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TESTIMONY OF LEROY FRAZER, Jr.
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Before the
NEW YORK CITY COUNCIL
COMMITTEE ON THE JUSTICE SYSTEM
JUNE 21, 2018

Good afternoon Chairman Lancman and members of the Committee on the Justice System. I am Leroy Frazer, Chief of Staff to the Brooklyn District Attorney and I am here representing the Kings County District Attorney's Office. Thank you for the opportunity to speak to you today about how my office is addressing the Opioid Crisis in Criminal Court.

The opioid crisis has hit us hard in Brooklyn. In the last five years we have lost well over 1,000 people to overdose, with the numbers increasing every year. Our priority with regard to opioids is - and must be - keeping people alive.

This means that, while we focus enforcement efforts on apprehending major distributors of opioids to interrupt supply chains at a high-level, most of our resources must be directed to prevention and treatment.

To interrupt the supply chain, my office conducts targeted long-term narcotics investigations, in conjunction with other law enforcement agencies. When successful, these investigations reveal large-scale networks consisting of suppliers, wholesale dealers, and their workers, as well as stash locations, and the recovery of both their stockpile of product and the proceeds of their illicit activity. The individuals behind these large-scale narcotics operations tend to contribute to the shootings and violence we see in Brooklyn, so apprehending these drivers of crime has the dual effect, for the moment, of cutting off a source of dangerous narcotics and removing violent criminals from the streets.

Nevertheless, with respect to the street-level dealers, we realize that each individual seller who is arrested and taken off the street is immediately replaced with someone else who is willing to risk arrest and incarceration to make money, providing a product for which there is unceasing demand.

And in many cases, these street-level sellers are themselves addicted to the substances they sell. So, for these individuals we take a nuanced approach to their cases.

Under the New York Penal Law, if a person shares heroin or another drug with another person, it is considered a sale of narcotics. It is not our policy to prosecute as a seller someone who has merely shared drugs with another user.

Moreover, we are not inclined to prosecute as sellers individuals who are merely "steerers," that is, who direct an undercover to a seller, though that too, could be considered "selling" under an acting-in concert theory in our penal law.

Finally, we see cases in which an undercover asks an individual to buy narcotics for them. The undercover gives the individual money, the individual procures the drugs for the undercover, and in exchange the undercover gives the person a "tip" in the form of cash of a portion of the drugs, and then arrests that individual for selling. The office policy is to evaluate these cases on an individual basis, however going forward we will endeavor to carve out those cases where the exchange is motivated by an individual's addiction as opposed to merely selling for profit.

One question that has been posed is whether our office would prosecute for homicide someone who sold drugs on which a buyer later overdosed and died. While there is a possibility that an appropriate case might at some point present itself, DA Gonzalez recognizes that the causes of drug use and overdose are complex, and involve a certain amount of free will on the part of the user, and that charging a seller with homicide will not be appropriate in most cases.

Nor does DA Gonzalez favor laws that create a new category of homicide as a result of a death from overdose.

Our investigations have revealed that high level dealers are often aware that their product contains fentanyl which can cause death by overdose. Therefore, a factually appropriate case could result in a homicide investigation.

That level of callousness could, in the appropriate case, rise to the level of "depraved indifference to human life" that would justify a homicide prosecution. But, in general we would not seek to charge a low-level seller of opioids with homicide.

We understand that supply-side enforcement responses alone will not solve the opioid crisis; we cannot arrest or charge or incarcerate our way out of this problem. We believe that drug misuse is and should be treated as a health issue rather than a criminal issue. And this is not something that we in law enforcement can do on our own. We must work with public health professionals, medical providers, treatment and other service providers, and members of the community to solve this problem.

Our Brooklyn CLEAR program is the best example of our approach to opioid use. And here I have to stop and thank Chairman Lancman and the members of this committee for your tremendous support in helping us obtain the funding for CLEAR during the recent budget negotiations. As you know the money for CLEAR was not in the Mayor's original proposal, and you all went all hands on deck to make sure that we got the funding to be able to offer this crucial treatment option. We are deeply grateful to you for stepping up on our behalf and on behalf of the people in Brooklyn who are suffering and who need this program.

CLEAR is a pre-charge diversion program, modeled on Staten Island's HOPE program, but CLEAR goes farther. We provide services to people arrested and eligible for a Desk Appearance Ticket on all non-marijuana drug charges, not just opioids, and we do not screen out people with

criminal records. In fact, we believe these are the people who are most in need of the services and treatment options that the program provides. Here is how it works:

When an individual is arrested on a drug charge, typically PL Section 220.03, and is found to be DAT eligible, the NYPD notifies my office and we dispatch a peer counselor directly to the precinct of arrest. The peer counselor explains that if the person is assessed by a case manager before the return date, which is seven days from the date of arrest, they do not have to appear in court. If the arrested individual then meaningfully engages in the recommended services, which are chosen jointly between the arrested person and the case manager, within the next 30 days, my office will decline to prosecute the arrest and the case will be dismissed and sealed. The peer counselor also trains the arrested person on how to use naloxone and gives the person a naloxone kit, whether or not they accept the program.

This program, which was initially funded by a grant from the City Council under the previous Speaker, was initially piloted in six precincts in Brooklyn South, where there were the greatest number of overdoses and where we perceived the need to be greatest. Last month we expanded the program to the rest of the precincts in Brooklyn South, and with the additional funds we secured for CLEAR as a result of your advocacy on our behalf, we will be expanding CLEAR borough-wide over the summer.

CLEAR is a pre-charge diversion program; an individual who meaningfully participates in CLEAR will never see the inside of a courtroom on that case. For cases that are not eligible for CLEAR and do end up in court, my office offers additional opportunities for diversion into treatment and other programs. Again, we believe that drug misuse is a health issue, not a criminal issue, and so the goal is to divert these cases out of the criminal justice system at the earliest point.

In addition to CLEAR, our office offers several other treatment programs: BTC (Brooklyn Treatment Court) for felony drug offenders and MBTC (Misdemeanor Treatment Court) for misdemeanor drug offenders, as well as STEP (Screen Treatment Enhancement Part) for non-violent, non-drug offenders and DTAP (Drug Treatment Alternatives to Prison) for non-violent predicate felons. For those who served our country through military service, specialized treatment for addiction is offered in both our Misdemeanor and Felony Veterans Courts.

An important point to make is that going forward; my office will increasingly take a harm reduction approach to drug cases. We will not insist on complete abstinence from all drug use as a condition of being accepted into or remaining in a program; we won't automatically recommend terminating someone in a program or put them in jail for their "failure" to remain abstinent. We understand addiction to be a chronic, relapsing condition that setbacks are part of the recovery process and that abstinence is difficult for even the most motivated individual to achieve. While we know that complete abstinence is the ultimate goal and we wish that everyone who is addicted to drugs could get off of them, we realize that that goal is unrealistic for many people and we no longer see it as our job to enforce abstinence using the criminal sanction.

Similarly, in our treatment courts, we intend to greatly reduce the extent to which we require an individual to plead guilty in order to access treatment or other services. We believe that this

approach, long the cornerstone of the treatment model in Brooklyn and in many other jurisdictions around the country, sets people up for failure, increases incarceration, has severe consequences for non-citizens, and is simply ineffective as a way of solving the problem we face. Offering pre-plea treatment options is one of the recommendations we received from our office's Justice 2020 committee, which the DA formed in January to recommend ways to increase public safety while reducing incarceration.

In addition to the programs we offer for those who are arrested for drug crimes in Brooklyn, we are always looking for creative ways to deal with this issue, to engage with the community and get in front of this enormous challenge we face. Our office is an active participant in Rx Stat lead by Chauncey Parker of the New York District Attorney's Office and the NY/NJ HIDTA, and we commend him for his leadership and for the creative approach he is taking on this issue.

DA Gonzalez recognizes that a major reason for the opioid crisis we now face is the overprescribing of lawful prescription opioids by doctors. Pharmaceutical manufacturers misled these doctors about the addictiveness and dangerousness of their drugs; and so our office has joined the NYS Attorney General in suing the pharmaceutical companies responsible for creating and marketing those drugs.

Substance use disorder is a chronic, relapsing disease that requires a lot of support to overcome. Cycling someone through the criminal justice system only exacerbates the disease by cutting them off from the tools they need to have any chance at success. My office is committed to treating the disease, not punishing the person suffering from the disease. Our behavioral health approach is in keeping with our office's vision of keeping Brooklyn safe and strengthening community trust by ensuring fairness and equal justice for all.

Thank you.

Richmond County District Attorney's Office

Testimony before City Council Committee on the Justice System

Addressing the Opioid Crisis in Criminal Court

June 21, 2018

Good morning, Chairman Lancman and members of the Committee on the Justice System. I am Staten Island District Attorney Michael McMahon and I would like to thank you for allowing me the opportunity to speak here today. As you already know, Staten Island and the City have been combating a deadly opioid and heroin epidemic, which every day continues to claim far too many lives. Sadly, this year on Staten Island there have been 52 fatal overdoses and an additional 125 Naloxone saves.

When I took office as Richmond County District Attorney in January 2016, Staten Island had one of the highest drug overdose rates in New York City. It seemed like we were losing more lives every week, and the crisis showed little sign of receding with the introduction of deadlier substances like fentanyl and its numerous analogues. The heroin and opioid epidemic felt as if it had turned into a plague on Staten Island, and as a result it demanded immediate action.

Recognizing the significant challenges facing the borough, I launched a multifaceted response that has expanded the role of local law enforcement and

prosecutors, and has given them the tools they need to address the crisis. Those efforts have included prosecuting serious drug dealers, offering treatment and other supportive services to affected individuals and families, and increasing public awareness through media and educational outreach.

RCDA's prosecutorial strategy is to combat the opioid crisis on multiple fronts using various strategies and approaches. We are vigilant in our pursuit of those drug dealers that are pedaling this poison and taking advantage of those dealing with the throes of addiction; we are also compassionate enough to understand that there are a number of people who are suffering with the cycle of addiction. Thus, we are dealing with the "supply side" and the "demand side" of this crisis through justice and mercy.

On the supply side, we have increased enforcement efforts and investigative methods through our Overdose Response Initiative, which has allowed Assistant District Attorneys from my office to work side by side with the NYPD and investigate each overdose as they would a criminal case. This is done in an effort to trace back the source of these toxic drugs and hold dealers more accountable.

On Staten Island, ORI has led to dozens of major drug takedowns as well as the arrest of over 100 drug dealers, many of which were directly tied to overdoses. The office has also expanded the number of investigations due to ORI, with 350 investigations opened in 2016 and over 400 that were opened in 2017, compared with just 192 in 2015. This successful model is now being duplicated by the NYPD and DA's offices throughout the City.

Currently, this office has no cases pending where we have charged any "co-user" with the accidental overdose of another person. Nor, in accordance with New York State's "Good Samaritan" Law have we charged a "co-user" with possession or use, when they have called in an accidental overdose.

This office was the first in the City to charge a dealer ("Death by Dealer") with the overdose death of an individual through our Overdose Response Initiative. However, that defendant was not a "co-user", but a supplier. That case is still pending before the Courts so I cannot expand further on the facts and/or circumstances of that investigation.

While I am immensely proud of our success and I have stayed committed to holding drug dealers accountable, I also recognize that we cannot simply arrest our way out of this problem. That is why my office has also worked together with groups from across the spectrum of law enforcement, the defense bar, treatment and social service providers, and the Staten Island community to create the Heroin Overdose Prevention & Education program (HOPE).

HOPE is the first of its kind diversion program in New York City to redirect low-level drug offenders in Staten Island, pre-arraignment, to community-based health and treatment services, instead of jail and prosecution. To date, the program has seen tremendous success, with approximately 90 percent of participants having meaningfully engaged in treatment services and their criminal cases withdrawn. I want to thank the Council and this Administration for being on the forefront of funding the peer mentors who are dispatched to the precinct to meet each individual arrest. These recovery coaches are critical to HOPE's success.

Through all of our combined efforts, last year Staten Island experienced a 15 percent decrease in overdose deaths. Almost 400 people have also received treatment services through the HOPE program. I am also proud to say that HOPE, like ORI, is being duplicated by my colleagues here today, recognizing the importance of offering treatment early at the moment of arrest. My office is also moving to expand the HOPE program on Staten Island to reach more people so that no one suffering from addiction is left behind or falls through the cracks.

At the same time, RCDA has continued to utilize other successful diversion models for hundreds of offenders each year. Staten Island Drug Treatment Court, Drug Treatment Alternative to Prison, and Treatment Accountability for Safer Communities are all programs with the mission to rehabilitate substance abusing offenders in order to improve not only their quality of life but also that of the Staten Island community by breaking the cycle of crime associated with addiction. At the same time, I also successfully fought and advocated for a Narcotics Court Part on Staten Island that will handle felony narcotics cases and trials for dealers, Treatment Court, and compliance for other diversion cases (i.e. TASC)– in essence, a truly full Narcotics Part. To oversee these initiatives, we also recently appointed an Alternatives to Incarceration program coordinator to supervise and expand our efforts.

Still, when I was running for this office and when I entered office in 2016, my team and I noticed a significant drop-off in people accepting and entering Treatment Court between 2014 and 2015 (158 people in 2014 and 60 people in 2015; this trend continued in 2016 and 2017 with 69 people and 64 people entering Treatment Court respectively). This does not mean that prosecutors under the former administration or under my administration made fewer offers for Treatment Court in these years, but rather that less people were willing to accept those offers and participate given the intensity and requirements of the program. This decline is one of the reasons we created the HOPE program. We recognized that we needed to expand the diversion opportunities to address the spectrum of individuals who would benefit from treatment and behavioral health services instead of incarceration and make these diversion points earlier in the process to steer more individuals towards treatment and away from incarceration and make a greater impact to save lives.

As I mentioned above, we are working to expand the HOPE program, because we recognize that there is still more that can be done to continue to expand diversion opportunities and capture an even greater universe of participants with addiction illness. With our partners in the Courts, we have also begun conversations about expanding the eligibility and varying the requirements of Staten Island Drug Treatment Court to achieve similar ends. Related, we are also working to expand Mental Health Treatment Court to include misdemeanor offenses in order to increase the number of people who can be helped by mental health services as an alternative to incarceration. We have proposed this expansion to the Court and to Legal Aid Society and eagerly await their approval and assistance to make this a reality.

My office also offers two anti-drug programs to engage our youth – the Choices & Consequences Program is an interactive high school presentation designed to prevent drunk, drugged, and reckless driving, while the 'No D' program is offered to all middle and high schools on Staten Island where Assistant District Attorneys travel to schools throughout the borough to give anti-drug presentations to youth. We are also actively involved in bringing the "Too Good for Drugs" program into all of our middle and high schools with our terrific partners in the NYPD and Borough President Jim Oddo.

We have also launched "Staten Islanders against Drug Abuse" – a grassroots public awareness campaign aimed at combating the heroin, fentanyl and opioid epidemic in Staten Island while also providing resources and help to those battling addiction. The initiative includes a one-stop shop website, SIHOPE.org, an online resource designed for those struggling with addiction, those with a loved one struggling with substance abuse, and those that simply want to get involved to help stop the heroin and opioid epidemic in Staten Island. As part of this campaign,

more than 3,000 "SIHOPE" lawn signs have been placed in public locations throughout Staten Island to help raise awareness to this serious issue.

Additionally, RCDA worked to install MedSafe Drug Disposal receptacles at four pharmacy locations on Staten Island for people to properly dispose of their unused pills. Since late last year, we have collected more than 300 gallons of pills, helping to ensure that addictive drugs are thrown away before they fall into the wrong hands.

We know that to most effectively combat the drug epidemic we need a Marshall Plan. We must address the supply by aggressively prosecuting those who deal drugs, address the demand by educating our young people of the dangers of drug use, and critically, get those battling addiction into the hands of health professionals who can help them beat their illness. The expansion of drug courts and alternatives to incarceration, including programs like HOPE, must be a key element of any strategy to combat the epidemic in localities across the nation. The "old way"; jailing those battling addiction for a short stint and sending them back to the streets, only exacerbates the existing problem and does little to improve public safety.

While there is still much work to be done on Staten Island and in other struggling towns and cities across the country, the successes we have seen already show that law enforcement must embrace new roles and develop innovative strategies to lead the way. Initiatives like ORI and HOPE work to allow our ADAs to take the type of balanced and multi-pronged approach necessary to finally overcome the drug crisis while saving lives and keeping our communities safe.

New York County District Attorney's Office

Testimony before the New York City Council Committee on the Justice System:
"Addressing the Opioid Crisis in Criminal Court"
June 21, 2018

Testimony by Executive Assistant District Attorney Chauncey Parker

Good afternoon Chairman Lancman and members of the Committee on the Justice System. My name is Chauncey Parker. I am an Executive Assistant District Attorney and Senior Policy Advisor to Manhattan District Attorney Cyrus Vance, Jr. I also serve as the Director of the New York/New Jersey High Intensity Drug Trafficking Area program, a federal grant from the White House Office of National Drug Control Policy that invests in partnerships to build safe and healthy communities. Thank you for the opportunity to speak today about DA Vance's strategy to combat the opioid epidemic.

The opioid epidemic is one of the worst public health crises in American history. New York City has not been spared from the consequences that have devastated so many communities across the country. In 2016 there were 1,374 fatal overdoses citywide, making it the sixth consecutive year of increase. This was a rise of more than 150 percent since 2010. Provisional data indicates that the number rose for a seventh straight year in 2017, and will reach more than 1,400 overdose deaths. This means that last year, there were four drug overdose deaths each day on average in New York City, representing one life lost to a drug overdose every seven hours. More than 80 percent of these deaths involved an opioid, with heroin and increasingly fentanyl and fentanyl analogs as the major drivers of these deaths. More than twice as many New Yorkers now die from drug overdose than homicides and motor vehicle collisions combined.

In response to the opioid crisis, DA Vance has launched and expanded several initiatives, focused on one goal: helping our communities to be safe and healthy. To increase the safety of our communities, we are utilizing an intelligence driven strategy, focusing our prosecutorial efforts on individuals who sell the most lethal drugs – in particular, fentanyl and fentanyl analogs.

And to increase the health of our communities, we are focused on the care and recovery of individuals suffering from substance use disorders. These efforts include investing in diversion programs, such as creating the City's first Alternatives to Incarceration (ATI) Unit in 2016. This Unit identifies treatment and programs that could serve as effective diversion options, as well as helping to identify defendants who can benefit from these programs without compromising public safety. The ATI Unit has enhanced our Office's institutional capacity to evaluate programs, encourage their utilization, and monitor their effectiveness.

Last year, DA Vance announced the creation of the Manhattan Hope program, aimed at diverting cases for those charged with misdemeanor drug possession and connecting people to services through harm reduction and rapid engagement. Manhattan Hope is based on a similar pre-arraignment diversion program developed by Staten Island District Attorney Michael McMahon, and pairs high-need individuals with peer navigators at the point of arrest to better facilitate access to treatment and other services. Upon successful completion of the program, we will decline to prosecute the criminal case.

More broadly, the Manhattan DA's Office also funds and participates in a diversion program called Project Reset. In 2015, the Office developed Project Reset – a pre-arraignment diversion program for people arrested of low-level offenses – in partnership with the Center for Court Innovation and the NYPD. Given the success of Project Reset, with a 98% completion rate for teens, the Office recently expanded the program to adults of all ages and expanded its partners to include the Osborne Association and Young New Yorkers. As a part of a suite of program offerings, Project Reset participants can be trained in naloxone administration and receive a naloxone kit to carry with them at the end of the training.

Additionally, in collaboration with the Office of Court Administration, we are expanding resources for the Manhattan Drug Court by funding an addiction psychiatrist and social worker to help advise the judge in Court, as well as expanding resources to the Department of Health and Mental Hygiene and the Office of the Chief Medical Examiner by funding epidemiologists and analysts.

Another significant drug policy investment made by DA Vance is RxStat, a groundbreaking public health-public safety partnership to reduce overdoses. When it comes to public safety, New York City has proven that when people work together toward a common goal, anything is possible.

NYC RxStat is a public health-public safety partnership which applies the same data-driven, evidence-based, ideologically agnostic principles of CompStat to drug policy. The goal of RxStat—the North Star—is to save lives and reduce overdoses. Over the past few years,

RxStat has expanded from a handful of representatives around a conference room table to a monthly meeting that hosts more than 80 senior representatives from 25 key federal, state and local agencies, including: the five NYC DA's Offices and the Office of the Special Narcotics Prosecutor, the New York City Police Department, the Department of Health and Mental Hygiene, the Drug Enforcement Administration, the United States Attorney's Offices for the Southern and Eastern Districts of New York, the Mayor's Office of Criminal Justice, the New York City Department of Probation, the New York State Department of Corrections and Community Supervision, the New York City Fire Department, the Office of Alcoholism and Substance Abuse Services, the Office of the Chief Medical Examiner, the New York City Health and Hospitals Corporation, and the New York City Department of Homeless Services.

All of these agencies are working together, like CompStat – looking at the same map, at the same time, with the same goal. Last year, New York City launched the next phase of RxStat called "Operational RxStat" which is hosted every three months by the NYPD at the Jack Maple CompStat Center. At Operational RxStat, which is co-chaired by the NYPD, DOHMH and HIDTA, partner agencies review or "tabletop" case studies of fatal overdoses to identify opportunities, where working together, we can save lives in the future. RxStat has been featured at numerous national conferences as a model for public health and public safety collaboration to reduce overdoses.

The opioid epidemic is one of the most daunting challenges we have ever faced. But we have faced daunting challenges before and we know as New Yorkers that nothing is impossible – especially when we work together and focus like a laser on our North Star.

Thank you for the opportunity to speak with you today about DA Vance's strategy to combat the opioid epidemic. I am happy to answer any questions.

BROOKLYN DEFENDER SERVICES

TESTIMONY OF:

Yung-Mi Lee – Supervising Attorney, Criminal Defense Practice
BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on the Justice System

Hearing on Addressing the Opioid Crisis in Criminal Court

June 21, 2018

My name is Yung-Mi Lee and I am a Supervising Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy in nearly 35,000 cases in Brooklyn every year. This includes thousands of people arrested for possession or sale of opioids, and many more fighting deportation, eviction, or a loss of parental rights due to opioid-related allegations or convictions. I thank the New York City Council, Committee Chair Rory Lancman, for inviting us to testify on the opioid crisis in criminal court.

The overdose epidemic is among the most deadly forces in our city today, warranting a strong response from policymakers. According to the New York State Department of Health, 8,444 New Yorkers overdosed on opioids in 2016. 1,769, or 20 percent, of those overdoses occurred in New York City.[1] Importantly, this epidemic is driven not only by opioid use but also by drug mixing, often including a combination of opioids and stimulants. BDS applauds Mayor Bill de Blasio for embracing the Safer Consumption Space model sought by people who use drugs and harm reduction specialists. The four Overdose Prevention Centers, if approved by the New York

[1] New York State Department of Health, New York State – Opioid Annual Report (October 2017), available at https://www.health.ny.gov/statistics/opioid/data/pdf/nys_opioid_annual_report_2017.pdf.

State Health Department, will build on the successes of other such sites around the world and save lives. We hope it becomes an example for the rest of the country, as public health initiatives originating in this city often are. Crucially, these centers must not become dragnets for the NYPD, which could seriously undermine their efficacy.

BDS believes a public health approach is essential to reducing the harms of addiction and recreational drug use alike. The criminal legal system is simply ill-equipped to prevent drug use, meaningfully reduce the supply of drugs, or – most important – help keep people who use drugs as safe as possible and minimize harm to their families and communities. The City's and State's discordant efforts to meld the enforcement and public health approaches often result in unnecessary and counterproductive incarceration and criminal records, social stigma, and tragic deaths.

I. DRUG TREATMENT COURTS

Pressed by formerly incarcerated people, grassroots activism and legal experts to reverse skyrocketing incarceration rates for drug offenses, New York City became a pioneer in the creation of drug treatment courts in the early 1990's and remains one of the jurisdictions with the most developed post-arraignment diversion system. While these courts may in fact reinforce the problematic drug prohibition model, they have helped reduce jail and prison admissions and sentences. A landmark report, *Better by Half: The New York City Story of Winning Large-Scale Decarceration While Increasing Public Safety*, details and attempts to quantify the impact of the these courts, including Drug Treatment Alternative-to-Prison (DTAP) program, originally operated by the Brooklyn District Attorney's office but later replicated throughout the state. For example, "the proportion of felony drug cases that resulted in a prison sentence fell from 21 percent in 1997 to an all-time low of 11 percent in 2007."[2] Largely as a result of decreased drug arrests and an increase in diversion, the City jail population began to fall from its peak in 1991. State prisons followed suit in 1999 (72,899 in 1999 to 49,424 as of June 1, 2018), with the majority of the decline in admissions coming from New York City. It is important to remember that this decline was relative to the surging incarceration rates under the Rockefeller Drug Laws, during which the state prison populated increased by a factor of seven. The decline has only been by about one-third since then.[3]

In Brooklyn, there are four specialized courts for drug offenses and/or criminal conduct linked to substance use disorders: Screening Treatment & Enhancement Part (STEP), Brooklyn Treatment Court (BTC), Misdemeanor Brooklyn Treatment Court (MBTC), and Brooklyn Mental Health Court (MD-1).

a. Screening Treatment & Enhancement Part (STEP)

STEP primarily handles non-drug non-violent felony cases (such as grand larceny, unauthorized use of a credit card, burglary in the 3rd degree) for those who have substance use disorders. The

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[2] Judith A. Greene & Vincent Schiraldi, Better by Half: the New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety, 29 Fed. Sentencing Reporter 22, 27 (2016), available at https://sites.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/fsr2901_04_greeneschiraldi.pdf.

[3] New York State Corrections and Community Supervision, DOCCS Fact Sheet, June 1, 2018, available at http://www.doccs.ny.gov/FactSheets/PDF/currentfactsheet.pdf.

court part also accepts felony drug cases for so-called non-violent predicate felony offenders, or people who have one or more prior non-violent felony conviction in the last ten years. Based upon a clinical evaluation, the participant may receive intensive outpatient or residential treatment. Successful completion of the program results in a dismissal of the case. Unsuccessful completion results in a jail sentence up to one year if the person does not have a prior felony.

STEP also handles Drug Treatment Alternative to Prison (DTAP) cases. DTAP is the first prosecution-led residential drug treatment diversion program in the country. The program diverts nonviolent felony drug offenders with a prior felony conviction to community-based residential treatment.[4] DTAP requires an upfront plea to a felony charge that will dispose as a misdemeanor or an outright dismissal if they complete the program. DTAP requires a longer residential treatment mandate – usually up to two years, although I once had a client who stayed for three years because he had no place to live. The mandate also requires six months of outpatient treatment with full-time employment and a stable residence. DTAP is thus difficult for our clients to successfully complete. Notably, DTAP mandates are not based on a clinical determination but are based solely on the participant's criminal record. If our clients cannot complete the program, they are sentenced to prison time that varies based on the case. Once in prison, they will no longer have access to medication-assisted treatment.

b. Brooklyn Treatment Court (BTC)

BTC handles felony drug cases for those who are not predicates. This form of treatment requires the consent of the prosecutor. However, if the prosecutor does not consent, BTC has the capability of offering treatment through judicial diversion which was established under the Drug Law Reform Act of 2009.

c. Misdemeanor Brooklyn Treatment Court (MBTC)

MBTC is designed for people who repeatedly cycle through the criminal legal system on low-level charges due to their addiction. The court has recently evolved to be less punitive toward our clients, with shorter treatment mandates and shorter jail sentences for those unable to adhere to them. Without these shortened mandates and shorter jail alternatives, court administrators, the judiciary, treatment staff, prosecutors and defense attorneys found that defendants were avoiding this option, preferring to take a plea to the underlying misdemeanor with a sentence of time served (or even short jail sentences). Those who complete the treatment program get a full dismissal of their case.

d. Brooklyn Mental Health Court (MD-1)

MD-1 serves those with serious and persistent mental illness and offers community-based treatment as an alternative to incarceration. A special program is offered for those with dual diagnoses for serious mental illness and substance use disorders.

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[4] Prosecutors may also, at their discretion, allow people to participate in DTAP who are charged with or have previous convictions for technically violent felonies, if the underlying conduct of the violent felony was not actually violent and no one was injured. A common example of this is burglary in the 2nd Degree when somebody steals a package from an empty foyer in a residential building.

All of the Brooklyn treatment courts refer participants to "outside" or "contract" substance abuse treatment programs. These programs also have patients who have no court mandate and who are not criminal justice involved. However, the overall quality of these programs varies. Some programs cannot take participants who have a diagnosed mental illness while some are better equipped to treat our clients with dual diagnoses.

New York City has limited residential treatment bed capacity, which can mean wait times of a few weeks or more for our clients who are interested in treatment. Sometimes, if the client is incarcerated, the longer waiting periods discourage a person from choosing the treatment program option. More funding for such programs could increase capacity and reduce waiting periods, but it should only be provided with oversight to ensure that recipient programs are actually addressing the need.

All of these courts have contributed to positive case outcomes for individual BDS clients, but in general many BDS attorneys are skeptical of STEP and BTC, and in some cases even MBTC. All of the treatment courts allow for relapses and recurring relapses, but our clients face increasingly harsher sanctions with each additional relapse. Our clients often find such coercive treatment regimens to be less effective than voluntary alternatives that do not involve such sanctions.

II. THE INJUSTICE OF PREDATORY BUY-AND-BUST OPERATIONS

Many of the felony drug cases[5] we see originate with predatory so-called "buy-and-bust" operations. These buy-and-busts typically involves undercover officers, generally dressed like homeless people and acting desperate, asking or pleading with people who, themselves, are truly drug users, to procure drugs for them. Based on the cases we pick up in court, officers appear to target people who are struggling with either addiction or mental illness or both. Some are what we call "no cash, no stash" cases, in which police do not recover buy money or drugs. Our clients often tell us they procured the drugs out of a sense of obligation to help somebody in need, perhaps in exchange for a single hit. They are almost never actual drug dealers pursuing customers. In some cases, people have walked away with the buy money, and police then arrest them for theft.

Even if law enforcement interventions were an effective tool to reduce the supply of drugs, this predatory NYPD tactic cannot be said to "get drug dealers off the streets." Police argue that they use this tactic to gain intelligence from people who use drugs to climb the ladder to find higher-level drug suppliers, but we have seen no evidence that buy-and-bust tactics lead to the arrest and prosecution of drug suppliers.

In our experience, prosecutors generally pursue the charges in these cases.

The harm of buy-and-bust operations is that they maliciously target the most vulnerable New Yorkers, those who are homeless, clearly suffering from a substance abuse disorder or mental illness, and prey upon them in order to bump up their arrest numbers. Rather than setting people up for arrest and jail time, NYPD should be working with other city agencies to connect people

[5] Most of these cases are charged with felony drug possession intent to distribute (PL 220.16) or felony drug sale (220.39).

in crisis with voluntary drug treatment, mental health support, housing and other services.

In one buy-and-bust case that was highlighted in the *New York Times*, a juror actually wrote a letter to prosecutors in the office of Manhattan District Attorney Cy Vance, saying it was "approaching absurd that you would use the awesome power of your office to represent the people of New York County, along with it and the court's limited resources, on such a marginal case."[6] This juror raises a valuable point: Why is the City wasting its resources on targeting the most vulnerable among us, rather than supporting them? If police can identify people struggling with addiction, why not provide them with information on treatment options or other services?

III. ARRESTS AND HARASSMENT OUTSIDE METHADONE CLINICS

For many years, the NYPD has targeted areas surrounding methadone clinics and needle exchanges for enforcement and harassment. This is widely known in public health circles, and police have discussed reforms, yet aggravatingly, the practice persists.[7] Often, the arrests involve deceptive buy-and-busts or other predatory tactics that sometimes result in serious charges against people who are actively and even successfully turning their lives around. Furthermore, it is impossible to know how many people have shied away from medication-assisted treatment and other widely-accepted and publicly-funded harm reduction resources due to fear of police presence. These harm reduction resources they are infringing upon have been proven to save lives, which suggests that police interventions may in fact be resulting in uncountable deaths.

When discussing the frequency of this practice, one of our attorneys said: "Everybody's arraigned a guy who's been arrested outside a methadone clinic. Usually, it's a Friday and the guy's got enough for the weekend."

IV. MARIJUANA PROHIBITION AND THE OPIOID EPIDEMIC

Research funded by the National Institute on Drug Abuse found that legally protected marijuana dispensaries were associated with reductions of 16 to 31 percent in opioid overdose deaths. (HealingNYC seeks to reduce opioid deaths by 35% over 5 years.) Other experts have argued that the criminalization of marijuana led to the over-prescription and over-use of opioids and eventually the epidemic that we are struggling to address today. Simply put, marijuana seems to be a safer alternative to opioids in pain management, but criminalization undercuts that benefit. However, even under the new reduced arrest policy announced earlier this week by Mayor Bill de Blasio, vulnerable New Yorkers will continue to face arrest and possibly prosecution for personal marijuana use. This should end. BDS is proud to support the Drug Policy Alliance's (DPA) StartSMART campaign to legalize and sensibly regulate adult marijuana use and sale across New York State. The immense harms of prohibition and discriminatory enforcement practices, balanced against the opportunity for advances in racial justice and economic

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[6] Joseph Goldstein, *Undercover Officers Ask Addicts to Buy Drugs, Snaring Them but Not Dealers*, N.Y. TIMES, April 4, 2016, available at https://www.nytimes.com/2016/04/05/nyregion/undercover-officers-ask-addicts-to-buy-drugs-snaring-them-but-not-dealers.html.

[7] John Knefel, *The Common Cure for Heroin Addiction is Also a Magnet for Police Harassment*, BUZZFEED, Feb. 19, 2015, available at https://www.buzzfeed.com/johnknefel/how-police-harassment-at-methadone-clinics-makes-quitting-he?utm_term=.rj94qpORg#.ekNOjm12P; see also VOCAL-NY, *Beyond Methadone: Improving Health and Empowering Patients in Opioid Treatment Programs* (2011), available at http://www.vocal-ny.org/wp-content/uploads/2011/10/Final-Methadone-Report1.pdf.

empowerment envisioned by this campaign, warrant urgent action by state legislators and the Governor. The Marihuana Regulation and Taxation Act (MRTA), S.3040/A.3506, sponsored by Senator Liz Krueger and Assembly Member Crystal Peoples-Stokes, would create a well-regulated and inclusive marijuana industry, improve public safety, and meaningfully repair some of the damage caused by existing drug laws, in addition to helping to address opioid epidemic.

V. #HealingNYC, DRUG PROHIBITION AND RESOURCE MISALLOCATION

Although it was marketed as a public health program, approximately half of the city funding for Mayor Bill de Blasio's initiative to combat the opioid epidemic, HealingNYC, is allocated to the New York Police Department (NYPD). This is an attempt to pair a public health approach to problematic drug use with increasingly aggressive law enforcement tactics – a strategy favored by many policymakers today, but one that does not appear to be rooted in modern science.

We appreciate that Mayor de Blasio is spearheading an effort to expand the use of life-saving naloxone kits and medication-assisted treatment, as well as other important initiatives to reduce the stigma of addiction and mental illness. However, we are concerned this important work could be undermined by regressive law enforcement strategies that further marginalize, stigmatize and ultimately criminalize the very people the Administration seeks to support. Indeed, as Crain's reported last year, "nearly half of the $143.7 million budgeted for HealingNYC through fiscal year 2021 will go to the NYPD, mostly to step up arrests of drug dealers." Much of the funding provided to the police was reportedly to be used to investigate overdoses with the goal of bringing criminal charges against people alleged to have supplied the drugs.[8]

There is a growing recognition among policymakers across the country, many of whom may struggle with addiction themselves or have friends or family members who struggle with addiction, that criminalization and the resulting marginalization are an ineffective and, in fact, often very dangerous approach to drug use. These dangers are only heightened as police and prosecutors pursue homicide-like charges or other very serious charges against alleged suppliers when overdoses do occur. In at least one case, NYPD worked with federal law enforcement agencies, leading to a federal prosecution of a man who had shared drugs, at below cost, with his best friend, who tragically overdosed and died. This strategy aligns with an alarming national trend toward expanded use of drug-induced homicide prosecutions identified by the Drug Policy Alliance in a recent report, *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane*.[9] Among many other serious risks, experts have noted that increased enforcement can discourage people who witness overdoses from calling 911 because suppliers are often close acquaintances and may even be the witnesses, themselves.

Portugal's model for drug policy suggests that we may be able to dramatically reduce overdose deaths and other serious harms related to addiction through a careful and deliberate

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[8] Caroline Lewis & Rosa Goldensohn, *Will stepping up drug-dealer arrests help alleviate the opioid crisis?* CRAIN'S N.Y. BUSINESS (2017), http://www.crainsnewyork.com/article/20170522/HEALTH_CARE/170529996/nypd-gets-biggest-share-of-new-city-funding-to-fight-opioid-overdose-deaths (last visited May 30, 2017).

[9] Lindsay LaSalle, *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane* (Drug Policy Alliance 2017), available at http://www.drugpolicy.org/sites/default/files/dpa_drug_induced_homicide_report_0.pdf.

decriminalization of the use and possession of all drugs coupled with an aggressive public health strategy. In that country, heroin use has been cut by an estimated 75% and, more importantly, overdose deaths have plummeted. Portugal has the lowest rate of drug-induced death in Western Europe – less than 2% of the rate in the United States. In light of the overdose epidemic, lawmakers should seriously study this model and import its successes where possible.

Even if a greater investment in law enforcement efforts against suppliers were an effective approach, the Council should consider whether it makes sense for those funds to come from initiatives like HealingNYC or rather be diverted from other NYPD functions. For example, the most common drug arrest charge in 2016 was for low-level marijuana possession (18,136) and, as referenced above, Mayor de Blasio recently committed to reducing this number. At an April 22, 2017 New York City Council Committee on Public Safety hearing, then-NYPD Chief of Detectives Robert Boyce said of the Department's response to the epidemic: "Our focus is not on the individual addict. Our focus is on the street level as well as interdictions coming into the country." Arrest data provided by the New York State Division of Criminal Justice Services does not support this statement. The most common drug arrest charge in 2016 was low-level marijuana possession, with 18,136 arrests. The next most common NYPD drug arrest charge, or fifth most common arrest overall, in 2016 was low-level non-marijuana drug possession, or Criminal Possession of a Controlled Substance in the 7th Degree, with 16,630 arrests. The most common drug *sale* arrest charge was Criminal Sale of a Controlled Substance in the 3rd Degree, with 5,628 arrests, or approximately one-sixth of the number of low-level drug possession arrests.

When analyzing the merits of drug enforcement and coercive treatment systems like drug treatment courts, it is essential to always consider what the funding required by these approaches could do to address the underlying causes of addiction and problematic drug use, such as lack of access to mental health care in the community.

As a public defense organization, Brooklyn Defender Services is principally concerned with the direct impacts of drug laws and enforcement on our clients and their families and communities. That said, we recognize that the fiscal and economic impacts of drug policy do in fact play a major role in their daily lives. For example, most of our clients or their children attend or attended public schools with inadequate funding. According to the New York State Board of Regents, schools are owed billions of dollars in funding under the Campaign for Fiscal Equity lawsuit, with the majority owed to schools with high populations of Black, Latino and immigrant students.[10] Without the resources for a State Constitutionally-mandated "sound basic education," many of our public schools have infamously become pipelines to prisons and jails. If funds currently spent on drug enforcement were instead reinvested in school-based mental health clinics and restorative justice programs, school environments would improve and administrators and teachers would be better able to address any behavioral problems without calling 911 or issuing suspensions and expulsions. If funds currently spent on overtime for police officers who make buy-and-bust arrests near the end of their shifts were instead reinvested in making substance use disorder treatment more widely available, perhaps overdoses would decline rather than increase or plateau at record-high levels.

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[10] Brennan Center for Justice, *Campaign for Fiscal Equity V. State of New York* (2006), https://www.brennancenter.org/legal-work/campaign-fiscal-equity-v-state-new-york.

The fact that drug prohibition is the status quo should not exempt it from close scrutiny. This hearing is a critical example of such scrutiny. These resource allocations expand the disparities in health, economic success, and liberty in our society.

CLIENT STORIES

(All names have been changed.)

Jake was a 40 year-old with a series of prior arrests. He was making progress in overcoming his heroin habit through his participation in a local methadone program in South Slope, Brooklyn. His mental health had deteriorated in tandem with his drug use. An undercover police officer disguised as a homeless man rolled up to him one day, begged him for heroin, and promised to give him a cut of the money. Jake was not interested in selling drugs, but acquiesced, bought him a bag, and was arrested. Ever since, all of his progress against his addiction has stalled. He worries about whether he will be evicted from NYCHA, where he cares for his ailing mother full time. He has now lost trust in himself and his ability to gain sobriety, suffering from severe anxiety and depression. He may go to drug treatment court, but at best it will restore him to his former path toward success, and at worst it will result in a sentence to upstate prisons, where he will have no access to medication-assisted treatment.

David was a 21 year-old with severe cognitive impairment (an IQ of 55) that qualifies as moderate mental retardation. He had struggled with heroin addiction since he was 16. He was living at home with mom in Bay Ridge addiction when he was arrested at 21 for petit larceny after stealing from her to buy drugs. The judge at arraignments set bail set and he then took a plea with a full order of protection to get out of jail. He was forbidden from having any contact with his mother, which resulted in a series of contempt charges, on which a BDS attorney represented him, when he violated the order. His mother never wanted the order and asked for it to be withdrawn, but the District Attorney fought to keep it in place because they deemed his offense elder abuse. He was forced to stay in a shelter. The judge ordered regular treatment, but with his cognitive condition, he did not have the wherewithal to tackle addiction himself. He could not even answer the intake questions. His mom had been his only support. After completing a certain amount of treatment, the judge would agree to lift the order of protection; in other words, his mother could not legally assist her son until he completed his treatment and he could not complete his treatment without her. Seeing no other options, David's BDS attorney and social worker regularly went with him to the methadone clinic. Ultimately, after the case had been open for two years, the judge realized how limited he was, recognized his hard efforts, and accepted his partial compliance with the program, resolving the case with a conditional plea to misdemeanor contempt with a limited order of protection for five years. Unless his mother makes a serious allegation against him, they can remain together.

Francis was found after he overdosed in a public bathroom and, after being revived, was charged with misdemeanor drug possession. With several other misdemeanor cases open, he continued to suffer from substance use disorder. He acquired a gun owned by a family member and intended to sell it for drug money but was caught and arrested for criminal possession of a weapon in the 2nd degree – a C violent felony. He ultimately pled to an E felony with two to four years in upstate prison. He was denied a treatment alternative because his was technically a violent crime.

Anthony, a 46 year-old, was charged with a violent felony for an alleged stabbing. He did not remember the incident. He had used heroin for more than two decades and had been incarcerated for most of his life. Because of the seriousness of the charge, the judge set bail $300,000 and he was sent to Rikers Island. During his time there, which lasted nearly a year, he was not allowed into any treatment program because he had been charged with a violent crime. Our social workers often find it difficult or impossible to get our clients into such programs for the same reason. Another common reason for such denials is an allegation that the person is a member of a gang, a specious and questionable designation that should have no bearing on access to treatment.

Carlos was an older man with a heavy file, which is indicative of a long history of criminalization. As is often the case with such people, his is a record of mostly misdemeanors. He was ensnared in a buy-and-bust operation and charged with felony possession with intent to distribute. The prosecutor found the arresting officers' documentation deficient and dismissed the felony charge, leaving only the misdemeanor drug possession charge for residue on a crack pipe found in Carlos' pocket. He was released from court with a sentence of time served and, as always, a mandatory surcharge that will likely go unpaid, damaging any credit he might have had. His parting words to his BDS attorney were, "I have a crack problem. When are they going to stop this?"

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BDS is grateful to the Council for hosting this critical hearing and shining a spotlight this issue. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact our clients. If you have any questions, please feel free to reach out to Jared Chausow, our Senior Policy Specialist, at 718-254-0700 ext. 382 or jchausow@bds.org.

Testimony of Aisha Greene
Bureau Chief of Alternatives to Incarceration
Bronx District Attorney's Office
In front of New York City Council
Committee on Justice Systems
June 21, 2018
(As Prepared)

Good Afternoon. Chairman Lancman and members of this committee. My name is Aisha Greene and I am the chief of the alternatives to incarceration bureau at the Bronx District Attorney's Office. On behalf of District Attorney Clark, who apologizes that she could not be here today, thank you for allowing us the opportunity to speak to you about her office's response to the opioid crisis in the Bronx. Upon taking office in 2016, District Attorney Clark made tackling this public health crisis one of her top priorities.

Home to 1.4 million people, in 2016, Bronx County had the second highest rate of overdose deaths with 376 fatalities. If the Bronx were a state, we would have the fifteenth highest overdose rate in the country. We ranked higher than large states such as Florida, New Jersey, California, and our own home state: New York. But this problem has been around for 40 plus years and is not a new epidemic in our county. The average person that overdoses in the Bronx is 46 years old and has been arrested 7.5 times for drug possession. This signifies that the Bronx's population is much different than our bordering counties and our population of users is older and more experienced than in other areas. Moreover, in 2017 in the Bronx, a total of 2,405 arrests were made for criminal possession of a controlled substance in the seventh degree. District Attorney Clark believes this provides our office with 2,405 opportunities to intervene and potentially save a life.

Based on that philosophy, our office has developed a four prong strategy to reduce the number of overdose deaths in Bronx County, entitled Operation HEAT (Heroin Education and Access to Treatment). These prongs include prosecution, diversion, coordination, and outreach.

At base, we must remove the supply of illegal narcotics and opioids lining our streets. To that end, we are working with our partners including the New York City Police Department, the Drug Enforcement Administration, Homeland Security Investigations, the Office of the Special Narcotics Prosecutor, and other local/state/federal law enforcement agencies to investigate and prosecute individuals and groups who illegally manufacture and distribute opioids and other narcotics in the Bronx. These investigations go beyond the typical street level drug trade and work to dismantle high level drug trafficking rings that pose a danger to the Bronx and New York City more broadly.

But supply reduction is only half of the puzzle. District Attorney Clark is committed to providing access to treatment for justice involved individuals with substance use issues, especially those at high risk for opioid overdose. This commitment extends beyond creating typical drug treatment courts and ensures a continuum of care at all touch points; attempting to remove barriers and collateral consequences associated with the criminal justice system.

First, District Attorney Clark is on the forefront of diversion programming and currently operates one opioid-based diversion program and a second is in planning. First, in partnership with Bronx Administrative Judge George Grasso, the Office of Court Administration, and the Center for Court Innovation, the District Attorney developed OAR, which is short for Overdose Avoidance and Recovery. This court-based pre plea diversion program is designed to divert individuals that are high utilizers and at high risk for overdose away from the criminal justice system and into treatment. This program is available to all individuals arrested for simple drug possession in the Bronx. What is different about this diversion program is that we effectively pause the criminal case and allow individuals to access treatment in lieu of criminal prosecution. Indeed, the defendant is offered connections to treatment pre-plea and this allows providers to develop a treatment plan that suits their needs without the "hammer" of a promised sentence forcing defendants into treatment. If s/he meaningfully engages in this plan, then the Bronx District Attorney's Office dismisses and seals their case. If the individual doesn't meaningfully engage or decides that s/he does not want to complete OAR, the Office returns his or her case to the regular case processing track without prejudice and makes the previous offer. In the six months that we have been operating, we have engaged over 150 people in treatment. Just last week, a middle aged man who works as a cab driver, successfully completed the program. It was a long road but with his wife by his side at every court appearance, he was able to meaningfully engage and successfully complete treatment. He is just one of 24 examples of lives saved in this short period.

Also, thanks to City Council and the Mayor for making funding available, we are currently planning HOPE, which stands for Heroin Overdose Prevention and Education. This initiative is designed to combat the heroin and opioid epidemic by diverting low-level substance use offenders into treatment at the time of arrest.

First implemented in Staten Island, the HOPE program uses trained peers to meet arrestees at the precinct in an attempt to immediately connect people to resources. These peers "walk individuals" to treatment and harm reduction services. If, after a period of time, the defendant meaningfully engages with the peer and makes a connection to a community-based organization, the Office will decline to prosecute the case.

These diversion and treatment alternatives only work if we are identifying individuals most at risk for overdose and in need of care. As such, through a partnership with New York University's Marron Institute, the District Attorney's Office developed a tool to identify individuals at risk for high utilization and overdose in the Bronx. The tool, which consists of five questions, will be validated in late 2018, should funding become available, and is being piloted in one of our two diversion programs.

Our efforts and activities must be coordinated to ensure that we are reaching our intended audiences and that our efforts are not duplicative. In summer 2017, the Bronx District Attorney launched a working group, modeled on District Attorney Vance and HIDTA Director Chauncey Parker's RxStat in an effort to create coordinated responses to the opioid crisis. The Bronx Opioid Working Group brings together an interdisciplinary group of stakeholders, including public safety and public health professionals to establish consistent, timely, and accurate analysis of opioid overdoses. The working group provides a forum for partners to review shared data in

order to craft responses, discuss emergent finds, and coordinate related policy efforts or program activities. The working group helps to reconcile the different missions of public health and public safety agencies by adopting a data-driven focus on information sharing. The group has been influential in assisting with the creation of the Bronx OAR and HOPE programs, which I have already mentioned.

In addition, through a partnership with Columbia University School of International and Public Affairs and the Office of the Special Narcotics Prosecutor, the Bronx District Attorney's Office just completed a needs assessment to identify factors contributing to this crisis including treatment access, the continuum of care, and prevention strategies. This assessment provides recommendations for strategies to improve access to opioid use disorder treatment, initiatives that can support individuals through their recovery and beyond, as well as strategies to improve and expand existing prevention efforts. Furthermore, the report will help shape the Bronx Opioid Working Group and the Bronx District Attorney's efforts moving forward.

And finally, getting the message out about the dangers of opioids and fentanyl is necessary to saving lives. Through District Attorney Clark's strategic enforcement and intergovernmental relations division and community affairs unit, she is working to educate the public about the risk of opioid overdose. The Office participates in town halls throughout the county and provides speakers at community meetings to discuss this important issue and we are exploring new ways to prevent overdoses and outreach to the public about the dangers associated with opioids and other substances.

We hope that this multi-faceted strategy, which focuses equally on demand and supply reduction, will help stem the number of overdoses and improve public safety in the Bronx. Thank you again for the opportunity to speak with you. I look forward to any questions that you may have.

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Richard A. Brown
District Attorney

TESTIMONY OF

KAREN RANKIN, CHIEF, NARCOTICS TRIALS BUREAU
&
DOUGLAS KNIGHT, DIRECTOR OF ALTERNATIVE SENTENCING
&
PHILIP ANDERSON, SUPERVISING ASSISTANT DISTRICT ATTORNEY, NARCOTICS INVESTIGATIONS BUREAU

QUEENS DISTRICT ATTORNEY'S OFFICE

BEFORE THE

NEW YORK CITY COUNCIL COMMITTEE ON THE JUSTICE SYSTEM
"Addressing the Opioid Crisis in Criminal Court"

JUNE 21, 2018

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Good afternoon. We would like to thank the Chair of the Committee on the Justice System, Rory Lancman, and other Council members here today for giving us the opportunity to testify at this hearing on behalf of Queens District Attorney Richard A. Brown.

My name is Karen Rankin, and I am the Chief of the Narcotics Trials Bureau of the Queens District Attorney's Office, where I have worked since January of 1990. The Narcotics Trials Bureau – as the name suggests – concentrates efforts and resources to combat narcotics-related crimes in Queens County. To that end, our bureau is assigned most of the felony narcotics and felony driving while intoxicated (DWI) crimes. However, the Bureau handles other types of crimes as well, which include but are not limited to Robbery, Assault, Attempted Murder and Burglary. Also from our Office is Philip Anderson, Supervising Assistant District Attorney from our Narcotics Investigations Bureau who handles the investigative side of felony narcotics-related crimes and is the liaison to the NYPD Overdose Investigation Team. Our Bureaus work in conjunction with Douglas Knight, who is the Director of Alternative Sentencing in our office. He has a Master's Degree in Criminal Justice and is a Credentialed Alcohol and Substance Abuse Counselor, with over thirty years of Alternative Sentencing experience. Together, we are responsible for the development and implementation of office-wide Alternative Sentencing programs offered to defendants by our office or the court. We collaborate with the court and treatment agencies on a daily basis in overseeing all compliance with treatment programs associated with the Queens County Criminal Justice System.

We are proud to say that District Attorney Brown has been and continues to be a leader in diverting both non-violent and a select few violent offenders into treatment as a way to assist and address the needs of those whose criminal behavior is motivated by substance abuse, alcohol abuse or mental health issues. Our office has a wide variety of alternative sentencing programs targeting particular types of offenders, including veterans, DWI offenders, drug offenders, those with mental health issues

and those who have a dual diagnosis. As soon as a case is assigned to a bureau in the office, that case is immediately assessed by a supervisor. The supervisor subsequently identifies if that defendant and the nature of his or her crime meets the treatment criteria for one of our specialized courts. He or she inputs the information into the system, and Mr. Knight immediately receives an email to begin the process of scheduling the defendant for an assessment with his counsel, if the defendant is interested in this type of disposition.

As we are all aware, our nation is facing an opioid crisis and we are all tasked with the responsibility to address this issue. Too many of our citizens, especially those between the ages of 25 and 54 years old, are overdosing and dying from the use of opioids, most notably heroin and fentanyl. We understand the importance of this crisis and have made efforts to address it. Those efforts include: (1) tracking both fatal and non-fatal overdoses; (2) treating each overdose death as a homicide investigation from inception with the riding ADA who is notified by the various Detective Squads; (3) coordinating with the NYPD Narcotics Borough Queens overdose teams and/or any other agencies, including the RxStat working group to offer assistance with investigations in an effort to bring criminal charges against those who sold the drug to the decedent; (4) seeking to proffer those arrested and charged to ascertain the source and location of the drugs; (5) taking a harsher position on those found to have sold fentanyl; and (6) continuing to identify those who are substance addicted and offer them treatment in our Alternative to Incarceration programs/courts as well as providing literature to educate them about the risks of drug use and making them aware about the use of Narcan/naloxone.

Alternative to incarceration programs were established to focus on the increasing number of substance-addicted defendants who we began to see in the 1990s and who continually appear in our courts on a daily basis. Towards that end, we have a number of programs. The Drug Treatment Alternative to Prison (DTAP) program, supported by District Attorney Brown since its inception in 1993, has been a tremendous success. It was

developed for non-violent second felony drug offenders whose involvement with the criminal justice system stems from their abuse of drugs. Each defendant is screened and assessed to determine whether they suffer from an addiction and the extent of that addiction. Before acceptance into treatment, which is 12 months of court monitoring, the defendant must plead guilty and abide by the court-imposed requirements. The defendant will be monitored through frequent court appearances, to determine whether they are progressing with their treatment and complying with the other requirements. Drug testing is given periodically throughout the treatment program. Those who successfully complete treatment will be eligible to have their criminal cases dismissed and sealed, or charges reduced or sentences lowered. However, those who fail will be sentenced to an alternative jail sentence that was negotiated at the time of the plea. This serves as a balance in enforcing the law while also treating those who need and want help for their addiction. We also believe that a jail alternative in the event of repeated failures serves as a legitimate incentive to get well and not re-offend.

Over the years and as a result of the success we experienced with our DTAP population, we expanded our network of drug treatment diversion programs. In 1998, we launched a separate court, Queens Treatment Court (QTC), for non-violent, first-time felony offenders. It is a unique court part, in that all parties operate as a team. The judge, the prosecutor, the defense attorney, various staff members and treatment providers work together in a collaborative effort. They meet on a daily basis to discuss the defendant's treatment, progress, and violations, and to determine the best course of action to take in any given situation. We are proud to announce that we recently celebrated our 20th anniversary, which has afforded over 2,000 otherwise jail-bound defendants the opportunity to avail themselves of treatment resources that resulted in charges being dismissed and sealed and a return to productive lives free of substances. Because of our tremendous success with the felony treatment court, in 2002, we launched a misdemeanor treatment court which concentrates on the recidivist misdemeanor non-violent, drug-addicted population. This court exposes

these participants to a structured graduated sanction approach to address the substance abuse issues that they continually struggle with over the years. The model employed in this court is similar to the felony treatment court model.

In 2006, we developed a DWI treatment court. This court operates out of Queens Treatment Court and specifically addresses the underlying alcohol-related issues of DWI offenses. We currently have a recidivism rate of less than ten percent. Moreover, a DWI defendant will not receive a dismissal upon successful completion. Instead, he or she will be sentenced on a misdemeanor DWI charge and receive probation.

We also provide services for those whose criminal behavior is motivated or complicated by mental health issues. Among the many services is the Queens Mental Health Court (QMHC). The court focuses on defendants who have mental health issues, especially those having a major depressive disorder. As all of you know, this population is extremely difficult to accommodate, yet we work diligently on a regular basis to provide the necessary services and linkages to allow them to succeed.

The programs identified above are just a few of the program options offered in Queens County. There are numerous other alternative to incarceration programs offered on a daily basis which assist hundreds of defendants in need of clinical services. With respect to the ever-growing opioid concern, we recently launched the Queens Treatment Intervention Program (QTIP) to specifically address misdemeanor non-violent individuals addicted to opioids. QTIP is a collaborative program with industry leader Samaritan Daytop Village, an Office of Alcoholism and Substance Abuse Services (OASAS) licensed treatment provider that will clinically engage defendants charged with seventh-degree possession of a controlled substance under Penal Law § 220.03 and other low-level offenses associated with opioid addiction. In lieu of traditional community service, defendants will plead guilty to Disorderly Conduct under Penal Law § 240.20 (a violation rather than a crime) and will be directed for a

clinical assessment to determine if further treatment services are warranted. If assessed and not determined to need any clinical services, upon return to court, the case will result in an adjournment in contemplation of dismissal (ACD). In the event the defendant is assessed and determined to be in need of clinical services, but he or she declines these services, the plea to Disorderly Conduct will stand, and the defendant will be sentenced to a conditional discharge. If assessed and treatment is recommended, and the defendant takes the necessary steps to enroll in services, on the following court date, the defendant will receive an ACD. Regardless of the outcome of the case, our goal is to clinically evaluate as many eligible defendants as possible; and, at the very least, plant a seed that professional services exist to address their opioid addiction. It is this population that we believe is most susceptible to overdosing. If we can reach these people in this early stage and connect them to treatment and services, we believe this will help reduce the number of cases resulting in overdoses and death.

Since QTIP began, 73 defendants have accepted our offer to participate in the program. Thus far, 79% of those assessed satisfied our requirements, resulting in their cases being ACD'd. It should be noted that 84% are male, and we have a retention rate of 88%. Furthermore, there is no cost to the defendant associated with QTIP and, to serve our diverse constituency, we provide services in all languages. And we will continue to identify other OASAS-licensed treatment programs to achieve our desired goals.

As stated before, most of these programs have been in existence for several years, and we are extremely proud of our retention and success rates. Again, these are the programs under which we offer a comprehensive array of treatment services to offenders who have been diverted through specialized courts that assess their treatment needs and then design a treatment plan to address those needs.

At this time, the existing Alternative to Incarceration programs are prepared to link the opioid population to the comprehensive existing

services and resources to address their needs. District Attorney Brown is delighted to join in the efforts to provide the needed services. This population is in need of unique outreach, peer support, specialized services and treatment to further educate them and avoid the dire consequences associated with drug addiction and opioid use in today's society.

In sum, we are glad to be a part of these innovative alternative sentencing initiatives and welcome any support that will better serve the pressing needs of this deserving and eligible population who suffer from trauma and addiction. We will continue to provide effective professional alternatives to defendants in need of treatment services. And we will continue to link them with the appropriate agencies in our specialized courts.

Finally, we encourage any of you who are interested in visiting our existing initiatives to come and meet with us to learn more about the services we provide. We look forward to meeting with you and keeping you informed about our programs and this innovative and important initiative. We hope that our efforts will go a long way in addressing the opioid crisis and saving lives of Queens residents.

Testimony

of

Bridget G. Brennan
Special Narcotics Prosecutor

Before

The New York City Council Committee on the Justice System

Addressing the Opioid Crisis in Criminal Court

June 21st, 2018
Council Chambers
City Hall

OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR

OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR

As Special Narcotics Prosecutor for the City of New York, I appreciate the opportunity to address the New York City Council's Committee on the Justice System under Chairperson Rory Lancman on the critically important question of how we can best address the opioid crisis.

Drug overdoses are claiming more lives in New York City than ever before. Over the past two years, more than 2,800 New Yorkers died from overdoses and thousands more survived overdoses only as a result of emergency medical intervention. Opioids are responsible for 80% of fatal overdoses, with the synthetic opioid fentanyl and fentanyl analogues present in nearly half of these deaths. Roughly 50 times more potent than heroin, fentanyl is saturating the city's black market for narcotics. The appearance of new fentanyl analogues, which are chemically similar variations of fentanyl, is escalating.

The Office of the Special Narcotics Prosecutor (SNP) coordinates with the city's five District Attorneys, the New York City Police Department, the Mayor's Office of Criminal Justice, the U.S. Drug Enforcement Administration and other local, state and federal agencies, in efforts to rein in this epidemic. My office advocates a four-pronged approach: reduce supply, increase treatment, promote sensible harm reduction and expand prevention efforts.

As set forth in the Mayor's HealingNYC initiative, the city is seeking to reduce overdose deaths by 35% from 2016 levels by 2022, largely through harm reduction efforts. This goal is far too modest, particularly given that the rate of overdose deaths rose by nearly 50% between 2015 and 2016. I believe with a more robust, balanced approach New York City can achieve far better results.

The most significant trend is the emerging prevalence of fentanyl analogues. Towards that end, I bring an urgent request to today's hearing. Last autumn, Gov. Andrew M. Cuomo proposed adding 11 fentanyl analogues to the schedule of controlled substances. These analogues are closely related to fentanyl, with slightly different chemical compositions, and can be even more deadly. Yet shockingly the state legislature approved the scheduling of just two of the 11.

A new analysis by my office has determined that four of the substances rejected by the state legislature were responsible for at least 48 deaths in Brooklyn South and Staten Island last year, nearly 20% of overdoses, and we are continuing to review and refine our data. We are expanding this analysis to include an examination of toxicology reports for overdose deaths in Brooklyn North and other regions of New York City, where we anticipate seeing a similar impact. The availability of fentanyl analogues is increasing at an alarming rate. It defies logic that the same state legislature that effectively banned dangerous synthetic cannabinoids would fail to control these highly lethal opioids even as an historic epidemic engulfs the state. By refusing to add them, the legislature hampers our ability to use tools like search warrants and wiretaps to identify the source and remove the deadly supply. I ask for the City Council to support our ability to protect New Yorkers by advocating to add deadly fentanyl analogues to the list of controlled substances.

Bridget G. Brennan
Special Narcotics Prosecutor
for the City of New York

Overview of Narcotic Enforcement in New York City

Saving lives and protecting public safety by stemming the flow of lethal narcotics into New York City is the top priority for my office and our law enforcement partners in addressing the opioid epidemic. My office has citywide jurisdiction over felony narcotics cases and our overall strategy has been to focus on high-volume suppliers of the most potent, deadly drugs and drug trafficking groups involved in violence. Working in coordination with the District Attorneys' offices, SNP is supervising an increasing number of wiretap investigations and recovering skyrocketing quantities of heroin and highly-potent fentanyl.

At each stage of the opioid epidemic, from prescription drug abuse to heroin, fentanyl and now chemically similar fentanyl analogues, my office has tracked emerging trends and developed new strategies to address each manifestation of the crisis.

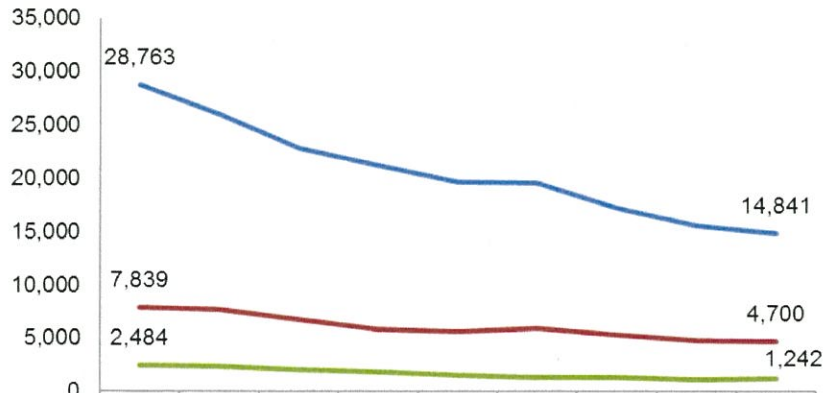
The overprescribing of opioid painkillers by doctors and false advertising by pharmaceutical companies in the U.S. created an appetite for opioids on a scale never before seen. Criminal narcotics enterprises quickly seized the opportunity to divert pricey pills onto the black market. Mexican cartels capitalized on the crisis by flooding the streets with highly pure heroin, followed by cheaper synthetics.

Because New York City has historically served as a major hub for narcotics distribution on the East Coast, we were a prime target for international drug cartels. Much of the heroin and fentanyl recovered here tracks back to Mexico. Precursor chemicals for fentanyl – and increasingly fentanyl analogues – are produced in overseas laboratories in China and then sold to the Mexican cartels or directly to U.S. customers through the dark web, fueling a multi-billion dollar international industry.

In response, I created specialized units, including the Prescription Drug Investigation Unit and the Heroin Interdiction Team, and reorganized the office to devote additional resources and staffing to the Investigation Division.

Before I describe these efforts in detail, I would like to address some misconceptions, beginning with the notion that individuals with substance abuse issues are being sent to prison for low level drug possession. This simply is not the case. Felony drug arrests and prison commitments declined by 50% over the past decade in New York City, from 28,763 in 2008 to 13,352 in 2017.

2008 - 2016 Felony Drug Trends: NYC

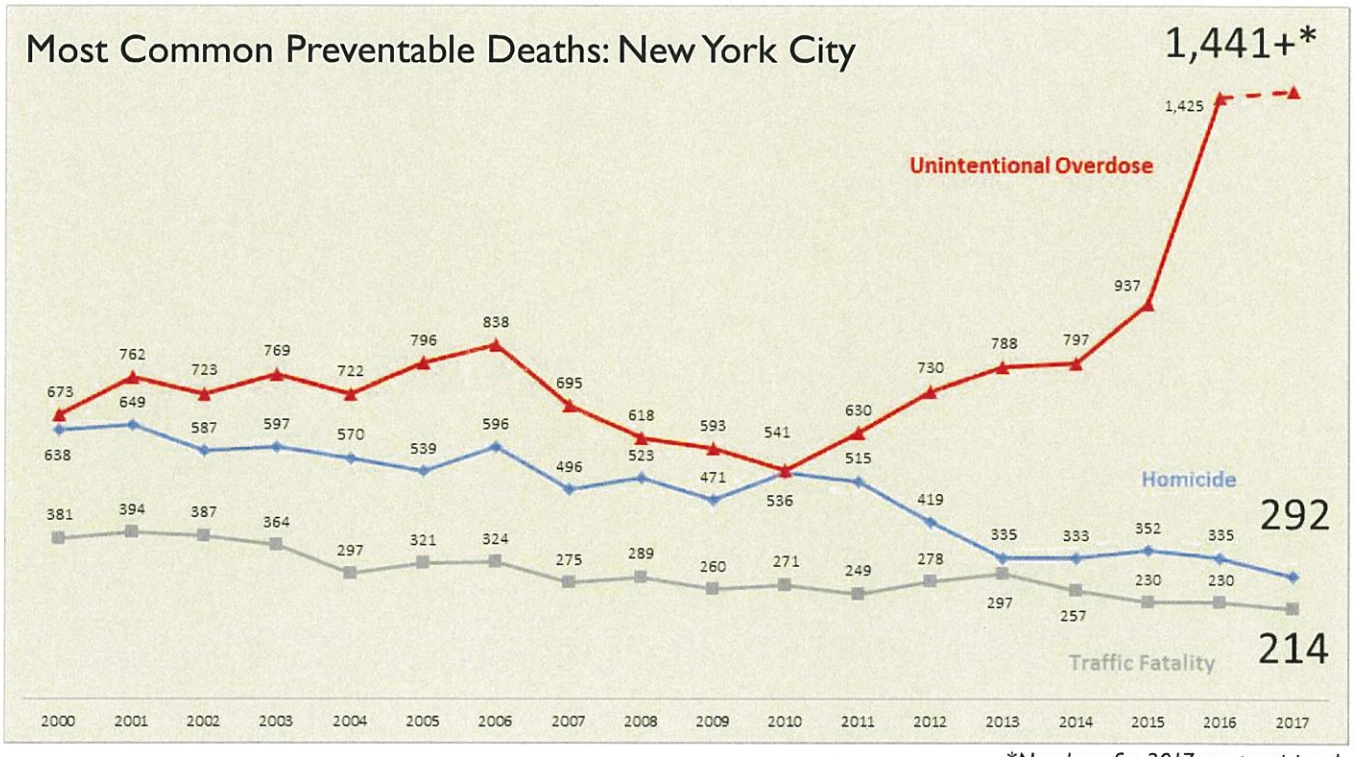


	2008	2009	2010	2011	2012	2013	2014	2015	2016
Arrests	28,763	25,957	22,792	21,206	19,680	19,502	17,206	15,507	14,841
Indict./SCIs	7,839	7,637	6,734	5,794	5,616	5,919	5,324	4,756	4,700
Commitments	2,484	2,339	2,019	1,813	1,500	1,336	1,349	1,171	1,242

Sources: DCJS, DOCCS

Mere possession of small amounts of opioids is not a felony unless there is evidence that a suspect is selling narcotics, and even then the individual could potentially be a candidate for placement in treatment. A defendant without prior felony convictions must possess a significant amount of narcotics before facing a charge that carries a mandatory prison sentence. For example, an individual must possess between 2,000 and 10,000 glassine envelopes of heroin in order to reach the four-ounce threshold for an A level felony. Similarly, a defendant in possession of oxycodone 30 mg would have to be carrying 1,200 pills to meet the A level felony threshold. Prosecutors would face the additional burden of proving the medication was obtained illegitimately, rather than through a legitimate prescription. Contrary to these frequent misconceptions, the majority of those sent to prison for drug crimes possessed distribution-levels of narcotics, were in possession of a weapon or had a history of violence.

Recent media coverage has highlighted manslaughter prosecutions in other jurisdictions targeting individuals purported to have used drugs with victims of fatal overdoses. In New York City, I am aware of just four manslaughter cases having been brought by local prosecutors in connection with overdose deaths. My office indicted two doctors on manslaughter, reckless endangerment and hundreds of criminal sales of prescriptions. One of these cases is pending and the other resulted in a conviction and prison sentence of more than 10 years. In each of these cases, the doctor allegedly prescribed medications that led to the deaths of multiple patients. The other two local manslaughter prosecutions that I am aware of are being handled by another office, but also do not appear to fit the fact pattern described in recent media coverage of "co-user" prosecutions.

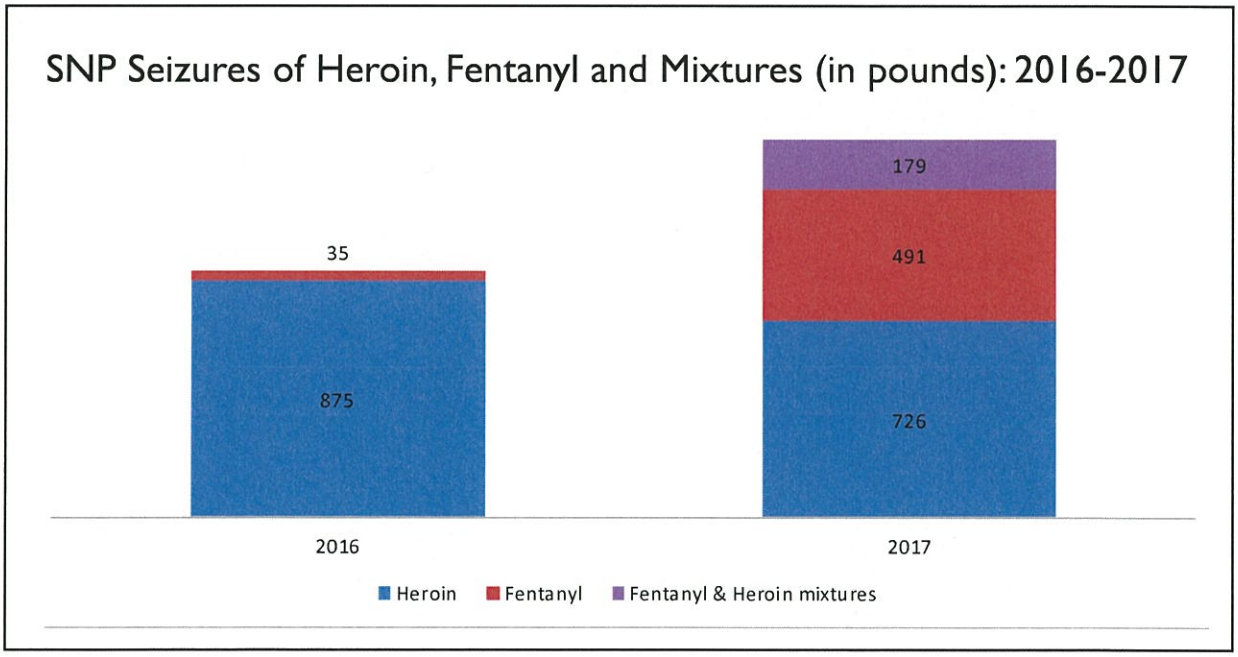


*Numbers for 2017 are provisional.

Supply Reduction: Illicit Opioids

As we have observed with prescription painkiller addiction, supply leads to demand. The focus of my office is tracking the source of supply to the highest level possible through the use of wiretaps, surveillance, confidential sources and other investigative techniques. Targeted enforcement enables us to make the best use of our resources and to have the greatest possible impact. Startling increases in the amounts of heroin and fentanyl we have seized over the past year are a cause for grave concern as they suggest the opioid epidemic is continuing to escalate in New York City and throughout the region. In 2017 our cases led to the seizure of 1,300% more fentanyl than in 2016. So far in 2018, my office participated in the seizure of an estimated 350 pounds of suspected heroin and fentanyl in New York City, Suffolk County, Westchester County, New Jersey, Boston and California (with laboratory analysis still pending on some seizures). The narcotics seized outside of the city were either intended for distribution here or sourced here. Fentanyl is frequently found mixed with heroin and an array of other substances, or pressed into counterfeit pills and sold as oxycodone, Xanax and other types of prescription drugs.

Fentanyl Seizures Increase by 1,300%



In 2016, SNP investigations yielded 35 pounds of fentanyl. One year later, these seizures had ballooned to 491 pounds of fentanyl, plus 179 pounds of mixtures containing fentanyl and/or heroin. Additionally, we continue to recover large amounts of heroin. While these substances vary widely in potency, they are sold almost interchangeably on the black market.

In our large seizures we have recovered fentanyl alongside a host of other narcotics, such as heroin, other synthetic opioids and cocaine. This was the case in an investigation last year that led agents to a stash apartment in Kew Gardens, Queens. A total of 214 pounds of narcotics were recovered, including more than 140 pounds of pure fentanyl and over 48 pounds of fentanyl mixed with heroin and other narcotics. Additional quantities of heroin and cocaine were also present. This marked the largest single seizure of fentanyl on record in the nation. A dose of fentanyl weighing between two and three milligrams can be lethal. The load recovered in this case could have yielded more than 30 million lethal doses.

In another emblematic case currently being prosecuting by my office, a Mexico-based fentanyl supplier and members of two related drug distribution groups operated out of a Central Park West apartment and a trendy Bronx hotel. The supplier was arrested in New York City in the vicinity of Penn Station after he agreed to travel here from Mexico in order to collect an alleged payment for narcotics. More than 35 pounds of fentanyl were recovered in the case, with the majority found inside a duffel bag on top of a vending machine in a publicly accessible hallway of the Bronx hotel.

Nation's largest fentanyl seizure in Kew Gardens, Queens

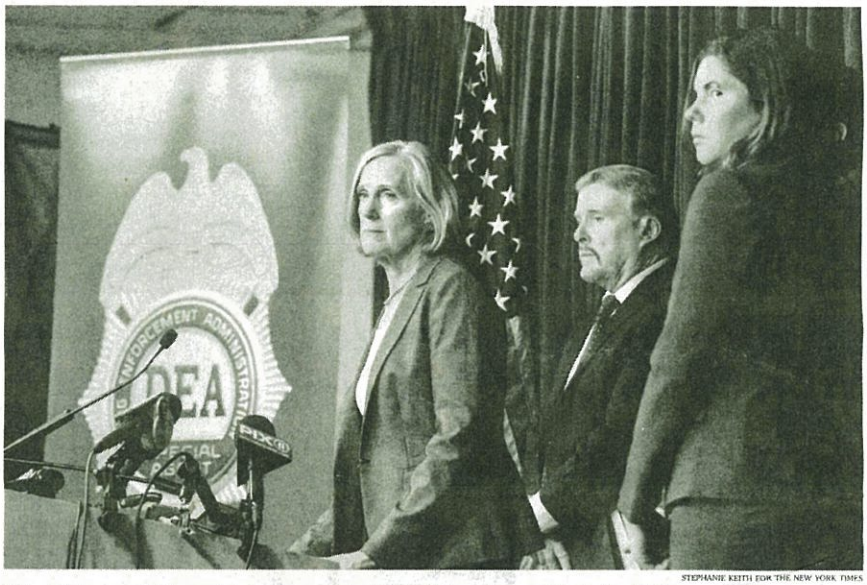
An investigation by SNP, the DEA and the NYPD led to the seizure of 214 pounds of narcotics, including more than 140 pounds of fentanyl and 48 pounds of fentanyl mixtures. Agents observed a suspected drug transaction at a New Jersey Walmart and tracked a couple in a Mercedes to a residential building in Kew Gardens, Queens. Inside the apartment, investigators found an enormous cache of narcotics. Packages contained a variety of narcotics and bore different wrappings.

Supply Reduction: Prescription Drugs

My office's Prescription Drug Investigation Unit, which was formed in 2011, has successfully prosecuted numerous members of prescription drug diversion rings and corrupt medical practitioners.

Most recently, we brought manslaughter and reckless endangerment charges against a physician who operated a medical practice in Flushing, Queens, which he abandoned last year upon learning he was under investigation. Dr. Lawrence Choy was arrested in Wisconsin in March and arraigned in Manhattan Supreme Court earlier this month. Manslaughter charges stem from the deaths of three patients to whom Choy allegedly prescribed opioid drugs and other controlled substances in high dosages and dangerous combinations for no legitimate medical purposes.

Once a legitimate medical provider, Choy's practices allegedly underwent a dramatic shift that coincided with financial difficulties associated with failure to pay taxes. The number of prescriptions Choy wrote for controlled substances shot up. Some of Dr. Choy's patients had never before been prescribed opioid drugs before seeing him and quickly became addicted. The doctor is alleged to have continued prescribing to patients he knew had suffered overdoses and engaged in treatment services.



STEPHANIE KEITH FOR THE NEW YORK TIMES

Bridget G. Brennan, left, the special narcotics prosecutor for New York, and James J. Hunt of the D.E.A. announced the charges.

Queens Doctor Charged in the Overdose Deaths of 3 Patients

By TYLER BLINT-WELSH

One day in 2013, Eliot Castillo, a 35-year-old clothing store worker and father of two, walked out of his doctor's office in Flushing, Queens, with a prescription for Xanax.

Three days later, he was found on his mother's couch in Jamaica, Queens, dead of an overdose of that drug and oxycodone. His doctor's name was on a prescription bottle for Percocet nearby: Dr. Lawrence Choy.

That same name would appear on pill bottles found near two other fatal overdoses in 2014 and 2016, authorities said.

In 2017, after a lengthy investigation, the police arrived at Dr. Choy's office and found it in shambles, with folders, papers and garbage strewn across the floor.

The doctor was gone.

Investigators would eventually find him nearly 1,000 miles away in Sheboygan, Wis. At a news conference in Manhattan on Thursday, the authorities released an indictment charging Dr. Choy, 65, in the deaths of three patients.

Dr. Choy was indicted on 231 counts, including manslaughter in the second degree in the deaths of Mr. Castillo and Michael Ries, 30, from Hauppauge, Long Island. He also faces charges of reckless endangerment in the second degree related to eight surviving patients and to the death of Daniel Barry, 45, a chef from Suffolk County who overdosed on Jan. 15, 2016, eight days after he got his last prescription from Dr. Choy. He was arraigned Thursday in Manhattan Supreme Court.

UNITED STATES DEPARTMENT OF JUSTICE

Dr. Lawrence Choy of Queens was indicted Thursday on 231 counts, including manslaughter and reckless endangerment.

Mr. Castillo, the store worker, first visited Dr. Choy's office in March 2012 seeking treatment for minor chronic pain. By June, Mr. Castillo was being prescribed as many as 680 oxycodone pills per month, the indictment said.

The charges come as prescription drug addiction continues to be rampant across New York and the rest of the nation. In New York State alone, 2,616 people overdosed on painkillers in 2016, the most recent year for which data is available.

Dr. Choy had been a licensed physician since 1981. His prescribing habits abruptly changed in 2012, according to Bridget G. Brennan, New York City's special narcotics prosecutor, after the filing of federal and state tax warrants against him totaling more than $1 million.

Dr. Choy's prescriptions were filed at pharmacies in New York City, upstate New York, Long Island and New Jersey. But a criminal investigation did not begin, authorities said, until the Pennsylvania attorney general's office became suspicious of prescriptions being filled at pharmacies in that state issued in Dr. Choy's name.

Prescribing hundreds of pills a month for minor chronic pain.

In March 2016, the Drug Enforcement Administration obtained a search warrant for Dr. Choy's office, seizing records and computer equipment. The search frightened Dr. Choy, and he fled to stay with family, Ms. Brennan said.

When the police executed a second search warrant on his office in August 2017, it was empty. He was arrested in Wisconsin in March.

New York Times, June 8, 2018.

Previously, in 2014, we secured the conviction of another doctor, Dr. Stan XuHui Li, on manslaughter and reckless endangerment charges related to patients' deaths. An anesthesiologist at a hospital in New Jersey, Li operated a weekend clinic in Flushing, Queens which drew patients from a wide geographic area. Patients lined up to wait for the doctor and paid cash for illegitimate prescriptions. He was sentenced to more than 10 years in prison. The conviction was affirmed last year by the Appellate Division, First Department.

Citywide Narcotics Analysis

SNP and the NYPD are working together to examine narcotics data from a broad citywide perspective in order to identify patterns and larger trends. Information is gleaned from laboratory reports, overdose data, arrests, seizures and community complaints. A detailed understanding of citywide trends and patterns allows SNP to effectively synchronize its work with the five District Attorneys' offices and make the best use of available resources.

Most recently, SNP has used these tools to examine how fentanyl analogues are impacting New York City's black market for narcotics. New types of these analogues are continually emerging, with the majority not currently listed among Schedule I controlled substances in New York State. This is problematic for law enforcement, because we are neither able to obtain search warrants in order to seize the analogues nor initiate wiretap investigations. If someone is arrested selling one of these substances, they cannot be charged. This significantly hampers our efforts.

Even more problematic for drug users, fentanyl analogues are highly potent and linked to numerous fatal overdoses. Through our analysis we have so far identified at least 48 deaths in Brooklyn South and Staten Island that involved four analogues that Gov. Cuomo proposed for inclusion on Schedule I and the state legislature rejected. Of these deaths, 26 were in Brooklyn South and 22 were in Staten Island. These deaths account for nearly 20% of all fatal overdoses in 2017 in those areas of the city.

Toxicology reports for deaths in Brooklyn South and Staten Island in 2017 show Fluoroisobutyryl Fentanyl was present in 30 fatal overdoses, including 15 in Brooklyn South and 15 in Staten Island. Furanyl Fentanyl was found in 11 deaths in Brooklyn South and six deaths in Staten Island. Methoxyacetyl Fentanyl was found in two deaths in Brooklyn South. The analogue U-47700 was involved in six deaths in Brooklyn South and two in Staten Island. At least eight of these deaths involved more than one of the four analogues.

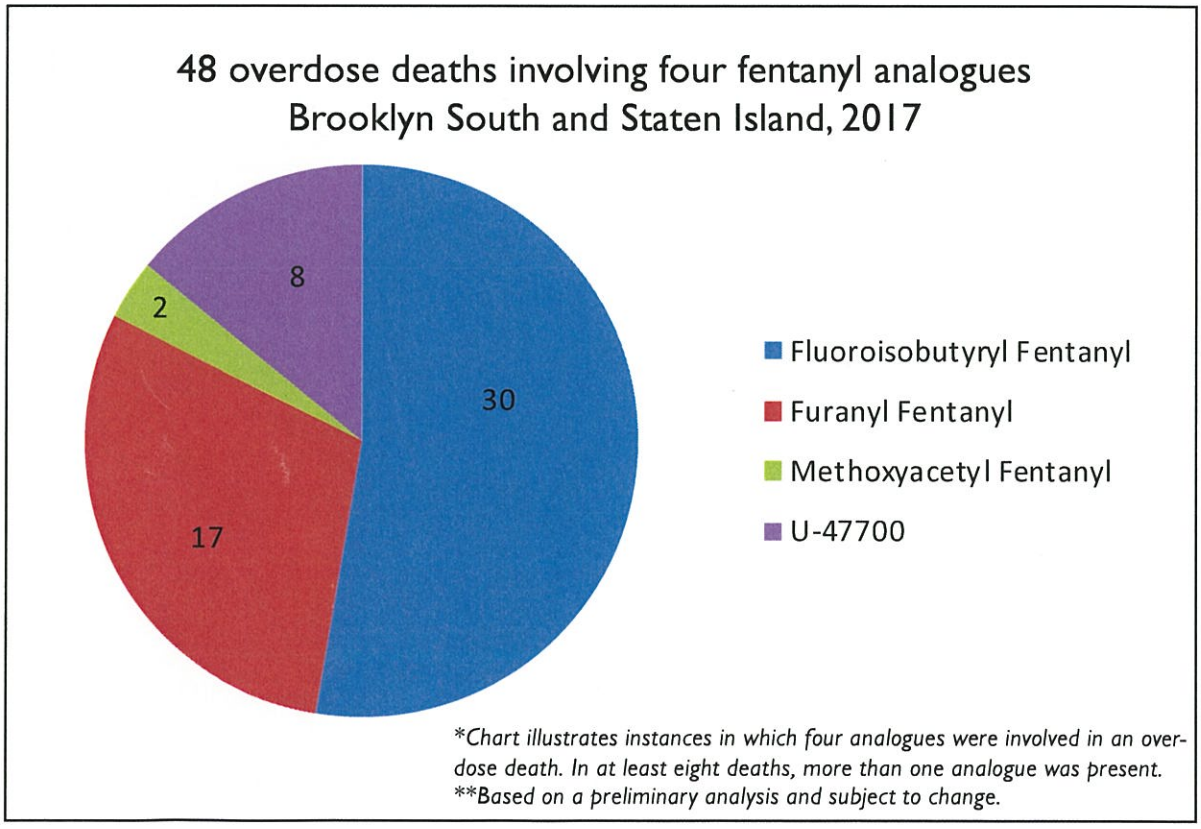


**Chart illustrates instances in which four analogues were involved in an overdose death. In at least eight deaths, more than one analogue was present.*
***Based on a preliminary analysis and subject to change.*

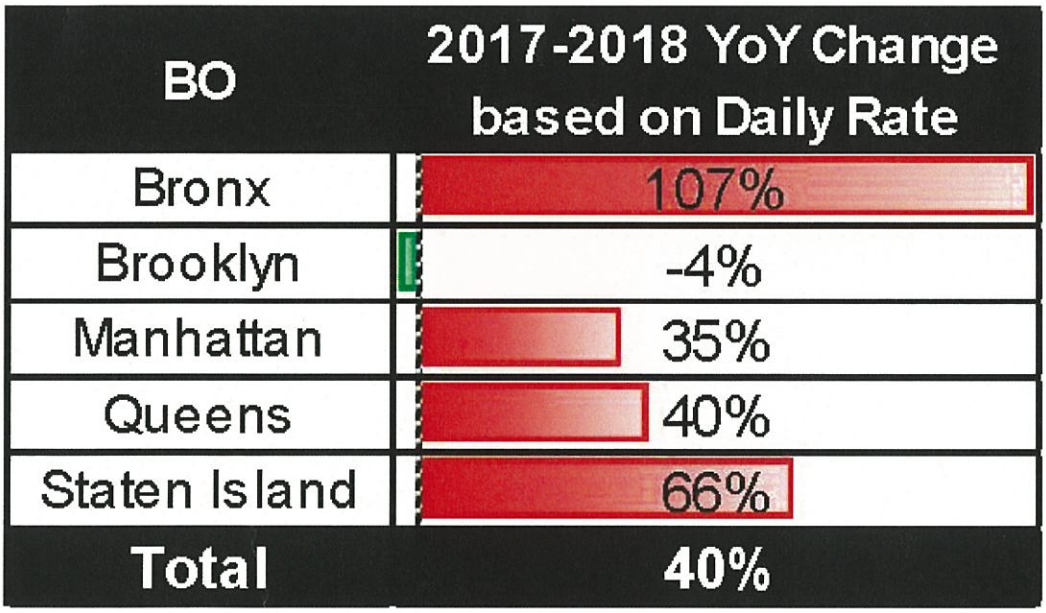
Additionally, fentanyl analogues are being seized by the NYPD with alarming frequency. An analysis of NYPD daily invoices for fentanyl analogues for 2017 – 2018 highlights the following:

- **Despropionyl Fentanyl** is appearing in NYPD seizures and invoices with 431% greater frequency in 2018 than in 2017.
- **4-ANPP** is appearing in NYPD seizures and invoices 203% more frequently in 2018 than in 2017.
- **Methoxyacetyl Fentanyl** seizures and NYPD invoices show a significant 82% rate increase in 2018 over 2017.
- **Fluoroisobutyryl Fentanyl** seizures and NYPD invoices show a slight rate increase of 6% in 2018 over 2017.

We have observed an overall increase in frequency of fentanyl analogue seizures by the NYPD as compared to seizures of fentanyl. The daily rate of analogue invoices increased by 40% citywide over the last year. Fentanyl invoices increased by 29%. In the Bronx, the daily rate of analogue invoices has doubled, most significantly for Acetyl Fentanyl (+287%) and 4-ANPP (+315%).

Numerous dangerous fentanyl analogues continue to be legal for drug dealers to sell to unsuspecting users. Our research shows that when analogues are controlled either federally or internationally, the result is a decline in the prevalence of those analogues in the New York City drug market. I implore the City Council to strongly advocate for adding the remaining nine fentanyl analogues proposed by Gov. Cuomo to the list of controlled substances.

Fentanyl Analogues - NYPD Lab Invoices



In the Bronx, analogue invoices have doubled YoY, most significantly for Acetyl Fentanyl (+287% YoY) and 4-ANPP (+315% YoY)

Data is from the NYPD Lab.
Note: Analogue tracking began on 3/26/2016 and is updated as of 5/11/2018

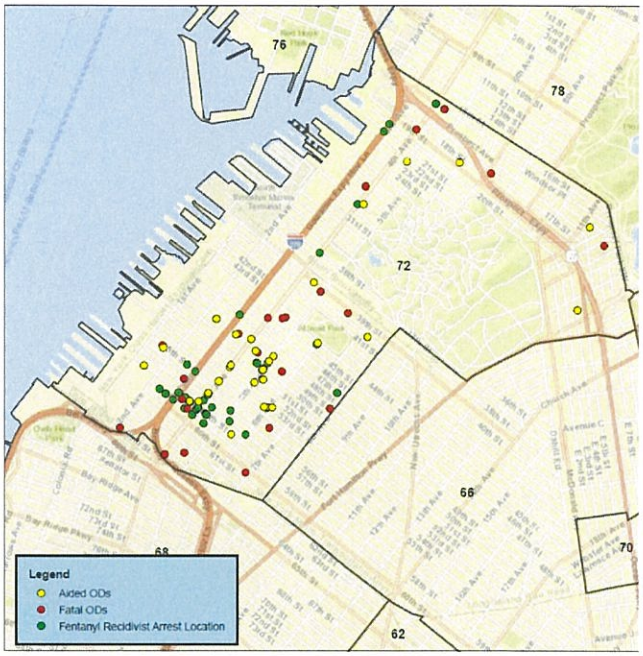
Fentanyl Hot Spots

Our analysis has also led to the identification of high volume drug markets that attract a significant percentage of drug buyers from outside the borough where they reside. By identifying those citywide hubs, law enforcement gains a better understanding of how narcotics move across boroughs and how to focus resources on those drug markets with an outsized influence on the supply of narcotics throughout the city. Similarly, this analysis sheds light on the presence of fentanyl "hot spots" or drug markets across the city where there appears to be a high incidence of fentanyl present in the drugs sold. By cross-referencing these locations with information about overdose deaths and non-fatal overdose reversals, we deepen our understanding of the impact those hot spots have on overdose rates.

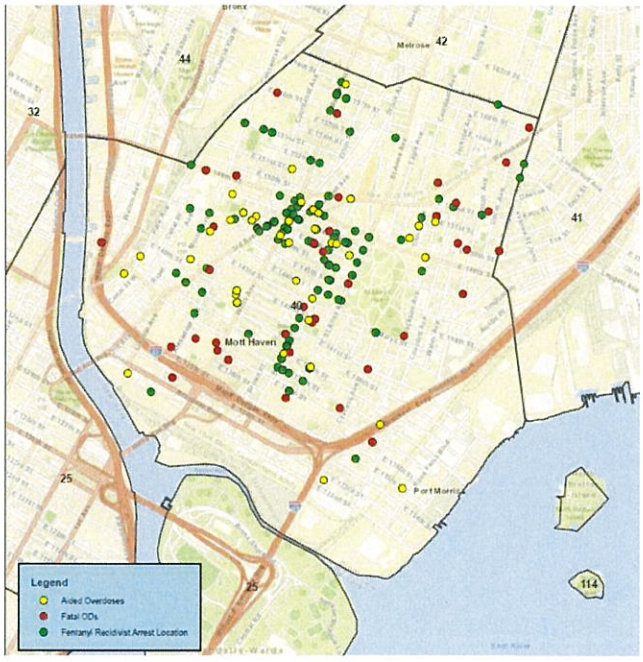
SNP also facilitates early identification of emerging distribution points and focuses on those areas of the city with a high incidence of narcotics seizures of significant weight. By tracking and analyzing large seizures throughout the city on an ongoing basis, the office is able to quickly identify geographical areas which are emerging as significant distribution points.

Ongoing SNP investigations demonstrate that fentanyl analogue trafficking differs from the pattern we have seen with other opioid drugs. Analogues are generally transported in smaller quantities, often through the mail or parcel delivery services. As a result of the dark web, these substances can be acquired directly from international producers by tech-savvy low level narcotics networks. One of our investigations into a fentanyl analogue trafficking organization involves violence. We will continue to monitor whether desperate drug users are recruited to carry out street sales in order to shield ringleaders from exposure to arrest. Threats of violence and assault are used as methods of maintaining control.

Fentanyl Hot Spots, Fatal Overdoses, and Aided Saves
72nd Precinct, 2016 - 2017



Fentanyl Hot Spots, Fatal Overdoses, and Aided Saves
40th Precinct, 2016 - 2017

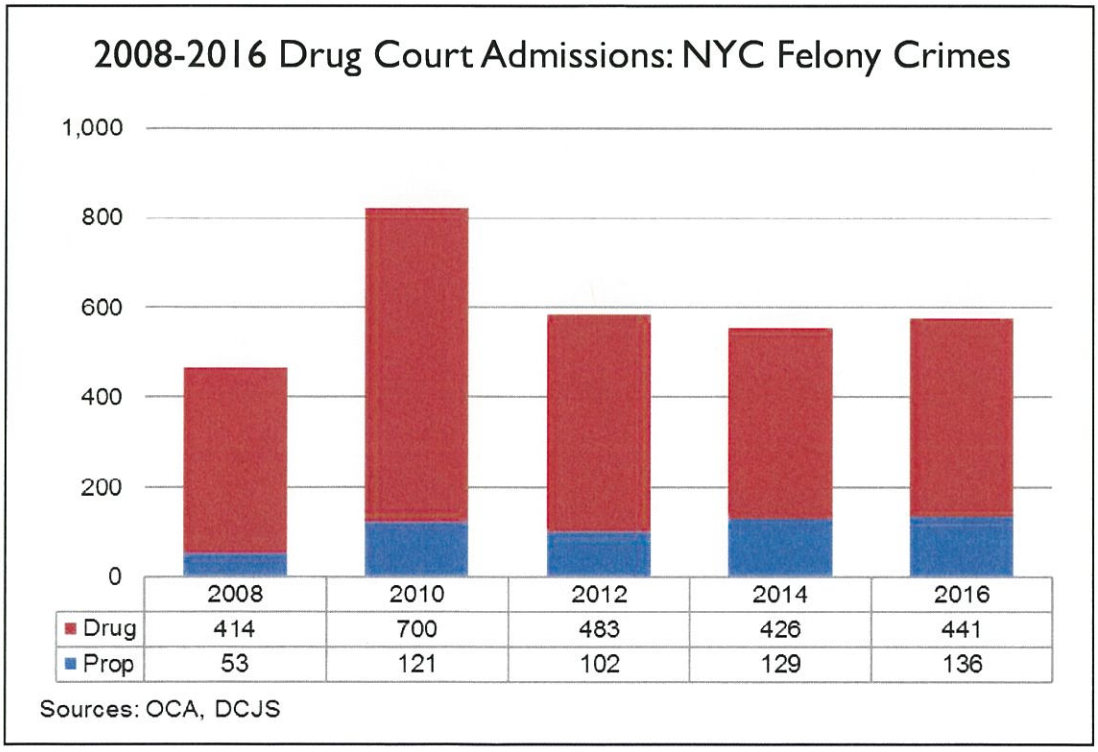


Treatment and Prevention

For nearly 30 years, SNP has been a proponent of offering treatment to defendants with substance abuse issues. A pioneer in the field, SNP operated robust Drug Treatment Alternatives to Prison (DTAP) programs that enabled hundreds of individuals to avoid prison and enter into recovery. Criteria considered in determining eligibility frequently include a determination as to whether a defendant sold drugs in order to support his or her own habit. Beginning in 2009, judges were authorized to place defendants into court sponsored diversion programs and the DTAP programs waned. Also in 2009, mandatory prison sentences were abolished or reduced for felony narcotics charges. Since 2011, a substantially lower number of offenders have applied for and been accepted into treatment through the criminal justice system.

I encourage the City Council to examine this issue. We must all seek to understand why people with substance abuse issues are not accessing the treatment they need and how we can entice them to do so. The District Attorneys' offices have developed promising and innovative programs, such as HOPE and OAR, to offer defendants arrested on low level misdemeanor charges an opportunity to avoid prosecution. However, these programs are not applicable to or appropriate for those charged with more serious felony offenses.

Nationally and in New York State, successful prevention initiatives to address the opioid epidemic rely on collaboration between entities from variety of fields, such as law enforcement, public health, education and treatment. By examining a range of strategies, we can identify approaches suitable to New York City. Education and prevention efforts will undoubtedly pay off by deterring new users from becoming addicted to heroin and fentanyl and diminishing the impact of the opioid epidemic on future generations. I believe we need to do more to inform all New Yorkers, not just chronic users, about the dangers of fentanyl. New York City public schools lack consistent and effective drug education messages. I applaud the City Council for advocating for opioid awareness education for city students to learn about the dangers of opioids. I also encourage the City Council to continue allocating resources towards researching effective prevention campaigns for the general public and age-appropriate educational materials for schools.



FEBRUARY 5, 2018 Albany, NY

Governor Cuomo Announces 30-Day Budget Amendment to Help Combat the Fentanyl Crisis in New York State

Legislation Will Add 11 Types of Fentanyl to the State's Controlled Substances Schedule

Governor Andrew M. Cuomo today announced a 30-day budget amendment will be advanced to add 11 fentanyl analogs to the state controlled substances schedule and provide the New York State Health Commissioner the authority to add any new drugs that have been added to the federal schedule, to the state controlled substances schedule. These actions will support law enforcement in their efforts to stop the spread of lethal drugs in New York State.

"Make no mistake: Fentanyl is potent, dangerous and its abuse is increasingly fueling the misery of the opioid epidemic," **Governor Cuomo said**. "These actions will give law enforcement the tools they need to combat this drug, holding the death dealers who peddle it accountable and helping ensure that our laws are able to keep pace with this evolving public health crisis."

"New York is working aggressively to combat the opioid epidemic, which is tragically affecting families and communities across the state," **said Lieutenant Governor Kathy Hochul, Co-Chair of the Heroin and Opioid Task Force**. "Fentanyl is especially deadly - we must give law enforcement the tools to take it off our streets and save lives. By adding fentanyl analogs to the controlled substance list, Governor Cuomo is doing just that."

In recent years, fentanyl analogs have been increasingly found pressed into pill form to resemble name-brand prescription opioids, and in heroin and cocaine being sold in New York State. Compared to 30 milligrams of heroin, just three milligrams of fentanyl can be fatal. A preliminary analysis conducted by the Department of Health identified more than 2,900 opioid-related deaths among state residents in 2016. Specifically, Staten Island saw a 700 percent increase in overdose deaths involving fentanyl - from seven deaths in 2015 to 58 deaths in 2016. Statewide, the number of fentanyl-related deaths increased by nearly 160 percent.

There is currently a loophole in state law that has left 11 dangerous fentanyl analogs off New York's controlled substances schedule. In October 2017, Governor Cuomo proposed new legislation to close this loophole as a result of shocking increases in deaths caused by opioid overdoses, and to further New York's efforts to end the fentanyl crisis.

This 30-day budget amendment will add these fentanyl analogs to Schedule 1 of the controlled substance schedules of New York State Public Health Law §3306. The 11 types of fentanyl to be added include: AH-7921; Acetyl Fentanyl; ButyrylFentanyl; Beta-Hydroxythiofentanyl; Furanyl Fentanyl; U-47700; and Acryl Fentanyl (or Acryloylfentanyl); N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide; Ortho-Fluorofentanyl; Tetrahydrofuranyl Fentanyl; Methoxyacetyl Fentanyl.

This 30-day budget amendment will also certify that the New York State Health Commissioner has the authority to add to the state controlled substances schedule any new drugs that have been added to the federal schedule.

The Governor's budget amendment builds on New York's multi-pronged strategy to combat the heroin and opioid epidemic. In April of 2017, the Governor signed historic legislation investing over $200 million to address the epidemic through a comprehensive approach targeting each component of heroin and opioid addition- prevention, treatment, and recovery. Additionally, at the Governor's direction, the New York State Department of Financial Services took immediate action in October 2017 to prevent insurers from instituting arbitrary limits on coverage for overdose reversal drugs, ensuring that New Yorkers have access to adequate doses of life-saving naloxone.

Over the past few years, the Governor has instituted new policies to continue the state's fight to end heroin and opioid addiction, including:

- Limiting initial opioid prescriptions for acute pain from 30 to 7 days;
- Expanding insurance coverage for substance use disorder treatment;
- Increasing access and enhancing treatment capacity across the state, including a major expansion of opioid treatment and recovery services;
- Implementing the comprehensive I-STOP law to curb prescription drug abuse;
- Launching a public awareness and prevention campaign to inform New Yorkers about the dangers of heroin use and opioid misuse and the disease of addiction; and
- Assembling a task force to propose initiatives to tackle the heroin and opioid epidemic.

New Yorkers struggling with an addiction, or whose loved ones are struggling, can find help and hope by calling the state's toll-free, 24-hour, 7-day-a-week HOPEline at 1-877-8-HOPENY (1-877-846-7369) or by texting HOPENY (Short Code 467369).

Available addiction treatment including crisis/detox, inpatient, community residence, or outpatient care can be found using the new and improved NYS OASAS Treatment Availability Dashboard at FindAddictionTreatment.ny.gov or through the Access Treatment page on the NYS OASAS website. Visit the #CombatAddiction website at oasas.ny.gov/CombatAddiction to learn more about how you can help to #CombatAddiction in your community.

Contact the Governor's Press Office

Contact us by phone: Albany: (518) 474 - 8418
New York City: (212) 681 - 4640

Contact us by email: Press.Office@exec.ny.gov

OCTOBER 12, 2017 Albany, NY

Governor Cuomo Details State Actions to Combat the Fentanyl Crisis on Staten Island

Governor Promotes Legislation to Add 11 Types of Fentanyl to Controlled Substance List, Enabling Law Enforcement to Further Crack Down on Dealers and Combat Emerging New Drugs

DFS Takes Action to Direct Insurers Against Instituting Arbitrary Limits on Coverage for Overdose Reversal Drugs

View DFS Circular Letter Here

Governor Andrew M. Cuomo today detailed a series of aggressive actions to combat the fentanyl crisis on Staten Island and across New York State. The Governor promoted legislation which would add 11 fentanyl analogs to the state controlled substances schedule, giving law enforcement the ability to go after the dealers who manufacture and sell these drugs. To further protect Staten Island residents, the Governor discussed his recent directive to the New York State Department of Financial Services, which took action to direct Insurers against instituting arbitrary limits on the number of naloxone doses covered by an insurance plan.

"On Staten Island, fentanyl has been a deadly scourge snaking silently though our neighborhoods leaving a trail of devastation in its path," **Governor Cuomo said.** "With these aggressive actions, we seek to give law enforcement the tools they need to crack down on these dangerous drugs and put an end to this epidemic once and for all."

In Staten Island, overdose deaths involving opioids increased 42 percent between 2015 and 2016. However, fentanyl-related deaths increased at a much higher rate - more than 700 percent - from seven in 2015 to 58 in 2016. Statewide, the number of overdose deaths involving opioids increased nearly 35 percent from 2015 to 2016, while fentanyl-related deaths increased by nearly 160 percent. A preliminary analysis conducted by the Department of Health identified more than 2,900 opioid-related deaths among state residents in 2016.

"New York State is setting the standard for combating the epidemic of addictions that are destroying lives, leaving families bereft, and ravaging our communities," **said Lieutenant Governor Kathy Hochul, Co-Chair of the state's Heroin and Opioid Task Force.** "The actions announced today by Governor Cuomo strengthen our ability to regulate the use of synthetic fentanyl substitutes and give greater support to law enforcement in the effort to prosecute those who make and sell these deadly substances."

Over the past few years, fentanyl analogs have been increasingly found in heroin and cocaine sold in New York State. They are also being pressed into pill form to resemble name-brand prescription opioids. Fentanyl analogs vary in potency, but can be 100 times stronger than morphine. Just three milligrams of fentanyl can be fatal, compared to 30 milligrams of heroin. Heroin and cocaine containing deadly concentrations of these synthetic opioids have been increasingly present in communities throughout New York State.

To combat the fentanyl crisis, Governor Cuomo is promoting legislation to close a glaring loophole in state law and add the following 11 fentanyl analogs to Schedule I of the controlled substance schedules of New York State Public Health Law §3306: AH-7921; Acetyl Fentanyl; ButyrylFentanyl; Beta-Hydroxythiofentanyl; Furanyl Fentanyl; U-47700; and Acryl Fentanyl

(or Acryloylfentanyl); N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide; Ortho-Fluorofentanyl; Tetrahydrofuranyl Fentanyl; Methoxyacetyl Fentanyl. The 11 substances are already listed on the federal schedule of controlled substances. The legislation will also give the New York State Health Commissioner the authority to add any new drugs that have been added to the federal schedule, to the state controlled substances schedule.

Fentanyl proper is a Schedule II synthetic opiate, with medical uses as a painkiller, an anesthetic, and in palliative care. Fentanyl's listing as a Schedule II controlled substance, available by prescription only, makes it a felony to sell on the street and a crime to use the opiate without a prescription. In response, underground labs have tweaked the molecular structure of fentanyl to create new, unregulated chemicals referred to as fentanyl analogs. These deadly cousins are chemically similar to fentanyl—and often many times more potent—but are not listed on New York State's schedule of controlled substances, and therefore not subject to the same criminal penalties.

As just .25 milligrams of fentanyl, or about the size of a head of a pin, can potentially result in death, the state is taking new steps to stop the scourge of this dangerous drug. Over the past three years across the country, deaths from synthetic drugs like fentanyl have sky-rocketed more than 500 percent. At the Governor's direction, DFS has taken immediate action to prevent insurers from instituting arbitrary limits on coverage for overdose reversal drugs; ensuring that New Yorkers have access to adequate doses of life-saving naloxone.

"With these aggressive actions, we seek to give law enforcement the tools they need to crack down on these dangerous drugs and put an end to this epidemic once and for all."

Governor Andrew M. Cuomo

New York State Health Commissioner Dr. Howard Zucker said, "New York State is committed to fighting the opioid crisis on every front and by calling on the Legislature to pass these bold measures, Governor Cuomo is taking another step toward getting these deadly drugs out of our communities and off our streets. I applaud the Governor for the aggressive agenda he has put into motion and I look forward to working with the legislature to ensure that this common-sense legislation is passed."

OASAS Commissioner Arlene González-Sánchez said, "While fentanyl's death toll continues to rise, Governor Cuomo's efforts to combat this epidemic have made New York State a national leader in the battle against addiction. We look forward to working with our partners in the legislature to enact these proposals and continue to save the lives of New Yorkers struggling with substance use disorder."

Department of Financial Services Superintendent Maria T. Vullo said, "New York continues to lead the charge to end the opioid epidemic, and naloxone is a crucial tool in the fight to prevent unnecessary overdose deaths. DFS is proud to support the Governor's efforts with the guidance we issued to remove arbitrary limits on the number of naloxone doses covered by insurance, which will help save lives and make progress toward ending this crisis."

State Police Superintendent George P. Beach II said, "Our members have witnessed first-hand the devastating human toll of opioid addiction in every type of community -- urban, suburban and rural -- throughout New York State. These actions will provide law enforcement with the tools necessary to arrest and prosecute dealers, and save the lives of those struggling with addiction."

Congressman Dan Donovan said, "The opioid crisis has swept through the Staten Island community and beyond and we must take every step possible to combat this deadly scourge. Before I introduced the Comprehensive Fentanyl Control Act, I met with the DEA on many occasions. They shared with me the challenges posed by keeping up with the many different types of fentanyl that keep popping up. By advancing legislation to add 11 different types of fentanyl to the controlled substance list at the state level, Governor Cuomo gives police officers and prosecutors the critical tools they need to combat

this crisis. I'll continue pushing similar legislation through Congress, and look forward to collaborating with our state partners to ensure the fentanyl traffickers get off the streets."

Senator Andrew J. Lanza said, "Drug traffickers continue to find new ways to fuel the opioid addiction crisis in our community, resulting in an incomprehensible and intolerable death toll. Identifying fentanyl analogs as well as opioid analgesics and drugs such as k2 as a Schedule 1 controlled substance is an important measure needed to combat the crisis. It is critically important that we continue a comprehensive approach, including empowering law enforcement to stop the spread of illegal and deadly substances. Governor Cuomo has been there for communities in need - and that includes Staten Island. Governor Cuomo has been a great partner for Staten Island, and I am proud to be working with him on these new initiatives to tackle the opioid epidemic and help our families in need."

Senator Diane J. Savino said, "In Staten Island, the opioid crisis has left a trail of devastation that has impacted thousands of individuals and families. With these actions, Governor Cuomo is taking a critical step in combatting the crisis that synthetic drugs like fentanyl can have on our communities and I applaud him for taking aggressive action against this scourge that has spread across Staten Island and across the state."

Assemblymember Michael Cusick said, "The opioid crisis has affected Staten Island in epidemic proportions and the recent abuse of fentanyl has only compounded this problem. Today's announcement will bring forth a new measure to rid our streets of these poisons and empower New York's law enforcement officers with the tools needed to go after the manufacturers and the dealers of these deadly drugs. I applaud the Governor and my colleagues in the Legislature for the ongoing fight to tackle this epidemic."

Assemblymember Matthew Titone said, "In order to combat the opioid crisis we must take strong and swift actions and with these aggressive measures, Governor Cuomo is taking the necessary steps to protect Staten Islanders from the deadly scourge of fentanyl and other opioids. Synthetic drugs have devastated communities across the state and it is crucial that we

give our law enforcement officers the tools they need to stop drug dealers and other organizations from infiltrating our communities with these deadly substances."

Assemblymember Ron Castorina, Jr. said, "In recent years the opioid crisis has crept through our cities and towns, leaving a trail of destruction that has affected families across Staten Island and across New York. By taking these actions, Governor Cuomo has equipped New York's State Police officers and local law enforcement with the necessary tools to combat this scourge in our communities. Fentanyl is a threat to New Yorkers across the state and with these actions, the Governor ensures that our streets and our neighborhoods can be cleared of this devastating drug."

Staten Island Borough President James Oddo said, "If you call it an epidemic, then you have to treat it like an epidemic; and that means taking all available actions to combat the opioid crisis that continues to affect far too many Staten Island families. We know that deaths due to Fentanyl and its analogs have increased at an alarming level. Thank you to the Governor for this call to action, which if passed by the Legislature will help law enforcement better fight this problem."

Richmond County District Attorney Michael McMahon said, "At a time when opioid addiction is destroying lives on Staten Island, law enforcement and the community at large need all the support they can get. We have been on the front lines of this battle, fighting back and also saving lives, but there is more that must be done before we can declare victory. Fortunately, we have leaders such as Governor Cuomo who are taking action to help those in need. From increasing access to treatment, to working with and empowering law enforcement to stop the spread of illegal and deadly substances like fentanyl, the Governor has been there for communities still struggling -- and that includes Staten Island. We are proud to be working with him once again to tackle this crisis and help our families in need."

The Governor's call for legislative action builds upon New York's multi-faceted strategy to combat the heroin and opioid epidemic. In April of this year, the Governor signed historic legislation investing over $200 million to address the epidemic through a comprehensive approach targeting each component of heroin and opioid addition- prevention, treatment, and recovery. These investments included:

- $145 million for community-based providers
- $65 million for 8,000 residential treatment beds
- $9 million for housing units
- $41 million for opioid treatment programs
- $21 million for outpatient services
- $9 million for crisis/detox programs
- $27 million for state-operated addiction treatment centers
- $6 million for naloxone kits and training
- $25 million for expanded programs, including family support navigators, peer engagement and 24/7 urgent access centers

Over the past three years, Governor Cuomo has put into place expansive new policies to fight heroin and opioid addiction, including:

- Limiting initial opioid prescriptions for acute pain from 30 to 7 days
- Expanding insurance coverage for substance use disorder treatment
- Increasing access and enhancing treatment capacity across the state, including a major expansion of opioid treatment and recovery services
- Implementing the comprehensive I-STOP law to curb prescription drug abuse
- Launching a public awareness and prevention campaign to inform New Yorkers about the dangers of heroin use and opioid misuse and the disease of addiction
- Assembling a task force to propose initiatives to tackle the heroin and opioid epidemic

New Yorkers struggling with an addiction, or whose loved ones are struggling, can find help and hope by calling the state's toll-free, 24-hour, 7-day-a-week HOPEline at 1-877-8-HOPENY (1-877-846-7369) or by texting HOPENY (Short Code 467369).

Available addiction treatment including crisis/detox, inpatient, community residence, or outpatient care can be found using the new and improved NYS OASAS Treatment Availability Dashboard at FindAddictionTreatment.ny.gov or through the Access Treatment page on the NYS OASAS website. Visit the #CombatAddiction website at oasas.ny.gov/CombatAddiction to learn more about how you can help to #CombatAddiction in your community.

Visit www.combatheroin.ny.gov for more information on addressing heroin and prescription opioid abuse, including a Kitchen Table Tool Kit to help start the conversation about the warning signs of addiction and where to get help. For tools to use in talking to a young person about preventing alcohol or drug use, visit the State's Talk2Prevent website.

Contact the Governor's Press Office

Contact us by phone: Albany: (518) 474 - 8418
New York City: (212) 681 - 4640

Contact us by email: Press.Office@exec.ny.gov

TESTIMONY OF THE HONORABLE GEORGE A. GRASSO

SUPERVISING JUDGE, BRONX CRIMINAL COURT

TO

NEW YORK CITY COUNCIL

COMMITTEE ON JUSTICE SYSTEM:

"ADDRESSING THE OPIOID CRISIS IN CRIMINAL COURT"

HELD: JUNE 21, 2018

1:00 PM

CITY HALL

NEW YORK, NY

GOOD AFTERNOON CHAIRMAN LANCMAN AND MEMBERS OF THE COMMITTEE ON THE JUSTICE SYSTEM.

IT IS MY PLEASURE TO HAVE THIS OPPORTUNITY TO ADDRESS THE CITY COUNCIL ON THIS CRUCIAL MATTER.

WITH ME ARE MARIA ALMONTE-WESTON, PROJECT DIRECTOR OF BRONX COMMUNITY SOLUTIONS, AND MY COURT ATTORNEY, CHARLENE DANIELS.

WITHOUT A DOUBT OUR CITY IS FACING A CRISIS.

ACCORDING TO DATA PROVIDED BY THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE (NYC DOHMH) THERE WERE 1,441 UNINTENTIONAL OVERDOSE DEATHS IN NEW YORK CITY IN 2017.

OF THAT NUMBER 342 WERE RECORDED IN THE BRONX.

FOR A MATTER OF SCALE, I WOULD COMPARE THAT TO THE 292 HOMICIDE DEATHS RECORDED IN NEW YORK CITY BY THE NYPD IN 2017.

I FIND IT SADLY IRONIC THAT AS OUR CITY IS EXPERIENCING RECORD LOW NUMBERS IN HOMICIDE DEATHS THAT UNINTENTIONAL OVERDOSE DEATHS ARE SPIKING YEAR AFTER YEAR.

FOR EXAMPLE, IN THE BRONX THE NUMBER OF UNINTENTIONAL OVERDOSE DEATHS HAVE MORE THAN DOUBLED FROM 162 IN 2013.

BEHIND THOSE NUMBERS LIE THE SCOURGE OF OPIOID ABUSE.

NYC DOHMH DATA TELLS US THAT OPIOIDS ARE INVOLVED IN MORE THAN 80% OF ALL OVERDOSE DEATHS AND THAT FENTANYL, A HIGHLY POTENT SYNTHETIC OPIOID IS INVOLVED IN APPROXIMATELY HALF OF THESE DEATHS.

ACCORDING TO THE CENTER FOR DISEASE CONTROL (CDC), FENTANYL IS MUCH MORE POTENT THAN HEROIN AND UP TO 100 TIMES MORE POTENT THAN MORPHINE.

THE DANGER OF FENTANYL LIES NOT ONLY IN ITS POTENCY, BUT ALSO IN ITS APPEARANCE: USERS ARE GENERALLY UNABLE TO RECOGNIZE WHEN THE DRUG THEY HAVE PURCHASED IS LACED WITH FENTANYL.

THE REALLY TERRIBLE NEWS IS THAT FENTANYL IS NOW BEING MIXED IN WITH EVERYTHING FROM HEROIN TO PILLS TO COCAINE AND WREAKING HAVOC AND DEATH THROUGHOUT NYC.

THE QUESTION FOR US TODAY IS HOW BEST TO ADDRESS THIS CRISIS IN THE CRIMINAL COURT OF THE CITY OF NEW YORK.

THE FIRST THING WE NEED TO BE COGNIZANT OF IS THAT EARLY ENGAGEMENT OF AN INDIVIDUAL AT HIGH RISK OF OVERDOSE IS CRUCIAL. EVERY DAY THIS INDIVIDUAL IS BUYING DRUGS ON OUR STREETS THAT INDIVIDUAL IS ENGAGING IN A VERSION OF RUSSIAN ROULETTE.

THE CRIMINAL COURT IS THE KEY COMPONENT OF THE CRIMINAL JUSTICE SYSTEM FOR EARLY ENGAGEMENT AFTER AN INDIVIDUAL IS ARRESTED AND CHARGED WITH A CRIME.

IN THIS RESPECT OUR ARRAIGNMENT PARTS NEED TO BE FULLY ENGAGED.

IT IS THE RECOGNITION OF THIS FUNDAMENTAL PRINCIPLE THAT HAS LED TO THE CREATION OF THE OVERDOSE AVOIDANCE AND RECOVERY TRACK (OAR).

WORKING IN PARTNERSHIP WITH THE BRONX DISTRICT ATTORNEY, BRONX COMMUNITY SOLUTIONS (BCS), AND THE BRONX DEFENSE BAR THE CRIMINAL COURT LAUNCHED THE OAR TRACK IN DECEMBER OF 2017.

OAR IS A HIGHLY SPECIALIZED COURT TRACK TO ADDRESS THE HIGH RISK OF DRUG OVERDOSE AND DEATH RESULTING FROM THE SCOURGE OF OPIOIDS, INCLUDING THE DEADLY FENTANYL.

IN FEBRUARY OF 2018, IN HER STATE OF THE JUDICIARY ADDRESS, CHIEF JUDGE JANET DIFIORE CHARGED ME WITH SPEARHEADING THE EXPANSION OF THE OAR TRACK CITYWIDE.

WITH THE FULL SUPPORT OF OUR CHIEF ADMINISTRATIVE JUDGE LAWRENCE MARKS AND THE ADMINISTRATIVE JUDGE OF THE CRIMINAL COURT, TAMIKO AMAKER, SPECIFIC PLANS TO EXPAND THE OAR TRACK ARE CURRENTLY UNDERWAY. IT IS MY BELIEF THAT THE OAR TRACK WILL SOON BE IN PLACE IN MANHATTAN AND BROOKLYN.

OAR TRACK CASES ARE IDENTIFIED AT ARRAIGNMENTS.

ASSISTANT DISTRICT ATTORNEYS (ADA) IDENTIFY AND FLAG ALL MISDEMEANOR COMPLAINTS THAT CONTAIN A CHARGE OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE 7TH DEGREE (PL § 220.03) AND IF NO TEMPORARY ORDER OF PROTECTION IS ATTACHED TO THE CASE IT IS PRESUMPTIVELY ELIGIBLE FOR OAR (BUT THE DA STILL RETAINS DISCRETION).

THE ADA THEN REFERS THE CASE TO BCS STAFF WHO NOTIFY THE DEFENSE COUNSEL OF THE OAR DESIGNATION. THE DEFENSE COUNSEL THEN REVIEWS THE CASE WITH THEIR CLIENT AND ADVISES

IF THEIR CLIENT WISHES TO BE INTERVIEWED. IF THE CLIENT DECLINES THEN THE CASE PROCEEDS TO ARRAIGNMENT.

IN THOSE CASES WHERE A DEFENDANT AGREES TO BE INTERVIEWED, BCS WILL CONDUCT AN ASSESSMENT TO ASCERTAIN IF THE DEFENDANT IS AT A HIGH RISK OF OVERDOSE. IF SO, THE DEFENDANT IS DEEMED ELIGIBLE FOR THE OAR TRACK. IF NOT, THE CASE PROCEEDS AS ANY OTHER CASE WOULD.

CASH BAIL IS NEVER REQUESTED IN CASES WHERE AN ELIGIBLE DEFENDANT CHOOSES TO PROCEED ON THE OAR TRACK. OAR TRACK DEFENDANTS ARE RELEASED ON THEIR OWN RECOGNIZANCE OR PLACED ON SUPERVISED RELEASE.

DEFENDANTS PARTICIPATING IN THE OAR TRACK AGREE TO AVOID RE-ARREST AND MEANINGFULLY ENGAGE IN A BCS DESIGNATED PROGRAM. THEY ALSO AGREE TO PARTICIPATE IN A POST ARRAIGNMENT FOLLOW UP ASSESSMENT (USUALLY THE NEXT BUSINESS DAY) WITH BCS SO AN APPROPRIATE TREATMENT PLAN CAN BE DEVELOPED.

IF THE DEFENDANT DECIDES TO OPT OUT OF THE OAR TRACK AT ANY TIME THE DEFENDANT WILL NOT BE PENALIZED IN ANY WAY.

POST ARRAIGNMENT, OAR TRACK CASES ARE ADJOURNED TO A SPECIALIZED COURT PART (AP-7, WHICH I PRESIDE OVER OR AP-9, WHICH IS PRESIDED OVER BY JUDGE LINDA POUST-LOPEZ).

WHILE CASES ARE IN THE OAR TRACK, THE DA SUSPENDS CRIMINAL PROSECUTION AND THE DEFENSE COUNSEL TOLLS MOTION PRACTICE AND WAIVES SPEEDY TRIAL PROVISIONS (§30.30).

DEFENDANTS ARE ADVISED BY THE COURT ON THEIR FIRST APPEARANCE THAT OAR TRACK CASES ARE NOT TYPICAL "CRIME AND PUNISHMENT" MATTERS. THEY ARE ADVISED THAT IF THEY UPHOLD

THEIR END OF THE AGREEMENT THAT THEY MADE AT ARRAIGNMENT THAT THE DISTRICT ATTORNEY, THE DEFENSE ATTORNEY AND THE JUDGE ARE ALIGNED WITH THE SAME INTEREST WHICH IS TO SEE THAT THE PENDING CRIMINAL CASE IS DISMISSED AND SEALED.

IT IS EXPLAINED TO THEM THAT THE DISMISSAL WILL OCCUR ONCE THE BCS REPRESENTATIVE MAKES A RECORD THAT THE DEFENDANT HAS MEANINGFULLY ENGAGED IN TREATMENT, IS ON A PATH TO RECOVERY AND IS NO LONGER AT A PRESENT RISK OF OVERDOSE.

SINCE WE HAVE BEGUN THE OAR TRACK IN DECEMBER, I HAVE FOUND THAT IN GENERAL, THOSE DEFENDANTS WHO HAVE MADE AN INITIAL APPEARANCE HAVE BEEN POSITIVELY ENGAGED WITH THE GOALS OF THE PROGRAM. THE INTENSITY AND FREQUENCY OF THE COURT'S INTERACTION WITH VARIOUS DEFENDANTS IS DEPENDENT UPON FEEDBACK FROM BCS AS TO THE QUALITY OF THE DEFENDANTS' ENGAGEMENT WITH THE ASSESSED TREATMENT PROGRAM. OBVIOUSLY, SOME INDIVIDUALS REQUIRE A BIT MORE TLC THAN OTHERS.

WHAT I HAVE SHARED WITH YOU IS A BRIEF OVERVIEW OF THE CRIMINAL COURT'S EFFORTS TO PLAY A POSITIVE ROLE IN ENGAGING WITH OUR PARTNERS IN THE CRIMINAL JUSTICE SYSTEM TO UTILIZE OUR RESOURCES IN A MEANINGFUL AND COMPASSIONATE WAY TO SAVE LIVES OF INDIVIDUALS WHO ARE AT SERIOUS RISK OF OVERDOSE AND DEATH. I CANNOT SAY ENOUGH ABOUT THE COMMITMENT OF OUR FELLOW STAKEHOLDERS. THE BRONX DISTRICT ATTORNEY DARCEL CLARK AND HER TEAM OF DEDICATED ASSISTANTS LED BY ADA AIESHA GREENE HAVE GONE ALL IN, IN ASSISTING THE COURT TO MAKE OAR A REALITY. WE ARE CONTINUING TO WORK TOGETHER TO EXPAND THE REACH AND SCOPE OF OAR IN THE BRONX.

MARIA ALMONTE-WESTON AND HER TEAM IN BCS LED BY CARMEN ALCANTARA HAVE LITERALLY WORKED AROUND THE CLOCK, SEVEN DAYS A WEEK TO PROVIDE HOPE TO INDIVIDUALS WHO HAD ALL BUT GIVEN UP ON THEMSELVES.

THE BRONX DEFENDERS AND THE LEGAL AID SOCIETY HAVE WORKED WITH US AS PARTNERS EVERY STEP OF THE WAY FROM CONCEPTION TO IMPLEMENTATION. THEIR INPUT AND COOPERATION HAS BEEN CRUCIAL TO THE COURT'S ABILITY TO ESTABLISH CREDIBILITY WITH INDIVIDUALS IN NEED AND STEER THEM TO A PATH TO RECOVERY.

ALL IN ALL, OUR EXPERIENCE IN CREATING AND IMPLEMENTING THE OAR TRACK IN THE BRONX IS A WORKING MODEL OF THE POTENTIAL OF THE CRIMINAL COURT TO ENGAGE STAKEHOLDERS AND INNOVATE IN REAL TIME.

OUR ULTIMATE GOAL IS TO DO WHAT WE CAN IN THE CRIMINAL COURT TO REDUCE THE TOTALLY UNACCEPTABLE RATES OF OVERDOSE AND DEATH IN OUR CITY.

BEFORE I CLOSE I WOULD LIKE TO LEAVE YOU WITH THE FEEDBACK FROM ONE OF OUR DEFENDANTS AS I REQUESTED HIM TO APPROACH THE BENCH AND RECEIVE A CERTIFICATE ACKNOWLEDGING HIS SUCCESSFUL COMPLETION OF THE OAR TRACK THIS PAST APRIL:

THE COURT: YES. I'M GOING TO ASK YOU WHAT, IF ANYTHING, YOU'VE GOTTEN OUT OF THIS?

THE DEFENDANT: WELL, BACK WHEN I WAS ARRESTED, I DON'T LIKE TO LOOK AT IT AS I GOT ARRESTED; I GOT RESCUED, ACTUALLY. AND IT WAS COMING TO YOUR COURT AND TAKING ADVANTAGE OF YOUR COURT AND THE THINGS THAT YOU IMPLEMENT, I NEVER SEEN BEFORE. SO, I THANK YOU FOR YOUR CLEMENCY. I THANK YOU FOR – THEY TALK ABOUT THEY'RE GOING TO GIVE ME A CERTIFICATE, THEY

NEED TO GIVE YOU A CERTIFICATE. I SIT HERE AND I LISTEN TO YOU TALK TO THE PEOPLE, YOU ARE SINCERE. I HEAR YOU TALK, JUDGE GRASSO, AND I'D JUST LIKE TO THANK YOU.

LIKE I SAID, I DIDN'T GET ARRESTED, I GOT RESCUED. AND I'VE JUST GOT TO TAKE IT A DAY AT A TIME. I GO TO NARCOTICS ANONYMOUS, I HAVE A SPONSER WHO HAS A SPONSER. I WILL JUST TAKE IT A DAY AT A TIME, YOUR HONOR. AND I WOULD JUST LIKE TO THANK YOU FROM THE BOTTOM OF MY HEART.

THE COURT: LET ME TELL YOU SOMETHING, YOU JUST GAVE ME MY CERTIFICATE. I WANT TO CONGRATULATE YOU AND I AM GOING TO ASK YOU TO COME UP HERE SO I CAN GIVE YOU – COME UP HERE, SIR

THE DEFENDANT: CAN I SHAKE YOUR HAND.

THE COURT: THANK YOU SIR.

WHAT I JUST SHARED WITH YOU IS TAKEN FROM THE OFFICIAL COURT TRANSCRIPT OF THE OAR TRACK PROCEEDING ON APRIL 11TH, 2018, THE DEFENDANT WAS AN AFRICAN AMERICAN MAN OF ABOUT 50 YEARS OF AGE WHO HAD A SUBSTANTIAL PREVIOUS HISTORY WITH THE CRIMINAL JUSTICE SYSTEM.

I WAS VERY MOVED BY HIS FEEDBACK AND I THINK IT REALLY SUMS UP WHAT WE ARE TRYING TO ACCOMPLISH.

THANK YOU FOR YOUR ATTENTION.

MS. ALMONTE – WESTON WOULD LIKE TO SHARE SOME PERTINENT INFORMATION WITH YOU AS WELL AND THEN WE WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

New York City Council
Committee on Justice System
Hearing on Addressing the Opioid Crisis in Criminal Court
June 21, 2018

Written Testimony of The Bronx Defenders
By Scott D. Levy

The Bronx Defenders provides innovative, holistic, client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people of the Bronx. Our staff of over 300 represents approximately 28,000 individuals each year. In the Bronx and beyond, The Bronx Defenders promotes criminal justice reform to dismantle the culture of mass incarceration.

My name is Scott Levy. I am Special Counsel to the Criminal Defense Practice at The Bronx Defenders. Thank you for the opportunity to testify today about this important issue.

The opioid crisis seems to have generated a recognition among some policymakers that the war on drugs has failed and that drug dependency should be treated as a public health problem. We, of course, welcome this change in perspective. But, at the same time, we cannot help but be a bit skeptical. For decades, The Bronx Defenders watched as our clients -- overwhelmingly from communities of color -- were demonized, criminalized, and punished for their struggles with substance dependency. For many of them, this reevaluation of the war on drugs has come too late. Countless people have spent days, months, or years of their lives in jail, and many more have lost jobs and stable housing, or faced deportation because of our misguided and destructive drug enforcement policies. We cannot shake the feeling that this new compassionate approach to opioid use is, to some extent, a product of the fact that the face of the opioid crisis nationally is white and middle class. This compassion was strikingly absent in policymakers' and law enforcement officials' responses to the crack epidemic that

disproportionately affected communities of color. We fear that this new focus on the opioid crisis -- rather than on the larger question of substance dependency generally -- will allow the drug war to continue largely unabated in the communities of color we serve. We must work to ensure that these new public health responses and steps toward decriminalization are available to everyone dealing with substance dependency issues, not just to those with opioid dependency.

The vast majority of people we represent who are dealing with addiction are still targeted by the NYPD as criminals rather than victims of a public health crisis. Law enforcement officials are often guided by a false dichotomy that divides the world into "users" charged with misdemeanors and "sellers" charged with felonies. For many, this distinction determines whether they are treated with compassion and given access to treatment, or treated as hardened criminals and threatened with prison. Those of us who do this work, however, know that the world cannot be so easily divided. For instance, over the past year, we represented over 450 people charged with felony drug sales. They vast majority of them, however, were not true drug sellers, but rather vulnerable users targeted by undercover narcotics officers, who give them money to purchase drugs from other people and then arrest them for a drug sale. In some instances, we see undercover officers praying on people in recovery outside methadone clinics. Rather than arresting our clients in these situations and charging them with felonies, we should be be diverting them to treatment and avoiding the court system altogether. We should be guided by need, not charge.

This tendency to criminalize drug use and employ the threat of punishment as our primary policy tool systematically undermines public health aims. Nowhere is this more evident than in our tradition drug treatment courts, where our clients are threatened with lengthy prison sentences unless they agree to plead guilty, give up their due process and trial rights, and enter into extended treatment programs under the threat of prison if they fail. The requirement that our clients plead guilty before receiving treatment is inherently coercive and distorts the aims of treatment. And too often, these programs set our clients up for failure by imposing requirements and conditions -- such as complete abstinence from drugs -- that we know are unrealistic in light of what we know about the nature of recovery. Post-plea drug court models also exacerbate the

collateral consequences associated with criminal justice involvement and prevent some people -- non-citizens in particular -- from engaging in treatment at all.

Selmin Feratovic was 27 when he was arrested for the last time. He had been accused of entering the laundry room of an apartment building and trying to pry quarters out of a machine. No coins were actually stolen, and no one was threatened or hurt. But because he was in a residential building he was charged with burglary in the second degree, a class "C" violent felony. $50k bail was set and he spent 7 months on Rikers Island awaiting resolution of his case.

Selmin had been in a motorcycle accident when he was younger. As it tragically does for so many, a prescription for oxycodone after the accident had evolved into a heroin dependency. His struggle with addiction was plain for all to see. He needed services. He needed and wanted treatment. And the prosecutor in his case offered treatment in his case, but only if he pled guilty to a felony.

Because Selmin was a legal permanent resident and not a US citizen, however, he could not plead guilty without facing deportation proceedings and separation from his young family. So he sat on Rikers Island, without access to the treatment he so desperately needed. Instead, he had access to more drugs, and on October 19, 2017, Selmin Feratovic was found dead in his cell. The cause of death: overdose by fentanyl.

The OAR track in Bronx Criminal Court is a step in the right direction. It is the first court-based program that we know of that prioritizes treatment over punishment and that does not require our clients to give up their constitutional rights to receive court-supported treatment. By allowing our clients to enter treatment before pleading guilty, our clients are able to engage in meaningful treatment without the threat of automatic jail hanging over their heads. They can come to treatment on their own terms and set their own priorities, avoiding having to make the impossible choice between treatment and a criminal conviction, the threat of jail, their immigration status, or other collateral consequences. Unfortunately, the OAR track is available only in misdemeanor drug possession cases, dramatically limiting its potential reach and effectiveness. Selmin Feratovic would not have been eligible for OAR. We would like to see the OAR track expand to include reduced felonies and appropriate felonies.

If we are going to treat substance dependence as a public health issue and prioritize treatment over punishment, we must move away from a system that uses the threat of state force as its primary tool. We should push approaches that reduce the footprint of the criminal justice system, creating off-ramps early on in the criminal process or outside the criminal justice system altogether, such as pre-arraignment or even pre-arrest diversion.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Yung-Mi Lee

Address: _____

I represent: Brooklyn Defender Services

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 6/21

(PLEASE PRINT)

Name: Micheel McMahon (Staten Island DA)

Address: 130 Stuyvesant Place ST, NY 10301

I represent: RCDA

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 6/21/18

(PLEASE PRINT)

Name: Melissa Moore

Address: 330 7th Ave

I represent: Drug Policy Alliance

Address: 330 7th Ave

Please complete this card and return to the Sergeant-at-Arms

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 6/21/18

(PLEASE PRINT)

Name: Erin Pilnyak - Q+A only.

Address: 1 Centre Street

I represent: Mayor's Office of Criminal Justice

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Aisha Greene

Address: 198 E. 161st St Bronx NY

I represent: Bronx District Attys Office

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Bridget G Brennan

Address: Special Narcotics Prosecutor

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Scott Levy

Address: 360 E. 161st, Bx

I represent: The Bronx Defenders

Address: 360 E. 161st st. Bx

Please complete this card and return to the Sergeant-at-Arms