Implications for a System of Care in Hawai‘i for Criminal Justice and Substance Use

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Abstract

Significant opportunities to improve treatment for substance use disorders can occur within the criminal justice system. This article will review the current system of care, understand current interventions available, and explore recommendations to better address community needs. With rising numbers of substance use and substance related deaths, this threat to the community is predicted to only worsen without intervention. There are multiple points in the justice system throughout the pretrial, court, and sentencing periods where the opportunity to help people with substance use disorder may occur. These points of diversion can focus on a more rehabilitative approach to crimes in the context of substance use disorder rather than punitive incarceration without adequate treatment. Police diversion can be increased and new police metrics incentivizing such efforts can be implemented in place of informal disposition by officers. Further training of law enforcement officers and continued development of support staff will help change practice allowing those with substance use disorders in the criminal justice system to connect to appropriate services. Data collection for research and analysis of recidivism among those engaged with diversion services compared to those who have not will help further guide future policy and resources for such programs.

Keywords

substance use, drug diversion, Law Enforcement Assisted Diversion (LEAD), pretrial diversion, drug treatment

Abbreviations and Acronyms

ADAD = Hawai‘i Department of Health Alcohol and Drug Abuse Division
ASUS = Adult Substance Use Survey
HIDTA = Hawai‘i High Intensity Drug Trafficking Area
LEAD = Law Enforcement Assisted Diversion
LSI-R = Level of Service Inventory-Revised
ORAS = Ohio Risk Assessment System

Background & Introduction

Significant work in stopping drugs and related crimes by law enforcement and criminal justice agencies in Hawai‘i has led to a collection of studied data by these same agencies. According to the Hawai‘i High Intensity Drug Trafficking Area (HIDTA) 2019 Drug Threat Assessment Report, methamphetamine, and high-potency marijuana pose the greatest threats to the community.[1] For example, in 2015, there were 186 methamphetamine substance abuse treatment admissions per 100 000 people and 141 marijuana treatment admissions per 100 000 people.[2] These drugs surpassed treatment admissions when compared to other substances such as cocaine, heroin, diverted prescription medications, and any other drugs.[1] Methamphetamine posed the greatest overall public health threat due to drug-related deaths, despite both marijuana and methamphetamine being the most widely available.[1] Given the scope of the problem, the aim of this writing is to review the system of care in Hawai‘i, understand current interventions available, and to explore recommendations to better address community needs around the intersection of substance use and the criminal justice system. This paper highlights key points from a chapter of the Hawai‘i Department of Health Alcohol and Drug Abuse Division (ADAD) State Plan which examines the intersection of substance use system of care and the criminal justice system in Hawai‘i. For more background and context around the overall State Plan project, readers are referred to the introductory article of this special supplement.

The criminal justice system can be broadly described as the, "…structure of laws, rules, and agencies designed to hold criminals accountable for their misdeeds and help them to restore their victims as much as possible."[3] The process for entering and moving through the criminal justice system consists of several parts. First, when a crime is reported to the police, the police perform their role by investigating the crime, identifying the offender, and possibly arresting those responsible. Second, if a person is arrested and charges are filed against an offender, then the criminal justice system, the court, assumes authority over the offender. There are 2 phases in the process for movement in the criminal justice system involving the courts: the pretrial phase and the adjudication phase. In the pretrial phase, there are a series of hearings designed to give defendants their due process. When a case is not dismissed or settled through a plea bargain, defendants are brought to trial to determine their guilt or innocence. Third, if an offender is adjudicated as guilty in the courts, the individual enters the corrections component of the criminal justice system containing 2 parts: (1) probation – which is supervision of the defendant in the community without incarceration, and (2) incarceration – which is imprisonment in a prison. A more detailed overview of how the criminal justice system works can be found in the ADAD State Plan.

Current System of Care in Hawai‘i

The United States Department of Health and Human Services has defined a "system of care" as a "broad, flexible array of services and supports for a defined population that is organized into a coordinated network, integrating service planning, coordination and management across multiple levels. This coordinated network is culturally and linguistically competent, builds meaningful partnerships with families and youth at service delivery, management, and policy levels, and has supportive management and policy infrastructure."[4]

In Hawai‘i, a common access point for care of individuals with substance use disorders is arrest, which leads to a person's entry into the criminal justice system. After arrest, a person with a substance use disorder can be supervised by the courts and later by corrections officials to get substance use treatment. However, there are 2 scenarios within Hawai‘i law for officers to engage individuals who are not criminally arrested. The first is when an officer determines an appropriate response to individuals who are imminently dangerous to themselves or others. In such cases, a common action is for police to take such people into custody if probable cause is determined.[5] Those people then have the opportunity to be offered mental health treatment and services outside the criminal justice environment via treatment and services in the healthcare setting.

The second scenario is diversion or alternatives to arrest which fall into 2 categories. The first involves the pre-arrest stage where the officer uses discretion to not arrest. In pre-arrest diversion, specialized training of officers and/or having ancillary support staff to address mental health and substance use disorders are essential. Diversion and mental health training for officers may lead to a decrease in informal dispositions. Such dispositions conveniently decrease paperwork and officer downtime as there is no engagement with mental health resources or process for arrest.[6] Diversion can also involve specialized teams to improve pre-booking assessments. In this model, officers can make referrals to services or transport to emergency care with a "no refusal" policy, which is seen commonly throughout the United States. This model may also involve a mobile crisis team where behavioral health experts can help police decide a course of action.[7] The second category is the Law Enforcement Assisted Diversion (LEAD) initiative which also allows diversion from prosecution.[8,9] LEAD is focused on individuals where criminal activity is due to behavioral health issues. Typically, the suspect has committed minor offenses where police may offer a referral to a LEAD worker who can coordinate services, housing, medical care, substance use services, and mental health care. In Hawai‘i, this category has yet to be practiced in a meaningful way. **Figure 1** below shows a simple flow of when a police officer determines that a person is imminently dangerous to self or others and makes a non-criminal arrest diverting the person to a healthcare provider.

In Hawai‘i, there are generally 2 situations where the courts are involved in care for substance use disorders: bail and probation. The first situation, bail, is where the system of care in the courts begins. After a person is arrested and charged with a crime, bail occurs and is used to secure attendance in court. In Hawai‘i, a defendant, with little exception, is nearly guaranteed the right to bail. When a defendant appears in court at their initial appearance before a judge, the judge will confirm the defendant's bail and that confirmation of bail triggers an assessment to determine a defendant's fitness for bail compared to their risk to the community. Commonly, bail is set immediately after arrest, clearing the way for a defendant to be released after completing the booking process.[10] Consequently, because of this short timeframe, defendants who post bail after booking will have no assessment for substance use.

The second situation is when the courts sentence a person to probation. Probation is a sentence served in the community while under court supervision. In Hawai‘i, all probationers must comply with conditions that include: a restriction against illegal drug use, a requirement to submit to drug testing, and if directed, a requirement to participate satisfactorily in substance use treatment. Accordingly, the courts work with community organizations to treat offenders who are directed into treatment.

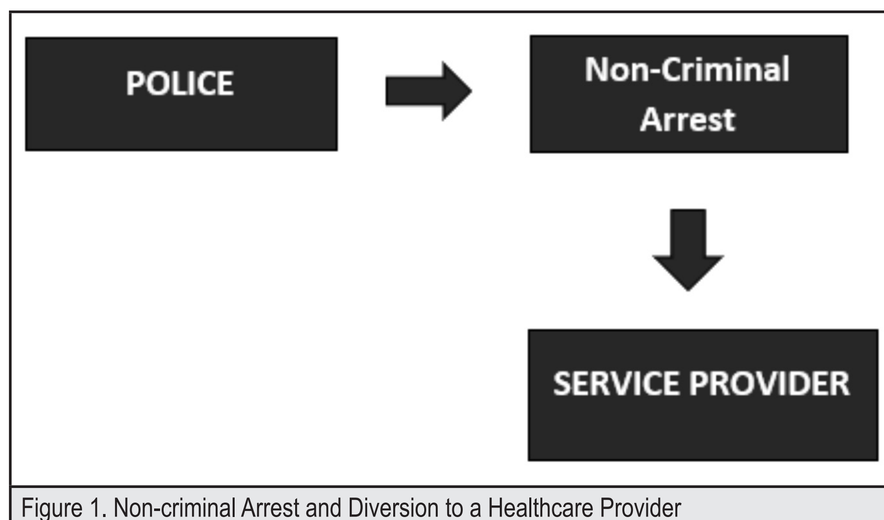

Figure 1. Non-criminal Arrest and Diversion to a Healthcare Provider

The Hawai'i Corrections System has an established treatment program consisting of several parts. The first is screening. The Department of Public Safety uses instruments for incoming inmates that assist in classifying risk and predicting recidivism. The Hawai'i Interagency Council on Intermediate Sanctions reported that these tools include the Level of Service Inventory-Revised (LSI-R) instrument which contains a subdomain for substance use and the Adult Substance Use Survey (ASUS).[11] The LSI-R and ASUS were used to measure "criminogenic and alcohol/drug dependency risk levels, as well as the severity of criminogenic and alcohol/drug patterns, known as subdomains." This report further notes that "all offenders are classified by risk levels, which provide invaluable information needed for case supervision purposes and determining treatment levels."[11] There were significant associations with increased LSI-R score and offender recidivism, and with subdomains including criminal history, education/employment, companions, alcohol/drugs, and accommodations.[11] The ASUS social subdomain was also found to be associated with offender recidivism.[11] It is important to note that these instruments help risk classify offenders to allow for appropriate treatment determination which are evidenced-based for substance use disorders.

Another risk assessment tool which may help determine supervision level is the Ohio Risk Assessment System (ORAS). The ORAS was designed and validated to allow more accurate risk assessment for offender recidivism at different points in the criminal justice system. It includes 5 different risk assessment tools for the different stages of the criminal justice system. These include the ORAS for: Pretrial Assessment Tool, Community Supervision Tool, Community Supervision Screening Tool, Prison Intake Tool, and Reentry Tool. These tools are also used to determine supervision level and to assist case managers to determine possibly modifiable risk factors and treatment barriers. These modifiable or dynamic risk factors can include substance misuse, association with antisocial peers, mental health needs, low income, and problems with employment.[12]

The next stage following assessment is treatment. The corrections system uses a variety of treatment types including: "no" treatment, increased urinalysis testing with drug/alcohol education, weekly outpatient therapy, intensive outpatient therapy, residential treatment, and therapeutic community treatment.

Interventions

Presently, the county police departments and the Sheriff Division are involved in the LEAD program.[13] LEAD's goal is to reduce client recidivism for minor offenses. LEAD diverts offenders on the front end of the criminal justice system by diverting individuals away from the criminal justice system to a more rehabilitative approach. There are short-term goals over the initial 6 months to coordinate resources to improve housing stability, increase social support, reduce substance use, and for stress mitigation. The long-term goals include improved quality of life and reductions in emergency room use, inpatient hospital stays, and arrests.[13] **Table 1** below shows the results of the LEAD program in Honolulu after 2 years.

The LEAD 2-Year Program Evaluation Report released in 2020[14] showed significant improvement in the community for many of the aforementioned goals. Between July 1, 2018 and July 31, 2020, 101 individuals through different outlets were encountered and assessed for LEAD. Of the 101, 57 individuals were referred to LEAD through social contacts (mostly from the Sheriff's Division or Honolulu Police Department Health Efficiency Long-term Partnership Initiative). Of the 101, 50 were enrolled and were provided services through the LEAD program, while 44 were triaged to other service providers; the remaining 7 were not enrolled due to incomplete intake and assessment. For the short-term goals, the LEAD program evaluation found a 47% reduction in the average number of days sleeping on the street, park, or bench (**Table 1**). There was an also increase from 13% to 48% in the percentage of individuals who were housed for the entire previous month at the time of their last assessment (not shown in table).[14] There was a 50% decrease in the average number of days spent in an emergency shelter with a concurrent 46% increase in average number of days in transitional housing. Furthermore, there was a 118% increase in days living in shared apartment or in an independent apartment. There was a 23% decrease in the average number of days of methamphetamine use by clients since the start of the program. Overall there was 20% reduction for the average number of days (9.29) for opioids/heroin use in the 30 days prior, compared to the first assessment (11.67). However, when excluding the period after the COVID-19 emergency orders, the average number of days (5.82) for opioids/heroin use in the 30 days prior, decreased by 50% (not shown in table).[14] There was an 11% increase in the number of days of alcohol use from 6.3 to 7.0 days over the past month. Finally, with community resource engagement, the number of days clients felt hopeful increased by 70%.

The long-term goals showed improvements in multiple domains as well.[14] Overall, there was a 30% decrease in hospital admissions in the past month (from 10% at baseline to 7% of clients at last assessment) (**Table 1**); furthermore, hospital admission decreased 43% (from 10% to 5.7%) when excluding the period after the COVID-19 emergency orders (not shown in table). There was a 56% decrease in emergency room visits in the past month from 32% at baseline to 14% of clients at last assessment (**Table 1**); furthermore, emergency room visits decreased 64% (from 32% to 11.4%) when excluding the period after the COVID-19 emergency orders (not shown in table). On average, there were 304% more citations per month with referred LEAD clients compared to the 82% increase seen with clients triaged to other services and not enrolled in LEAD (not shown in table). However, it is important to note that the most common citations for LEAD clients were for entering closed parks, sitting/lying on sidewalk, and jaywalking, while the citations for

Table 1. Law Enforcement Assisted Diversion (LEAD) Honolulu 2-Year Program Data Results, July 1, 2018 and July 31, 2020, n=50.[a]	
Short Term Measures (% change from baseline to last follow up assessment)[b]	
Housing	↓ 47% days sleeping on street/park/beach
	↓ 50% days staying in emergency shelter
	↑ 46% days living in transition housing
	↑ 118% days living in shared apartment
	↑ 531% days living in independent apartment
Substance Use	↓ 36% days used benzodiazepines past month
	↑ 11% days used alcohol past month
	↓ 25% days used marijuana/hashish past month
	↓ 20% days used opioids/heroin past month
	↓ 23% days used methamphetamine past month
	↓ 6% days used cocaine past month
Stress	↓ 12% days felt unable to control the important things in life
	↓ 9% days felt difficulties could not be overcome
	↑ 19% day felt that things were going their way
	↑ 18% days felt confident about ability to handle personal problems
	↑ 70% days felt hopeful about future
Long Term Measures (% change from baseline to last follow up assessment)[b]	
Emergency & Hospital use	↓ 56% percentage gone to the emergency room in the past month
	↓ 30% percentage admitted to hospital in the past month
Crime & Recidivism[c]	↑ 7% frequency of cited encounters
Community Support	↓ 78% times visited a spiritual group in last month
	↓ 92% times attended a community group in the last month
	↑ 67% times engaged in recreational activities in the last month
	↓ 88% times participated in a support group in the last month
Social Support	↑ 33% someone able to help if confined to bed
	↑ 25% someone to take to doctor if needed
	↑ 24% someone to share private worries and fears with
	↑ 17% someone to turn to for suggestions about how to deal with personal problems
	↑ 24% Someone to do something enjoyable with
	↑ 26% someone to love and make you feel wanted
Health & Wellbeing	↑ 3% general health improvement
	↑ 5% # physically unhealthy days past month
	↓ 32% # mentally unhealthy days past month
	↓ 26% # activity limitation days past month
	↓ 24% # days in pain past month
	↓ 29% # days depressed past month
	↓ 38% # days anxious past month
	↓ 32% # days not enough sleep past month
	↑ 47% # days full of energy past month
Experiences with Trauma	↓ 23% experienced violence, trauma, or sexual maltreatment/assault in past month
	↓ 5% witnessing physical or emotional trauma

[a] Percentages are rounded, adapted from Willingham et al, 2020[14]
[b] Percent change values are based on comparison of baseline first assessment to last follow-up assessment data for LEAD enrolled individuals.
[c] Percent change value is based on comparison of pre-enrollment to post-enrollment in LEAD.

triage only clients were commonly related to vehicles, such as expired safety checks or vehicle registrations or driving without a license. In contrast, there was only an increase of 7% more encounters with law enforcement resulting in a citation issued for LEAD clients (**Table 1**) compared to the 93% increase for triaged only clients (not shown in table).

The second intervention in Hawai‘i involves drug treatment courts. The Hawai‘i Judiciary reported in 2019 that more than 2100 people have graduated from Drug Court programs in the state since 1996.[15] The Government Accounting Office assessed the effectiveness of drug court programs leading to statistically significant recidivism reductions (ie, reductions in rearrests and convictions).[16] Because these programs provide offenders with court supervision, mandatory drug testing, substance use treatment, and other social services, drug courts are considered to be an important strategy for reducing incarceration and providing access to treatment and reducing drug use and recidivism. The National Institute of Justice's multi-site adult drug court evaluation showed that drug court participants were less likely to have a drug relapse, report criminal activity, or need employment, educational, or financial services at 18 months.[17]

Observations & Recommendations

One key observation is the concept of discretion in the criminal justice system. Discretion is traditionally defined as "an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience."[18] Discretion provides officials with authority conferred by law to act with a range of choices including choices to not enforce laws, to arrest or not to arrest, to drop cases, to grant bail, to dismiss charges, and to reward and punish defendants.[19,20] Discretion impacts the way in which the system deals with those with substance use disorders. Entry into the criminal justice system requires the police to make an arrest. Thus, if police exercise their discretion when investigating a crime and choose not to arrest, a person suffering from a substance use disorder will not receive services and treatment within the criminal justice system. Moreover, even if the police were to arrest that person, there is opportunity for prosecutors, judges, and other criminal justice officials to exercise discretion. Consequently, the criminal justice system is a filtering process that may either fail to identify people who have a substance use disorder or exclude people who might otherwise use criminal justice system services and treatment.

Management of criminal justice discretion is important to connect people with treatment regardless of the decision made. First, it is important that the police and the courts be well-connected to non-criminal justice treatment providers who can take referrals for people who never entered or are filtered out of the system. The police and the courts must know what treatment resources exist and be trained in a practical procedure that can quickly connect people to services at the point of police, or court contact.

A second critical aspect is that people in the criminal justice system who have not been convicted are presumed innocent and are generally entitled to receive bail upon arrest. Consequently, a defendant who has been given the opportunity for bail may post bail and be released anywhere along the pretrial timeline. Forecast data published by the Hawai‘i Department of Public Safety in 2021 showed the amount of time to settle one's affairs with the court was about 200 days or more in 2020, and the felony court processing time was 400 days or more in 2020.[21] It is important to note there are limited to no substance use treatment options in pretrial jail, and those who bail out of pretrial detention may have limited community supervision for substance use. Therefore, treatment opportunities for those out on bail, especially those on bail for long periods must be made available and enduring.

A third key point is that people who have been convicted and sent to prison with a substance use disorder cannot be forced into correctional drug treatment programs. This is concerning for those who "max-out" or complete their prison sentences without even starting a program, or for those who do not complete substance use treatment. The recidivism rate for maximum term release prisoners was 57%.[22] Consequently, 2 important ideas should be mandated. First, procedures should be implemented to reduce the number of offenders who "max-out" with no treatment. Research by Florida State University and the Florida Department of Corrections into the benefits of supervised or conditional release has shown that those offenders who undergo conditional or supervised release are less likely to reoffend.[23] Offenders should be required to participate in conditional release or community supervision programs where treatment can be mandated or continued. Second, offenders should be incentivized to complete treatment while incarcerated. Currently, earned time credit towards early release does not occur in Hawai‘i. Attractive incentives such as earned time credits, moves to lower levels of security supervision or increased privileges should or continue to be a carrot for participation and completion of treatment. These 2 ideas taken together would ensure that greater numbers of offenders start treatment and continue their treatment upon release, thereby offering greater opportunity to be successful after release, and decreasing the recidivism rate.

To improve the criminal justice system of care in Hawai‘i, the following recommendations across the components of the criminal justice system (police, courts, and corrections) should be considered. Recommendations were synthesized based on the literature, available data, as well as the historical perspective and conversations with stakeholders over several decades by the lead author from within the criminal justice system.

Priority should be placed on alternatives to arrest and incarceration.

When the LEAD program was introduced in Hawai‘i, a pilot project was completed to gauge the effectiveness of the program. The results of the project showed a 23% decrease in methamphetamine use by clients since the start of the program.[14] This measurable decrease in methamphetamine use shows the promise of LEAD's impact in reducing drug use. When LEAD's efficacy was studied in Seattle, where LEAD has been practiced for a longer time, the study showed that the effects of LEAD in reducing arrests revealed lower odds of recidivism resulting in arrest.[9] This is promising because offenders tend to achieve better outcomes when substance use treatment is community-based rather than occurring in incarceration. Consequently, alternatives to arrest and incarceration coupled with community-based treatment should be prioritized in the future.

Harness opportunities to offer services and treatment.

The police traditionally do not screen for substance use disorders and in the pretrial phase there are currently limited assessments for substance use. The police and others should use the opportunity when people are in custody to assess and coordinate referrals for services. Brief assessment tools, such as the ORAS Pretrial Assessment Tool,[24,25] may be a simple starting place in identifying opportunities to begin the process of helping people.

Ensure that there is continuity of care while justice-involved people move through the criminal justice system.

The Hawai‘i criminal justice system must ensure uninterrupted continuity of care. Those who have initiated treatment and/or services prior to their arrest and introduction into the criminal justice system must be assured that their treatment can continue while they are involved with the justice system. Similarly, those who are released from the criminal justice system because their charges are dropped or they are found not guilty must also be assured that any treatment that was started can continue even after their justice system involvement is over. Moreover, the role of continuity of care and its effects on recidivism should be studied to determine if continuity of care started before, during, and after involvement with the justice system lowers the rate of recidivism.

Ensure or create incentive programs that motivate incarcerated people to participate in treatment programs while incarcerated.

A significant situation within the corrections population are those offenders who decide not to participate in any treatment programs and "max-out" of the system. The 2019 recidivism rate amongst the maximum sentence offender group was 57%. To reduce the recidivism rate in this group, treatment programs can be incentivized to increase participation and complete the requirements of such programs.

Conflict of Interest

None of the authors identify a conflict of interest.

Notice of Duplicate Publication

This article is based on the draft version of a chapter from the Hawai‘i State Department of Health Alcohol and Drug Abuse Division (ADAD) State Plan, and all or a majority of the contents within will be subsequently also reproduced in the corresponding chapter of the final version of the ADAD State Plan (https://health.hawaii.gov/substance-abuse/state-plan/). While the ADAD State Plan may later be modified as a living document following its release, the material and content found in this article represents a snapshot of the highlights of the ADAD State Plan at the time of the article's publication.

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