachael Thomas, *Dispute between Governor, AG over COVID-19 Restrictions in La. Continues; Landry Releases Statement*, WAFB (last updated Dec. 21, 2020), <https://www.wafb.com/2020/12/21/dispute-between-governor-ag-over-covid-restrictions-la-continues-landry-releases-statement/> [<https://perma.cc/HQ8U-YQQ7>] (Governor Edwards and the Attorney General are frequently at odds).

It provides the administrator of the fund with the flexibility to send funds where they are most needed. Through SB 145, drug court programs can receive a healthy boost in funding to address any problems which may arise. With the variety of needs that drug court programs have, which can range from staffing to drug testing costs, a set list of uses would hinder the bill's effectiveness. In the unlikely event that funds were frivolously expended, it would not escape the attention of Louisiana's Legislative Auditor.<sup>108</sup>

In essence, Governor Edwards justifications for vetoing a bill that saw universal support boil down to a desire for stagnation and a fear of forward progress. Since "the Louisiana Supreme Court Office runs an extremely successful program"<sup>109</sup>, it seems there is no need for a piece of legislation that directs the use of billions of dollars of opioid settlement proceeds. Governor Edward's constituents should strongly consider where this money should go. Should it fall into the abyss of the legislative budget and be used to fund other state programs? Or should it be put into state drug court programs in order to address the harm for which the state of Louisiana was compensated? The answer seems rather obvious. Louisiana legislators and the public should push to bring back SB 145 so that Louisiana drug courts, which may soon need support more than ever, can receive a new, stable stream of funding.

### *B. The Narcotics Anonymous Problem*

The primary treatment method that is employed by a Louisiana drug court is ultimately determined by the judge. The form of treatment is selected by the drug court judge according to the advice and counsel of the court's designated treatment professional. This provides the judge with the discretion needed to craft a treatment plan that suits a particular participant's needs. However, this benefit is ultimately hampered by an over-reliance on Narcotics Anonymous and the 12-step program. While the NA program has been proven successful with those that end up sticking with it, the reality is that NA is not effective at reducing relapse and

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108. LA. STAT. ANN. § 24:513 (detailing the expansive review power of the Legislative Auditor).

109. See Edwards, *supra* note 88, at 1.

recidivism.<sup>110</sup> Data indicates that NA is not for everyone and is unappealing to many individuals.<sup>111</sup> Social anxiety and opposition to or disbelief in group therapy likely play a part.<sup>112</sup> Perhaps the most problematic aspect of NA lies with its opposition to MAT as a viable form of substance use treatment. While the premier health organizations of the world agree that MAT is the most effective way to combat opioid dependency<sup>113</sup>, drug court participants required to attend NA may find the two forms of treatment incompatible.

Ultimately, Louisiana drug courts' over-reliance on NA is a detriment to the effectiveness of the program.<sup>114</sup> It hinders the ability of the drug court judge to construct a personalized treatment program for participants. A 12-step program requirement ultimately eliminates the viability of the most effective form of treatment for opioid dependency in MAT. In this, the goal of reducing recidivism rates, which is fundamental to all drug court programs, is inevitably hindered. Louisiana drug court judges should consider requiring, and the state legislature should make more affordable, another form of group therapy that is unopposed to alternate treatment options such as MAT.

### *C. The Benefit of Consistency*

Although following the general structure of other drug courts in America is a disadvantage in some ways, in other areas it provides a great advantage. The Louisiana program shares many common elements with other state drug court programs such as graduated phases, coordination between prosecutors and defense counsel to rehabilitate the defendant, close judicial oversight of the participant's progress, and frequent drug testing.<sup>115</sup> Louisiana's

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110. Mark W. Scheeren, *Success of Narcotics Anonymous*, SAINT JUDE RETREATS (Jul. 18, 2013) (NA dropout rate is 95%); See also White, *supra* note 56, at 14-5 (only 5.2% of patients remain involved for more than a year).

111. See White, *supra* note 65, at 11.

112. *Id.*

113. See Andraka-Christou, *supra* note 52, at 188.

114. See generally Michael L. Prendergast & Thomas H. Maugh, *Drug Courts: Diversion that Works*, 34 JUDGES' J. 10 (1995) (Detailing how most drug court programs in the United States utilize 12-step programs and NA as their primary form of treatment).

115. Compare Keesley, *supra* note 40, at 35 with § 13:5304, *supra* note 56.

program is also similar to that of other states in its utilization of NA and the 12-step program.<sup>116</sup> Louisiana drug courts should move away from the status quo in terms of utilizing NA as the primary form of treatment, but Louisiana legislators should stray from eliminating other commonalities. It would be entirely unnecessary, and a legislative rewrite of Louisiana drug courts could take years to develop. Given the new problems related to substance use disorders that have arisen because of COVID-19, this is valuable time that many Louisianans do not have. Instead, drug courts in Louisiana should value the kinship they share with other state programs and the consistency that it produces.

Drug courts in Louisiana should continue to operate in graduated phases, require close oversight from the drug court judge, impose sanctions that are proportionate to violations committed by the participant, and employ a non-adversarial approach to curing a defendant's substance use disorder. By following this general structure, Louisiana drug courts become comparable to other state programs. The inherent value of this lies with data availability and easy cross-referencing. Legislators and treatment professionals are provided with a consistent data set that can be relied on to evaluate the successes and failures of American drug courts. This would enable legislators, drug court treatment professionals, and drug court judges (in Louisiana and abroad) to work towards improving elements that work and eliminating those that hinder drug court programs. Furthermore, the federal government would be able to evaluate state drug court programs in the aggregate without the complication of an outlier.<sup>117</sup> Federal legislators would have a better understanding of the needs common to drug courts and could easily determine which programs need more resources. Instead of entirely rewriting its program, Louisiana should continue to follow the general structure of American programs. It should make small,

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116. Compare Prendergast, *supra* note 114 with 22d JUD. DIST., DIST. ATT'Y OFF, *supra* note 77.

117. See Jody Forman, Nat'l Ass'n of Drug Ct. Prof., Drug Ct. Standards Comm., *Defining Drug Courts: The Key Components*, 5-25 (1997) (the federal government has expressed its desire for uniformity in state drug court programs in making implementation of these key components a condition for federal grants).

targeted tweaks to the program that are specific to the needs of Louisianans and address problems unique to its jurisdiction.

#### IV. THE OPTIMAL DRUG COURT PROGRAM

##### *A. A Familiar Structure*

The optimal drug court program should be one that is familiar to the state legislatures that wish to implement it. A complete redesign of the standard American drug court program would be unlikely to pass easily through the legislature, would take years to develop and evaluate, and would cost the taxpayer greatly in terms of the logistics needed to develop a new drug court program. An optimal drug court program is a pipe dream if it cannot easily fit into a state's existing statutory framework for drug courts.

Instead of revolutionizing drug court programs, the optimal program should be one that operates in phases, imposes graduated sanctions, requires frequent drug testing, and involves close judicial oversight of the participant's progress. These components are not only familiar but also proven. The National Association of Drug Court Professionals outlines this general structure in its ten key components of drug court programming and the positive results that drug courts have produced are evidence of its viability.<sup>118</sup> It is also of note that in order to receive a federal grant under Adult Drug Court and Veterans Treatment Court Discretionary Grant Program, a drug court must follow the structure outlined by the National Association of Drug Court Professionals.<sup>119</sup> In addition, a common structure provides experts with a comparable data set upon which to base decisions on how to better the program. Federal and state legislators will undoubtedly feel more comfortable dedicating resources to a program that has data to show its effectiveness.

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118. *Id.*

119. U.S. Dep't of Just., Bureau of Just. Assistance, OMB No. 1121-0329, BJA FY 21 Adult Drug Court and Veteran's Treatment Court Discretionary Grant Program, 6 (2020).

### *B. Reliable Resources*

The optimal program should have a dedicated stream of funding and a reliable pool of resources. This is one area in which the optimal program deviates from the standard American drug court, as most states utilize a model which dedicates funds to the judiciary and does not have a separate source of funding for drug courts.<sup>120</sup> The problem with this scheme lies with the fluctuating nature of a state budget. The judiciary, a massive and sprawling creature in most states, is only allocated so much money with every new budget. As such, this sum is spread across a multitude of programs and allocated to satisfy many different needs. Drug courts may be allocated more or less every year and are entirely at the mercy of a fluctuating budget.

With the advent of COVID-19, drug courts require a dedicated stream of funding now more than ever. As unemployment rates continue to rise<sup>121</sup> and the economy continues to trend downward<sup>122</sup>, more substance use and the crime that stems from it are inevitable. Drug courts may find that more and more people who end up in their programs cannot afford to pay their own way towards recovery. More indigent defendants means that drug court programs will need more resources to put towards funding treatment. Without a reliable

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120. See *Juvenile Drug Courts*, W. VA. SUP. CT. APP. (last viewed Mar. 13, 2022), <http://www.courtswv.gov/lower-courts/juvenile-drug/juvenile-drug-court.html> [<https://perma.cc/F3RM-HKCT>]; *Texas Drug Courts*, TEX. DEP'T CRIM. JUST. (Mar. 3, 2003), [https://www.tdcj.texas.gov/documents/cjad/CJAD\\_Texas\\_Drug\\_Courts\\_Fact\\_Sheet.pdf](https://www.tdcj.texas.gov/documents/cjad/CJAD_Texas_Drug_Courts_Fact_Sheet.pdf) [<https://perma.cc/6V9J-NFFQ>]; *Problem Solving Courts Annual Report*, ADMIN. OFF. CT. (Nov. 2020), <https://mdcourts.gov/sites/default/files/import/opsc/pdfs/annualreports/fy2020opscannualreport.pdf> [<https://perma.cc/RMD2-XUKZ>].

121. Andrew DePietro, *States with the Highest Unemployment Rate in 2022*, FORBES (Feb. 8, 2022), <https://www.forbes.com/sites/andrewdepietro/2022/02/08/states-with-the-highest-unemployment-rate-in2022/?sh=2bae22eb2bac> [<https://perma.cc/7UGL-EHAW>] (Louisiana's 2022 unemployment rate is 6.5%).

122. *United States Inflation Rates*, TRADING ECONOMICS (Feb. 2022), <https://tradingeconomics.com/united-states/inflationcpi#:~:text=US%20Inflation%20Rate%20Accelerates%20to,coupled%20with%20strong%20demand%20weigh> [<https://perma.cc/A9PR-VRHQ>] (“The annual inflation rate in the US accelerated to 7.5% in January of 2022, the highest since February of 1982 and well above market forecasts of 7.3%, as soaring energy costs, labor shortages, and supply disruptions coupled with strong demand weigh”).

stream of funding, drug courts may have to implement less effective forms of treatment or worse, turn those that cannot pay away from the program and place them in prison. Given that many states are soon receiving billions in opioid settlement dollars, now is the perfect time for states to make the step towards allocating a pool of resources specifically for drug courts. This money should naturally be put towards repairing the damage that the opioid industry has done to the country. By placing opioid settlement monies in a dedicated fund for drug courts, legislators can begin to work towards treating opioid dependency among its citizenries.

However, opioid settlement monies won't last forever, and the opioid crisis will likely take years to remedy. If a pool of resources is not set aside for drug courts and opioid settlement money dries up, states will be back to square one. As such, the optimal American drug court program should be one that does not receive all its funding through the judiciary. The legislature should take steps to set aside resources specifically for drug court programs, eliminating the dependency of programs on a fluctuating state budget. Ultimately, this fund should reach a level of stability necessary to pay for participant treatment and drug testing. Potential participants should not have to weigh the financial burden of life saving treatment against a free prison sentence. Legislators should strive to incentivize participation by removing a financial burden upon the eligible individual.

### *C. Judicial Discretion*

The optimal program should be one in which the drug court judge is given extensive discretion in developing a treatment plan. The close judicial oversight of a participant's progress places the judge in the best position to evaluate different forms of treatment. Drug court judges should work closely with the court's licensed treatment professional to craft the most effective plan for each individual participant. Furthermore, the judge should be provided with ample ability to revise a participant's treatment regime. As the participant progresses through the graduated stages of the program, the drug court judge and treatment professional will have a better sense of which forms of treatment the participant responds well to and which they do not. In addition, the optimal program should

encourage and support judges in looking for alternative forms of treatment. With a dedicated stream of funding, drug court judges would not be constrained to prescribing Narcotics Anonymous and the 12-step program. The licensed treatment professional of a drug court<sup>123</sup> can determine if a participant would benefit from MAT, alternative forms of group therapy, or individual therapy. The drug court judge should be given ample discretion and ability to implement those elements into the rehabilitation plan at the treatment professional's recommendation.

## V. IMPLEMENTATION OF THE OPTIMAL PROGRAM IN LOUISIANA

### A. *An Easy Switch*

The optimal program could be easily implemented in Louisiana. Louisiana drug courts already possesses the foundations of the optimal program. It would fit seamlessly in the statutory structure already in place in Louisiana. However, two significant changes would need to be undertaken. The first is that Louisiana drug courts would need to move away from an over-reliance on Narcotics Anonymous and the 12-step program as the primary form of treatment for its participants. Instead, drug court judges in Louisiana would need to be encouraged to prescribe alternative forms of treatment. Legislators should especially encourage drug courts to emphasize MAT, as it has proven to be the most effective form of treatment for opioid dependency. While breaking new ground and consistently utilizing MAT may be uncomfortable for many drug court judges, they should feel reassured in that they are fulfilling an existing legislative goal of expanding access to MAT.<sup>124</sup>

While Louisiana drug court judges may feel some growing pains because of the optimal program, the greatest task lies with the legislature. The Louisiana legislature has the seemingly herculean task of establishing a dedicated stream of funding for state drug courts. In most other states, this would take years of research and

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123. See § 13:5304, *supra* note 53 (“Treatment professionals shall possess sufficient experience in working with criminal justice clients with alcohol or drug abuse or addictions, or both, and shall be certified and approved by the state of Louisiana”).

124. See Connolly, *supra* note 79.

political maneuvering to accomplish. However, the optimal program is most easily implemented in Louisiana because its state legislators have already done the legwork. Louisiana legislators need look no further than SB 145, which establishes a dedicated fund for Louisiana drug courts using opioid settlement funds. As to the political support needed for SB 145, the only person that seems to need convincing is Governor Edwards. Proponents of the bill should restructure the bill to the best of their ability to assuage the concerns of the governor. The public, which obviously has an interest in seeing reduced recidivism rates and less substance use, should push for the bill's reimplementation. If this can be accomplished, the only task remaining for the legislature would be to cement the continuity of the fund. Legislators would need to make a commitment to set aside resources for Louisiana drug courts after opioid settlement monies have stopped flowing. With the structure for a fund already laid out in SB 145, this task is much easier for Louisiana than for most other states.

#### CONCLUSION

The benefits of drug court programs cannot be denied. They have been proven by reduced prison populations, crime rates, fatal overdoses, and recidivism rates. Drug courts seek to rehabilitate rather than punish and work towards healing the wounds inflicted upon America by the opioid crisis. By treating participants, drug courts produce graduates who are free of substance use disorders and lead crime-free lives. America is certainly a better nation because of the efforts of its drug court programs. However, drug courts cannot simply rest on their laurels. With the advent of COVID-19 and a rising rate of substance abuse, drug courts have much work ahead of them. America's programs should continue to innovate and optimize their effectiveness. An optimal drug court program, which builds upon the already tried and tested general operating patterns of current programs, should be implemented across the United States. One state must make the first step. That state should undoubtedly be Louisiana. Louisiana possesses a statutory structure that allows the optimal program to be implemented without massive legislative reform. Louisiana has a program with a strong history of success and a dedication to healing

lives. Louisiana has legislators and researchers who have already worked out a way to provide stability and security to its drug courts. As a state that has been decimated by the opioid epidemic, Louisiana should strive to be the figurehead of drug court reform. If not us, then who?