ADOPTED

AMERICAN BAR ASSOCIATION

SENIOR LAWYERS DIVISION
COMMISSION ON LAW AND AGING
COMMISSION ON LAWYER ASSISTANCE PROGRAMS
SECTION OF STATE AND LOCAL GOVERNMENT LAW
SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
NATIONAL CONFERENCE OF THE ADMINISTRATIVE LAW JUDICIARY

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association adopts the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018*; and

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, and law firms to implement the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018*. 
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. The recommendations and action items from the Summit are summarized in the report, Experienced Lawyers, American Families, and the Opioid Crisis--Report of the Opioid Summit May 2018 found at http://ambar.org/opioid.

With this Resolution, the ABA adopts the recommendations and action points in the report and 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, and law firms to implement those recommendations and action points.

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 addressing this issue, 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.\(^2\) 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.\(^3\) 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.\(^4\) 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.\(^5\) 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 those misusing opioids identify untreated physical pain as the reason for misuse. These findings

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3 Theodore Cicero, et al., Increased use of heroin as an initiating opioid of abuse, Addictive Behaviors, 2017
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.6

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 opioids, with a baby born withdrawing from opioids every 25 minutes.7 This has also caused a drastic increase in the rate of incarceration of women and has had a huge impact on families.8 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.9 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.10

Curbing opioid misuse has been challenging in part because of the many ways in which opioids have flooded into communities. Sources of opioids include (1) valid prescriptions provided to a patient, (2) opioid prescriptions intended for one person, but shared with someone else, usually a family member or friend, (3) the illicit sale of opioid prescriptions on the street, (4) fraudulent prescriptions distributed through pill mills, and (5) illicit use of heroin and other opioid-based substances.11 Importantly, the source and type of opioid used may change over time. For example, research suggests that more than 80% of new heroin users, began only after misusing prescription opioids, with the majority of these individuals receiving prescriptions either directly from physicians or through prescription sharing from a family member or friend.12

Early efforts to address the opioid epidemic sought to decrease the availability of opioid prescriptions and opioid-based medications on the streets. These first steps

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6 (Cicero, supra.).
8 https://www.prisonpolicy.org/reports/women_overtime.html; A shared sentence—The Annie E. Casey Foundation.
initiated an important trend towards revised prescribing guidelines, better tracking systems of prescription medications, and eventually, decreased the number of drugs available for misuse. However, during the same period, new, cheaper, and more potent sources of heroin began flooding into markets, creating a ready substitute for individuals already dependent on prescription opioids encountering increasing difficulty in obtaining prescription opioids, fueling a resurgence in new heroin users, and consequently, more overdose related deaths. Moreover, the increase in heroin drug use led to other, public health challenges, including: increase in other types of substance misuse; Hepatitis, HIV, and other disease outbreaks; complex comorbidities among users, increased demand on first-responders, hospital and emergency department services, and child welfare and other social service agencies. Consequences also include shortages of available pain medications for hospitalized patients, including cancer patients, raising concern about the heavy-handed responses to opioid misuse that fail to consider the broader implications of narrowly-focused efforts.

Both the success in initially lowering the flood of prescription opioids and the unintended consequence of fueling a broader market for heroin while limiting the availability of necessary pain medications underscores the complexity of the opioid crisis and the necessity of carefully crafting and enacting policies and laws that consider the wider problems associated with opioid misuse and support broader public health efforts to reduce drug use and drug-overdose deaths. To do so, requires awareness of the underlying risk factors driving the opioid epidemic, eradicating barriers to treatment, and working towards programs that support rehabilitation and recovery through the availability of a continuum of services over time.

Additionally, in the wake of the crisis, local, state, and federal entities 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.\textsuperscript{19} In response, a chorus of stakeholders has urged broader implementation of these laws, yet without continued, collaborative effort to educate on this issue, the reach of these policies will continue to be limited.\textsuperscript{20} At this critical juncture, efforts 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.

\section*{III. RECOMMENDATIONS AND ACTION POINTS}

\textbf{FOCUS AREA 1: EXPAND ACCESS TO TREATMENT, EDUCATION, AND ADVOCACY EFFORTS}

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

The magnitude of the opioid crisis requires broad-scale educational efforts targeting individuals, families, high-risk groups, professionals, and community stakeholders.\textsuperscript{21} The legal profession is in a unique position to guide such educational efforts by advancing policies and laws that address the need for education while providing transparency and insight in terms of current limitations in policy and law and highlighting areas for change.

Currently, rates of substance misuse continue to climb, with opioids representing one of the most frequently misused substances.\textsuperscript{22} Research has identified several factors associated with increased opioid misuse, including: receiving multiple prescriptions, taking higher dosages and receiving prescriptions for longer lengths of time, prior history of substance abuse, and living in socially and economically under resourced and rurally located regions. Targeted educational efforts addressing these risk factors represent a first line approach in prevention strategies focused on reducing the number of new opioid users.\textsuperscript{23}

\begin{footnotesize}
\textsuperscript{23} CDC (2018). Prescription opioids: Risk factors for prescription opioid misuse and overdose. Available at: https://www.cdc.gov/drugoverdose/opioids/prescribed.html
\end{footnotesize}
Although several risk factors have been identified, the effect of any one risk factor will vary with other factors, such as age, availability of social support, education and income levels, and broader socio-structural factors in the community. Thus, for education programs to be successful at reducing the impact of the opioid crisis, programs must be tailored to individual needs that reflect differences in age, gender, ethnicity, culture, and environment. In response, the following key recommendations for action are advanced:

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.

Multiple obstacles to treatment exist, ranging from stigma associated with seeking help, poor access to services reflecting under-resourced communities, insurance barriers, and exorbitant out-of-pocket costs, inadequate and inappropriate treatment programs, poor understanding of treatment modalities and effectiveness, lack of emphasis on long-term recovery and support services, lack of access to medication-assisted treatment programs, and poor coordination between available services and individual needs for treatment. Stigma is particularly insidious in that it not only dissuades users from seeking treatment, but it also undermines public empathy and support for the type of broad scale changes in treatment programing and public policy that are necessary to address the opioid crisis.

Ensuring access to the right treatment at the right time is fundamental to addressing opioid misuse and preventing drug overdose deaths. Expanding insurance—both in terms

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of recognizing the chronicity of substance misuse disorders as well as removing barriers to proven treatment strategies, such as medication-assisted treatment, are paramount to increasing successful outcomes.\textsuperscript{26} Additional barriers to treatment reflect gaps in services for large regions of the United States,\textsuperscript{27} as well as lack of parity in mental health services, poor coordination of treatment support and services, and a lack of effective programming.\textsuperscript{28} In response, the following key recommendations for action are advanced:

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.

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

Fewer than 10\% of those struggling with opioid misuse disorder are receiving treatment,\textsuperscript{29} and of those receiving some form of treatment, most have limited access to the full range of services and supports necessary to reach and sustain recovery. Best-practices in treatment require a continuum of services ranging from intervention to recovery, with individually tailored services and supports that meet individual needs. Over time, treatment must be dynamic, varying the intensity and frequency of in-patient and out-patient services, with counseling and medication as needed for well-being. Best practice

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consists of seamless transition across these treatment modalities, aided by wrap-around services tailored to the individual.30

Timing is equally important to successful treatment. Because current demand far exceeds system capacity, individuals requesting treatment are often placed on waiting lists, forced to make do with a set of services currently available but not necessarily matched to need, or given an inappropriate set of services given the individual’s current needs. For example, in some rural communities, treatment is limited, often singularly focused on initial withdrawal and detoxification, and may involve significant travel requirements.31

These barriers to effective treatment are further compromised by policies and regulations that limit access to treatment, such as insurance policies that prohibit reimbursing for certain medications used to treat substance misuse disorders at stand-alone clinics, rigid criteria for treatment approval, lack of coverage for certain medications, and time-limits that undermine treatment success.32 In addition to insurance barriers, individuals with opioid use disorders struggle to find the correct entry point to services, ensuring safe, confidential referral to services. Several communities have developed variations on the “single point of entry” model to treatment referral. Single point of entry models strives to connect individuals to the continuum of available services and supports regardless of entry point in the system, to ensure the right combination of services are available at the right time. Efforts to achieve single points of entry require building partnerships across providers through community education, as well as the use of case management to ensure coordination and integration of treatments, supported by wrap-around services targeting physical, mental health, and social support needs.33 In response, the following key recommendations for action are advanced:

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.

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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.**

The challenge for the legal profession in mounting a response to the crisis is twofold. First, the legal profession must embark on a wide-scale effort to educate its members, both in terms of working with clients and their families and communities to address the crisis, but also in terms of recognizing the risk of opioid misuse among colleagues and friends in the profession. The first step in this process is outlining key areas and curricula that provide in-depth knowledge of the background and nature of the problem, including risk factors for opioid dependence; instruction on best-practices in developing and accessing a continuum of services for both clients and their families; details key legal and ethical issues related to practice and advocacy, including both individual- and community-level factors; and mobilizes professional agency in outlining next-steps in taking action.

Second, information and resources aimed at connecting individuals and families with services and supports, as well as best-practice guidelines for working with clients, must be collected, prioritized, organized, and disseminated in order to be readily available and easily accessible. Collaboration with key stakeholders and other professionals is necessary to build a community-level response that is both effective (i.e. found and accessed quickly during a crisis) and broad enough to meet the breadth of challenges affecting individuals and families. In response, the following key recommendations for action are advanced:

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.

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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.

The U.S. policy of criminalizing drug abuse has not worked to deter the crisis. Medical and health policy experts have argued for decades that substance misuse is best understood as a chronic condition, like diabetes, that requires ongoing treatment and support at not only the individual level, but at the population level as well. Importantly, a public health model stresses evidenced based solutions that address the multifaceted nature of the problem.

In light of the failure of the war on drugs, several promising approaches supported by policy and implemented at the population level have demonstrated positive results, including: shorter sentencing, removing felony charges for non-violent offenders, a focus on harm reduction, increasing access to treatment, and embracing policies that expand a seamless continuum of services and supports. Importantly, this includes strengthening the user’s social network, including the family, as well as investment in the broader community. Communities must engage in outreach efforts aimed at destigmatizing treatment and increasing safe and confidential locations for those seeking treatment, as well as lend protection to those in a position to render life-saving aid. In response, the following key recommendations for action are advanced:

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.

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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.

Estimates suggest that the United States has spent more than one trillion dollars related to the opioid epidemic since 2001. Reports of families exhausting their resources in the face of multiple urgent medical crises, followed by a revolving door of barriers to treatment and relapse, disrupted families and work, underscore the impact of addiction on the many lives connected to the individual struggling with drug use. Estimates suggest that perhaps as much as 20% of the rising increase in unemployability among men between the ages of 25 and 55 is due to opioid misuse. Moreover, the increase in opioid use among women of child bearing age has led to more than a three-fold rise in opioid-addicted births, which are associated with considerable medical complications, including withdrawal, birth defects, and developmental delays. The opioid epidemic has impacted caregiving across generations as well, with a steep increase in the number of older adults raising grandchildren, as well as interrupting elder care, spousal support, and other kinship care. The disruption to families has led to increasing strain on the foster care system, which in turn, is struggling to provide services and supports. The complexity and long-term consequences of these effects on family require that policies and programs be framed to address the intersecting needs of not just the user, but of all members of the family. In response, the following key recommendations for action are advanced:

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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.

Curbing opioid misuse has been challenging in part because of the many ways in which opioids have flooded into communities. The early success in initially lowering the flood of prescription opioids and the unintended consequence of fueling a broader market for heroin while limiting the availability of necessary pain medications underscores the complexity of the opioid crisis and the necessity of carefully crafting and enacting policies and laws that consider the wider problems associated with opioid misuse and support broader public health efforts to reduce drug use and drug-overdose deaths. To do so, requires awareness of the underlying risk factors driving the opioid epidemic, eradicating barriers to treatment, and working towards programs that support rehabilitation and recovery through the availability of a continuum of services over time.

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Building flexible, effective policies requires access to accurate, substantive, and timely data that informs family members, stakeholders, and all of those engaged in addressing the opioid crisis at the family and community level. Although improvements in data compilation and sharing have occurred, additional progress is needed to continue to address the problem. For example, interagency collecting and sharing of data can help to identify potential hotspots of drug activity, doctor shopping, and fraudulent dispensing of prescriptions, as well as comprehensive toolkits for sharing promising programs.

Most importantly, for these policies to work, individuals affected by the opioid crisis must feel safe in taking action. For example, policies that seek to strengthen Good Samaritan Laws or enact Angel Policies assure bystanders that efforts to intervene in the midst of an overdose does not result in personal harm. Removing limitations in how the lifesaving drug, naloxone, is dispensed, including allowing family members to administer the drug, is another approach to retooling today’s state and federal laws to more readily address the crisis. In response, the following key recommendations for action are advanced:

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.

The potential to harness existing policies and laws in combating the opioid crisis has been underutilized. Effort to leverage existing policy while enacting new policy holds promise

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for addressing some of the foundational problems associated with drug misuse, such as unemployment, limited access to treatment, and housing instability. For example, the Family Medical Leave Act (FMLA),\textsuperscript{47} and the American with Disabilities Act (ADA) provide standards applicable to treatment. Nonetheless, employees encounter work disruptions when admitting substance misuse and/or attempting to return to work after prolonged absence for treatment, and evidence suggests that the failure for these laws to protect workers may disproportionately affect those communities of workers struggling the most with opioid misuse.\textsuperscript{48} Finally, requesting leave requires admission of substance misuse, a behavior that is heavily stigmatized, and which may lead to individuals’ attempt to avoid seeking treatment for fear of being viewed as incompetent. In response, the following recommendations for action are advanced:

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, \textit{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.

The opioid epidemic has laid bare a history of policies and laws that have disproportionately criminalized African-American and minority populations through efforts to “control crime” and restore “public order” that stands in stark contrast to current calls to broaden public health efforts and ensure access to treatment. Although efforts to equip states with the resources necessary to address the consequences of the opioid epidemic are to be applauded and reflect increasing awareness that substance abuse is a treatable


disease rather than a personal weakness or moral failing, policies that would extend the gentler war on drugs approach to those who misuse other types of drugs, have been slow to develop.49 Given the amount of focus on the current opioid epidemic, and the shifting sentiment about the nature of substance use disorders as a treatable disease, considerable opportunity exists to extend the efforts in fighting the opioid crisis to other types of substance misuse, while revisiting prior policies that resulted in mass incarceration and the devastating consequences associated with these policies. Simply, it is time to extend the public health call to address the opioid crisis to substance use disorders of all types and for all communities. In response, the following recommendations for action are advanced:

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

GENERAL INFORMATION FORM

Submitting Entity: Senior Lawyers Division

Submitted By: Marvin S.C. Dang, Chair, Senior Lawyers Division

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

The Resolution urges the American Bar Association to adopt and 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, and law firms to implement the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis—Report of the Opioid Summit May 2018* found at [http://ambar.org/opioid](http://ambar.org/opioid).

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:

- **18M105:**
  [https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lss_colap_2018_hod_midyear_105.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lss_colap_2018_hod_midyear_105.authcheckdam.pdf)

- **13A101:**
  [https://www.americanbar.org/content/dam/aba/directories/policy/2013_hod_annual_meeting_101.authcheckdam.docx](https://www.americanbar.org/content/dam/aba/directories/policy/2013_hod_annual_meeting_101.authcheckdam.docx)

- **12M101F:**
  [https://www.americanbar.org/content/dam/aba/directories/policy/2012_hod_midyear_meeting_101f.authcheckdam.doc](https://www.americanbar.org/content/dam/aba/directories/policy/2012_hod_midyear_meeting_101f.authcheckdam.doc)

- **10M105A:**
  [https://www.americanbar.org/content/dam/aba/directories/policy/2010_my_105a.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/2010_my_105a.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 was also referred to all ABA Sections, Divisions, and Forums, and in particular, the following ABA entities that collaborated with the Senior Lawyers Division on the Opioid Summit (which produced the Report that is the basis for the Resolution) were asked to co-sponsor 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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   Director, ABA Senior Lawyers Division and ABA Career Center
   321 N. Clark Street
   Chicago, IL 60654
   (312) 988-5692
   Emily.Roschek@americanbar.org

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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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges the American Bar Association to adopt and 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, and law firms to implement the recommendations and action points in the report, *Experienced Lawyers, American Families, and the Opioid Crisis–Report of the Opioid Summit May 2018* 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.