RESOLVED, That the American Bar Association supports reducing the morbidity and mortality associated with opioids in American families and successfully confronting and addressing the opioid crisis.

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal courts, governmental entities, bar associations, public health agencies, lawyer assistance programs, lawyer regulatory entities, institutions of legal education, law firms, and other entities to consider the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis—Report of the Opioid Summit May 2018*, by the ABA Senior Lawyers Division, and which report resulted from the Opioid Summit held in collaboration with twenty ABA entities and non-ABA organizations.
I. INTRODUCTION

As detailed in the report, *Experienced Lawyers, American Families, and the Opioid Crisis—Report of the Opioid Summit May 2018*, by the Senior Lawyers Division of the American Bar Association (see [http://ambar.org/opioid](http://ambar.org/opioid) for the full report and citations therein), the opioid crisis is the deadliest epidemic in U.S. history. It touches communities and families throughout America. It does not discriminate among income levels. More than one in ten people have a relative or close friend who has died as result of a drug overdose according to the Associated Press-NORC Center for Public Affairs Research. The epidemic is shortening American life expectancy, impacting local government budgets, straining family resources and relationships, and challenging all of us to find solutions. It affects all of us.

The opioid crisis is steeped in a long cultural history of moralism about the nature of addiction, the century old legal separation of treatment of addiction from the rest of medicine, and the state sanctioned stigmatization of addiction through the criminalization of possession. The impact of the crisis implicates society’s approach to the treatment of addiction, pain, and often co-occurring serious mental illnesses. It also implicates the approach to drug marketing, distribution, and the public approach to active drug users. It challenges us to discard the understanding of substance use disorders as moral maladies and embrace them as chronic, complex medical diseases with biological, psychological, and social dimensions.

On May 4, 2018 the ABA Senior Lawyers Division held an Opioid Summit in an effort to confront three aspects of the crisis: (1) the effects on the family, including intergenerational stress in confronting those of its members who have fallen victim; (2) differences in addressing treatment of what the National Institute on Drug Abuses terms a long-term, treatable brain disease, and; (3) the necessary changes to laws and policies surrounding those directly, and indirectly, affected. Gaps in treatment alone demonstrate the distance that must be traveled to provide adequate health care coverage and erase the social stigmatization of the disease and its treatment. This report summarizes the efforts and the challenges faced.

The Opioid Summit was a collaborative effort organized by the Senior Lawyers Division and which brought together twenty ABA entities and non-ABA organizations, a multidisciplinary group of experts from a range of legal areas, nationally recognized speakers, leaders of the Senior Lawyers Division, as well as ABA staff members and volunteer law students. Incorporating the productive discussions, recommendations, and actions items generated at the Opioid Summit, this report contains nine recommendations and 45 action points to address the opioid crisis.
II. ADDRESSING THE OPIOID CRISIS: BACKGROUND AND OVERVIEW

Now in its 20th year, the opioid epidemic continues to devastate families, weaken communities, and overwhelm public service agencies. Described as the largest human-caused public health emergency in history, the opioid epidemic has claimed more than 360,000 lives since 1999. The severity of the epidemic is reflected by its grim statistics: life expectancy in the United States is declining, opioid overdose deaths now outnumber firearm—and automobile-related deaths, opioid-related incarceration rates have surged, labor force participation among men is declining, and in many states, foster care systems are overwhelmed, with more than half of all children in some states requiring services due to opioid misuse in the home. Despite broad coverage of the size and scope of the epidemic, recent estimates indicate that overdoses related to opioids continue to increase each year, with more than 42,249 overdose deaths recorded in 2016 alone.¹ The complexity and magnitude of the problem requires a broad, multiagency and multidisciplinary approach, informed by medical, social-behavioral, and public health disciplines and research, supported by federal, state, and local policies and laws, that enable greater access and sustained commitment to education, prevention, and treatment targeting both individuals and families. Although the scope of the problem exceeds the resources and capacity of any single entity, the wide-ranging

calls to action highlight the urgency in building a comprehensive framework for responding to the crisis.

The legal profession is a critical partner in this effort, uniquely positioned to support, inform, and advocate for effective policies and laws, while current statistics underscore the present exigency of doing so. For example, recent estimates from the CDC indicate that as many as 5 million adults struggle with opioid use disorders, and some additional 11.5 million adults misuse opioids on a regular basis, with research suggesting that roughly 8% to 12% will eventually develop drug dependence. Early focus on prescription opioid misuse alone has had an unintended but predictable consequence of increasing illicit opioid (e.g., heroin and fentanyl) initiation and misuse. Estimates suggest that in 2016, 170,000 adults began using heroin for the first time, adding to the roughly 948,000 individuals with long-term heroin use histories. This is particularly concerning given the disproportionate dangers of illicit opioids such as heroin and fentanyl.

Despite efforts to curtail opioid prescribing, overall use rates in the United States remain high, with roughly one-third of adults in 2015 reporting use of an opioid-based pain reliever at some point in the previous year. Most of these were short term, post injury or procedure prescriptions, with chronic use mostly limited to the elderly and disabled populations. Among those that misuse opioids, the vast majority continue to obtain them from a friend, relative, or drug dealer—the common narrative of prescriber to patient to addiction is not supported by the evidence. Moreover, the majority of misusers of opioids identify untreated physical pain as the reason for misuse. These findings underscore the need to focus prescribing policy efforts at drastically reducing the number of left-over opioids available for diversion as well as societal efforts to comprehensively address pain treatment.

Although often construed as an epidemic limited to middle-aged, rurally-located, white men, the opioid epidemic has reached across all regions and demographics of society. Current estimates indicate that among young adults aged 12 to 17 years, nearly 122,000 youths are dependent on prescription opioids, while an additional 21,000 admit to using heroin. Similarly, opioid use among women has increased steeply as well, with death rates climbing more steeply among this population than among men (400% vs. 239%) between 1999 and 2009, perhaps reflecting women’s higher rates of chronic pain and subsequently, disproportionate use of opioid based pain relievers. The steep increase in opioid misuse among women has led to an increase in births complicated by

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3 Theodore Cicero, et al., Increased use of heroin as an initiating opioid of abuse, Addictive Behaviors, 2017
6 (Cicero, supra.).
opioids, with a baby born withdrawing from opioids every 25 minutes. This has also caused a drastic increase in the rate of incarceration of women and has had a huge impact on families. Although rarely the focus of concern, older adults represent the fastest growing group with diagnosed opioid misuse, affecting 6 out of every 1,000 older adults. In addition, the black and Latino communities have been adversely affected as well, with strong evidence suggesting that the rise in use of synthetic opioids and heroin is spilling into urban centers, leading to increases in drug-related mortality rates.

When considered in the broader context of the opioid epidemic, the risk of too narrowly focused strategies developed without the benefit of broader stakeholder input and collaboration, risks attenuating the success of targeted efforts to address this epidemic. There is a rush to blame chronic pain doctors instead of a focus on how people were getting the opioids they misuse. For example, prescription drug monitoring programs policies may actually do more harm with little impact on morbidity and mortality even worse, may be fueling illicit overdoses.

In an effort toward harm reduction, access to Naloxone has been very successful despite some continued barriers which so many stakeholders are working on. In the wake of the crisis, local, state, and federal entities have rushed to respond by issuing new laws and regulations aimed at ensuring access to the prescription drug, naloxone—used to prevent opioid overdose and death. Despite specific legislation allowing for more flexibility in pharmacist dispensing, including without a prescription in some states, these efforts have fallen short of program goals. Pharmacists report, in part, that requirements for training before dispensing, lack of insurance coverage for the drug, fear of harming business and/or contributing to opioid misuse, and uncertainty about demand for naloxone, as well as concerns regarding its impact on the overall public health and reluctance to embrace the value of these policies, represent stubborn obstacles to ensuring drug access. There are drug shortages right now, too. In response to their widespread effectiveness, a chorus of stakeholders have urged broader implementation of these laws, which depends on continued collaborative efforts of multiple stakeholders. At this critical juncture, effort to clarify responses to the opioid crisis in legal and public policy terms that support action, ensure health, advance effective strategies and programs, and safeguard individual and family rights, are sorely needed.

8 https://www.prisonpolicy.org/reports/women_overtime.html; A shared sentence—The Annie E. Casey Foundation.
The legal profession’s voice is critical to advancing public health efforts to confront the opioid epidemic, including efforts focused on prevention, intervention, and treatment. Much like the pivotal role assumed by the legal community in the public health fight against tobacco, the legal profession is a key partner in the fight against the escalating opioid epidemic, for instance, by providing alternatives to criminal sentencing, mandating education and training, providing equal access to treatment, requiring insurance benefit coverage for substance use disorder treatment, strengthening data tracking and reporting requirements, and aiding and supporting collaboration across agencies focused on developing family-friendly policies and resources, to name a few.

Drawing upon this multidisciplinary framework of understanding, this report details three broad areas of concern and proposes several actionable steps aimed at addressing both the immediate crisis as well as sustaining a long-term response. Given the evolving nature and scope of the problem, these recommendations reflect a concerted effort to both address the multifaceted and complex nature of the problem as well as contribute specific, meaningful, practical, and flexible solutions. Moreover, these recommendations are intended to not only add to, but strengthen and support the many calls to action currently in progress, with the overarching aim of building and strengthening national efforts focused on addressing the opioid crisis.

III. RECOMMENDATIONS AND ACTION POINTS

FOCUS AREA 1: EXPAND ACCESS TO TREATMENT, EDUCATION, AND ADVOCACY EFFORTS

Recommendation 1: Invest in multidisciplinary education and training opportunities for individuals, families, vulnerable populations, professionals, and community stakeholders.

1.1 Develop education and awareness programs targeting prevention, treatment, and advocacy, both within and across stakeholder groups, and for both opioid and other substance misuse disorders.

1.2 Ensure educational efforts provide targeted immediate next steps for those with acute opioid and other substance misuse disorders.

1.3 Require continuing education for all professionals (e.g., CLE, CME, CEU) to keep abreast of policy, best practices, and treatment options.

1.4 Actively collaborate with professional organizations (e.g., AMA, APHA, NASW, ANA, SAMHSA) to build multidisciplinary capacity and engagement across key stakeholders.

1.5 Disseminate educational and advocacy materials broadly, through professional organizations, civic organizations, faith-based communities,
service and provider networks, etc. regarding opioid and substance misuse disorders.

**Recommendation 2: Expand access to treatment and recovery for individuals with opioid and substance misuse disorders and aggressively address stigmatism.**

2.1 Invest in research focused on best-practices in treatment and long-term recovery and support; employ evaluation and outcome methods of treatment modalities to identify best-practices.

2.2 Engage individuals directly in decision-making about treatment options.

2.3 Expand access to treatment for opioid and substance misuse disorders, including removing insurance barriers and increasing access to medication assisted treatment.

2.4 Create a continuum of services that support individuals and families in and across all stages of substance misuse, including: immediate crisis, withdrawal, and long-term recovery.

2.5 Incorporate services and supports for socio-behavioral challenges that often co-exist with opioid and substance misuse disorders.

**Recommendation 3: Establish comprehensive treatment and outreach efforts tailored to the diverse needs of individuals and families struggling with opioid and substance misuse disorders.**

3.1 Address social and environmental inequities placing individuals at risk for opioid and substance misuse disorders.

3.2 Develop comprehensive treatment and recovery programs tailored to meet individual needs, including programs sensitive to age, gender, race/ethnicity, family/social networks, and socioeconomic differences.

3.3 Remove barriers to treatment and recovery programs by addressing legal and policy limitations that prevent access to effective, affordable, and best-practice evidence-based treatments and supports.

3.4 Harness federal and state resources while working with community stakeholders to create comprehensive, targeted strategies for addressing local needs in responding to opioid and substance misuse disorders.

3.5 Harness social media platforms and grassroots advocacy to destigmatize the disease and recovery for opioid and substance misuse disorders.
FOCUS AREA 2: STRENGTHEN AND SUPPORT FAMILIES STRUGGLING WITH OPIOID AND SUBSTANCE MISUSE DISORDERS

Recommendation 4: Increase the legal profession’s capacity to respond to and meet individual and family needs through partnerships, collaboration, and dissemination of information and resources in support of individual and family needs.

4.1 Require CLE completion of learning modules focused on opioid and substance misuse disorders; infuse law school curriculums with training on opioid and substance misuse disorders.

4.2 Create and disseminate an inventory of resources including educational references about the breadth and scope of the problem, agencies and services available to support families in crisis, treatment and recovery programs, and practice guidelines for working with clients.

4.3 Build partnerships with key stakeholders (e.g., AMA, APHA) focused on education and advocacy leadership in support of families.

4.4 Build partnerships across government agencies and private sector service providers to improve crisis and long-term services and supports for families struggling with opioid and substance misuse disorders.

4.5 Foster community-wide education and discussion; compile a list of expert speakers on topics related to family, law, and the opioid crisis.

Recommendation 5: Promote policies and laws that support families and caregivers struggling with opioid and substance misuse disorders.

5.1 Adopt a public health model of intervention, including efforts focused on prevention, strengthening coordination of services and treatment, and supportive of long-term recovery.

5.2 Engage in advocacy, policy, and outreach efforts that seek to destigmatize treatment and keep families together.

5.3 Develop policies and laws that support the legal needs of caregivers, including kinship care, foster care, and grandparents raising grandchildren.

5.4 Increase awareness and support for individuals struggling with opioid and substance misuse disorders, with unique needs, including children, older adults, and pregnant women, populations living with chronic pain and disability, and those incarcerated or recently incarcerated.
5.5 Extend education and protection to those in a position to intervene during crisis by broadening protection under Good Samaritan Laws, increasing access to naloxone by family members, and educating family members on effective ways to intervene.

**Recommendation 6: Support policies and laws that support families in crisis and strengthen the family unit.**

6.1 Decriminalize non-violent and low risk drug-related crimes in favor of alternative programs that increase access to treatment, remove obstacles to employment, enable reentry into work and family, and mitigate other risk factors for drug misuse.

6.2 Expand access to non-profit community-based treatment programs, particularly in rurally located communities. Target programs to meet individual and family needs, e.g., family and residential treatment programs, teen programs, older adult programs, and transitional programs; clear obstacles to receiving the right treatment at the right time.

6.3 Ensure drug courts and family courts have up-to-date information for programs and services offering medication assisted treatment; consider mandating medically assisted treatment for non-violent/low-risk drug offenders.

6.4 Expand referral to drug and family courts for cases involving drug-related offenses; recognize that criminal prosecution is ineffective in combating opioid and substance misuse.

6.5 Expand access to medically assisted treatment and recovery for incarcerated populations.

**FOCUS AREA 3: ENACT LEGAL AND POLICY REFORMS THAT INCREASE ACCESS TO TREATMENT AND RECOVERY, AND LIMIT UNWARRANTED PRESCRIBING AND DRUG MISUSE**

**Recommendation 7: Identify state laws and initiatives that have been shown to decrease opioid and substance misuse while ensuring access to pain medications for those with chronic pain.**

7.1 Remove barriers to seeking treatment for fear of prosecution.

7.2 Extend options for disposing of unused drugs and seeking treatment.
7.3 Revise minimum sentencing laws for non-violent/low risk drug offenders; allow those incarcerated under minimum sentencing laws to appeal their sentencing.

7.4 Enact best-practice prescribing and drug monitoring laws; create data sharing capabilities across state lines.

7.5 Support interagency data collection and analytics to identify opioid and drug misuse hot spots to better direct resources and interventions.

Recommendation 8: Expand research and understanding of litigation and policy issues with the aim of addressing the sometimes indirect yet complex issues affected by the opioid crisis.

8.1 Recognize that opioid and substance misuse affects those dependent on the user, including parents, grandparents, and children. Develop partnerships with agencies that serve these populations.

8.2 Leverage existing policies and regulations that offer protection for individuals and families struggling with opioid and substance misuse disorder, e.g., ADA and Fair Housing Act as well as parity laws in mental health treatment.

8.3 Ensure treatment houses provide safe, effective environments for those seeking treatment and recovery. Require quality outcomes reporting for all treatment providers.

8.4 Require all correctional facilities to develop collaborative relationships with community supports and providers and engage in transition planning to ensure treatment is uninterrupted.

8.5 Expand harm reduction policies and strategies and decriminalize misdemeanor drug offenses.

Recommendation 9: Recognize the inconsistent response and action to the opioid crisis versus other forms of substance misuse and advocate for policies that address underlying health and socioeconomic disparities.

9.1 Increase state and federal funding to provide treatment for uninsured or underinsured individuals struggling with opioid and substance use disorders.

9.2 Increase access to family court and drug courts; link treatment and recovery programs to courts.
9.3 Require education of first-responders and other medical personal on substance misuse and mental health.

9.4 Mandate all survivors of drug overdoses be referred for treatment before discharging care.

9.5 Allow greater flexibility in minimum sentencing laws for all non-violent/low risk drug offenses; require all correctional facilities to follow best-practices in treating opioid and substance misuse.

**IV. CONCLUSION**

These nine recommendations and 45 action points are a significant step by the Association in confronting the opioid crisis. The recommendations and action points build on the broader understanding that addressing the opioid crisis requires reframing our understanding of drug use and abuse from a moral failing to a chronic disease, and that the effort to do so requires leadership within and across professional organizations, as well as a commitment to reshaping policy and regulations to better support individuals, families, and communities.

Respectfully submitted,

Marvin S.C. Dang
Chair, ABA Senior Lawyers Division

January 2019
1. **Summary of Resolution(s).**


2. **Approval by Submitting Entity.**

The Resolution was approved by ABA Senior Lawyers Division’s Council on August 4, 2018 during the Annual Meeting in Chicago.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

The ABA has policies regarding substance misuse, treatment, and decriminalization:

- **2018 Midyear 105:**
  https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lawy_colap_2018_hod_midyear_105.authcheckdam.pdf

- **2013 Annual 101:**
  https://www.americanbar.org/content/dam/aba/directories/policy/2013_hod_annual_meeting_101.authcheckdam.docx

- **2012 Midyear 101F:**
  https://www.americanbar.org/content/dam/aba/directories/policy/2012_hod_midyear_meeting_101f.authcheckdam.doc

- **2010 Midyear 105A:**

- **2010 Midyear 102C:**
  https://www.americanbar.org/content/dam/aba/directories/policy/2010_my_102c.authcheckdam.pdf
However, those policies are not focused on the opioid crisis like this Resolution. This Resolution addresses the multifaceted and complex nature of the opioid crisis and contributes specific, meaningful, practical, and flexible solutions.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A.

6. Status of Legislation. (If applicable)

On October 24, 2018, the President signed the Support for Patients and Communities Act which provides funding for treatment and other support for opioid victims. More efforts will be necessary to fully address the opioid crisis.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

After the May 4, 2018 Opioid Summit, the ABA Senior Lawyers Division created an Opioid Initiative Task Force to, in part, advance the recommendations and action points from the Summit. The Task Force consists of representatives from various collaborating entities that participated in the Summit. Efforts to implement this policy will come from those collaborating entities and the Opioid Initiative Task Force.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

N/A.

10. Referrals.

Prior to filing, the Resolution was referred to the Opioid Initiative Task Force.

The Resolution is also being referred to the following ABA entities that collaborated with the Senior Lawyers Division on the Opioid Summit which produced the Report that’s the basis for the Resolution:

Center for Professional Responsibility
Center on Children and the Law
Commission on Disability Rights
Commission on Law and Aging
Commission on Lawyer Assistance Programs
Criminal Justice Section
Government and Public Sector Lawyers Division
Health Law Section
Law Student Division
Section of Intellectual Property Law
Section of Labor & Employment Law
Section of State and Local Government Law
Solo, Small Firm and General Practice Division
Standing Committee on Bar Activities and Services
Standing Committee on Legal Aid and Indigent Defendants

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.)

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1. **Summary of the Resolution**


The Opioid Summit Report is found at [http://ambar.org/opioid](http://ambar.org/opioid).

2. **Summary of the Issue that the Resolution Addresses**

The nine recommendations and 45 action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018*, by the ABA Senior Lawyers Division represent a significant step by the ABA to confront the opioid crisis—the deadliest epidemic in U.S. history.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

The recommendations and action points in the Opioid Summit Report are directed toward a full range of stakeholders and resulted from the May 4, 2018 Opioid Summit held in collaboration with twenty ABA entities and non-ABA organizations.

If implemented, these recommendations and action points will build on the broader understanding that addressing the opioid crisis requires reframing our understanding of drug use and abuse from a moral failing to a chronic disease. Additionally, the effort to do so requires leadership within and across professional organizations, as well as a commitment to reshaping policy and regulations to better support individuals, families, and communities.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None have been identified.