

*Dane County District Attorney's Office Deferred Prosecution Opioid Diversion Program (DPP-O)*



## **Participant Recidivism Analysis**

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### **Introduction to DPP-O**

The Deferred Prosecution Opioid Diversion Program (DPP-O) operates within the larger Deferred Prosecution Program in the Dane County District Attorney's Office. DPP-O was created in 2013 in response to the number of opioid-related deaths occurring in Dane County. DPP-O created a pre-charge and post-charge diversion option that aims to quickly connect participants with wraparound services to address substance abuse, physical, and mental health issues, and to support a lifelong journey of sobriety and recovery. Participants who successfully complete individualized deferred prosecution agreement requirements avoid formal charges being issued or receive a dismissal or reduction of charges. More information about DPP-O can be found here:

<https://da.countyofdane.com/DA-Units/Deferred-Prosecution-Program>.

With funding from the WI Department of Justice (DOJ) *Treatment Alternatives and Diversion (TAD) Program*, the Dane County District Attorney's Office partners with staff at the University of Wisconsin-Madison Population Health Institute (UWPHI) to enhance DPP-O through program evaluation. Staff at UWPHI use a mixed methods evaluation approach to provide a comprehensive program evaluation for the purpose of ongoing DPP-O improvement. In an effort to measure DPP-O's success with diverting participants from further criminal justice involvement after discharge from DPP-O (a DPP-O goal), a three-year post-program participant recidivism analysis was completed in fall 2021. Results of this analysis are summarized in this report.

### **Methods**

Participant recidivism data included documentation of any new offense after DPP-O discharge that resulted in charges being filed for participants discharged from DPP-O between program inception in July 2013 and December 31, 2017. UWPHI staff manually retrieved new offense data for each of the 173 participants discharged from DPP-O from the Wisconsin Circuit Court Access (WCCA) website of the Wisconsin Court System. The data abstracted from WCCA included filing, charging, offense, disposition, and sentencing data for the first criminal offense committed after DPP-O discharge. Data collection included all information documented in WCCA through December 31, 2020 to ensure a three-year post-discharge follow-up window for all 173 discharges.

To optimize the accuracy and validity of the participant recidivism data, participants who passed away in the three-years following DPP-O discharge were excluded from analyses (depending on the timing of their passing). Information related to participant deaths was manually gathered by UWPHI staff via online searches, and sample sizes may differ due to participant deaths post-

discharge. A total of 19 participants were excluded from the three-year analysis due to passing away during that time period after DPP-O discharge.

### ***Data Limitations***

There are several limitations associated with the data available to document participant recidivism: (1) Lack of a common identifier across data systems prohibits efficient matching of individual data, (2) individuals who do not successfully complete DPP-O may be charged, convicted, and/or sentenced for the offense that brought them to DPP-O which may include incarceration time that could impact their time in the community in the three years post-DPP-O discharge, (3) the WCCA data system includes offenses/charges committed in the state of Wisconsin (offenses committed outside of Wisconsin and offenses not resulting in charges are not included in this analysis), (4) participants included in this analysis were at least three years post-DPP-O discharge but had varying discharge dates between 2013-2017 (offenses committed after three years post-DPP-O discharge are not included in this analysis), and (5) circuit courts were impacted by the COVID-19 pandemic and information reflected in WCCA during the pandemic is likely affected by delays in court processing.

## **Results**

### ***New Charges***

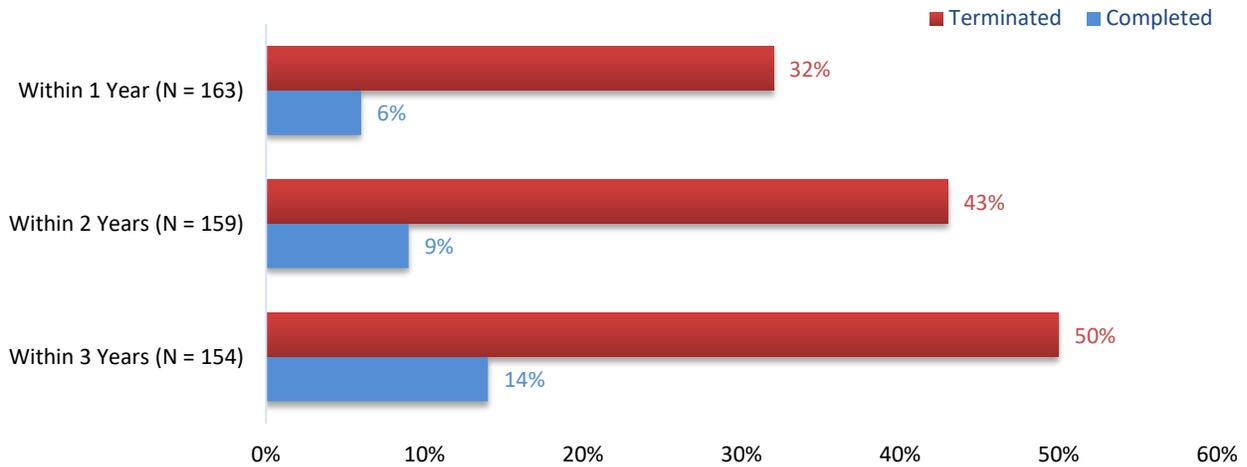
For the purposes of these analyses, “new charges” are defined as the first criminal offense committed after discharge from DPP-O for which charges were filed documented in the WCCA data system. The date of the offense was used to determine the first criminal offense. Any criminal offense was included, traffic offenses other than Operating While Intoxicated (OWI) were not included. This definition is in alignment with definitions used to measure recidivism in Dane County Alternative Sanctions Programs and in WI DOJ’s statewide TAD evaluation efforts.

As a note, numbers of offenses resulting in charges each year are cumulative. For example, if an individual committed a new offense resulting in a new charge within one year, that new offense would also have been committed within two years and within three years after DPP-O discharge.

Overall, 16% of DPP-O discharges committed a new offense that resulted in charges being filed within one year after their program discharge, 22% within two years, and 27% within three years. These numbers are lower than the recidivism numbers for the Dane County Drug Court Treatment Program (30-48% at two years post-discharge) and the Dane County Drug Court Diversion Program (33-55% at two years post-discharge) reported in the 2019 Recidivism Summary. These numbers are also lower than the overall numbers for diversion program participants (30.7% at three years post-discharge) reported in the TAD 2020 Program Report.

**Figure 1**

**Participants who successfully completed DPP-O were significantly less likely to commit new offenses resulting in criminal charges within one, two, and three years after DPP-O discharge.\***



*\*Note: Sample sizes differ based on individuals who passed away after discharge.*

The average number of days between DPP-O discharge and the first criminal offense for those participants with new charges was longer than one year (381 days). Participants who successfully completed DPP-O and subsequently reoffended had a significantly longer time to first offense (585 days) than individuals who did not successfully complete (290 days).

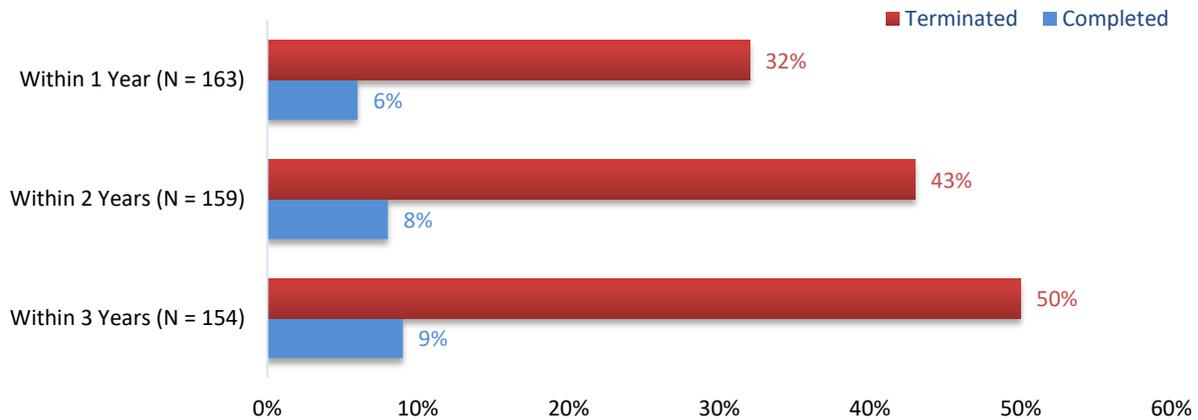
### ***New Convictions***

For the purposes of these analyses, “new convictions” are defined as the first criminal offense committed after discharge from DPP-O which resulted in a subsequent conviction documented in the WCCA data system. The date of the offense was used to determine the first criminal offense. Any criminal offense was included, traffic offenses other than OWI were not included. Cases that received an eventual disposition of “dismissed” or “deferred prosecution” were not counted as convicted of the offense, but cases without a documented disposition in WCCA were counted as convicted to provide the most conservative estimate possible. Note that numbers of offenses resulting in convictions each year are cumulative, similar to the new charges analysis.

Overall, 16% of DPP-O discharges committed a new offense that resulted in a conviction within one year after their program discharge, 21% within two years, and 25% within three years. These numbers are slightly lower than the overall numbers for diversion program participants (25.8% at three years post-discharge) reported in the TAD 2020 Program Report. The number of DPP-O successful completions who committed a new offense resulting in a conviction within three years (9%) is lower than the 19.9% reported for completions in TAD diversion programs, however, the number for DPP-O terminations (50%) is higher than the number reported for TAD diversion terminations (33.9%).

**Figure 2**

**Participants who successfully completed DPP-O were significantly less likely to commit new offenses resulting in convictions within one, two, and three years after DPP-O discharge. \***



*\*Note: Sample sizes differ based on individuals who passed away after discharge.*

The average number of days between DPP-O discharge and the first criminal offense for those participants with new convictions was just under one year (335 days). Participants who successfully completed DPP-O and subsequently reoffended had more time to first offense (482 days) than individuals who did not successfully complete (290 days).

### **Conclusion and Recommendations**

These analyses reveal that the majority of participants discharged from DPP-O do not commit new criminal offenses resulting in charges and/or convictions in Wisconsin in the three-year period following DPP-O discharge. This suggests that participation in DPP-O results in successful diversion from criminal justice involvement in Wisconsin in the three-year post-discharge period. Additionally, the vast majority of participants who complete DPP-O do not commit criminal offenses resulting in new charges or convictions in the three years post-DPP-O discharge. Finally, DPP-O's outcomes exceed outcomes reported by other Dane County and statewide TAD diversion programs.

This is the first participant outcomes analysis completed for DPP-O, and it is recommended that outcomes analyses following similar protocols should be completed in the coming years. Future analyses would provide additional clarification on DPP-O's effectiveness and would allow for larger sample sizes to accommodate a more in-depth analysis of types of offenses, severity of offenses, sentencing for new offenses, etc. post-discharge.

### **Discussion and Recommendations from James Sauer (LCSW, LMFT, CSAC, ICS) DPP-O Developer and Senior Substance Abuse Counselor**

I was hired as the Deferred Prosecution Opioid Counselor in 2013 through a Justice Assistance Grant (JAG), obtained by the Dane County District Attorney's Office, to design and

implement this track that serves opioid affected defendants. I inherited 12 defendants on day one, and quickly filled up the census, later establishing a waitlist. Under the supervision of the Program Director, I was the solo counselor for the majority of this study period. In hindsight, this was, and is, a rigorous undertaking that requires total vigilance of each person being served. Participants are required to attend a weekly meeting with a DPP-O Counselor, do an additional weekly random check-in, along with several other program requirements. In this way, staff are able to detect the slightest changes in behaviors, discussions, mannerisms, etc., and address those respectively. This has not been a position of ease, experiencing the daily pressure of closely tracking every participant. It requires responding to things as quickly as possible. However, it is also the way to track the day-by-day integration of new behaviors that solidify, bridging to newer and more powerful rituals of healthy living, gradually becoming stronger than the rituals of using and addictive behaviors. This happens over time. This is respectfully addressing a chronic condition with parallel response. Though there are acute episodes which are addressed along the way, the total treatment is for healing to occur within this chronic condition. The structure that was developed has intended to address the many layers that contribute to opioid use disorder, and offer a pathway to sustained sober living, returning each participant to their own personal life goals which were long abandoned.

A second counselor was hired in late 2017 with a Treatment Alternatives and Diversion (TAD) grant. This allowed for the sharing of various responsibilities and tasks, as well as establishing separate caseloads. A second staff does not only add a “body” for caseload. This new person adds the unique talents and qualities of that individual that are brought to the table, creating an expansion of possibilities of population served, changes or amendments in protocols, and further development of the integrity of the program. This has certainly been the case with our current second counselor. She brought a solid treatment background, extensive knowledge of opioid affected individuals, and a creative flair in the development of things. One of the largest undertakings in our two counselor system has been changing the program protocols starting in March 2020, with the advent of the global pandemic. New and creative measures needed to be instituted with the client population which included sustained virtual formats, altered check-ins, testing being contracted externally, and increased electronic methods to complete many tasks. The addition of the second counselor made this much more doable while working closely together to accomplish the best possible program.

The program’s full operation over several years has shown us some things that are positive, as the above analysis demonstrates with relatively good outcomes. However, we have also identified some areas that, in our opinion, need to be worked on and improved. These areas relate to the community at large and the relationships of participants of that community. Listed below are some of those things.

- Because we are dealing with individuals with substance use disorders, and therefore the potential for associated using behaviors, individuals can and do interface with the jail system. Some of them are on an opioid replacement medication, or need to be, and the jail system lacks the ability to continue agonist medications, or start one. Dane County has needed to participate in a coordinated medication replacement system, not limited to Vivitrol, with community outpatient providers. This has been done in several other states for many years.

- Individuals who are prescribed Methadone, one of the medication replacements, are limited in getting into residential care. Residential programs do not have methods to incorporate the needed dosing protocol which occurs outside of their facilities. They have limited staff positions to be transporting clients daily to dosing facilities. That is not their fault. There is not a county systems-wide plan for this. Recently, one residential facility has developed a protocol with a specific dosing clinic for this to occur. More programs need to follow with a wider acceptance of supporting this medication with provisions for sustained dosing. This addition, just like with jails above, needs to have broader community coordination and regulation.
- Our treatment resources and been overwhelmed in the past, and with the pandemic, counselors and therapists are stretched very thin, and are working well and beyond their capacities. This has created waitlists and postponements of appointments and care, and has also affected providers leaving, which has caused even more client disruption. Though there may be federal dollars being pumped into the system, resources have not expanded to the dimension really needed.
- The Medicaid system in Wisconsin, Badger Care, has provided medication replacement treatment for thousands of individuals. For most, this has been a lifesaver, and that is to the credit of this huge system. However, consistent client treatment can be in jeopardy when individuals in early recovery return to a level of work which they are capable of. Suddenly, they are forced to choose losing their Medicaid due to making too much money in a month vs. stopping their medication or paying out-of-pocket in order to work at their full capacity. The needed change would require an alteration of rules and limits, and perhaps a system based on a gradation type scale where certain criteria dictated ceiling amounts over time.
- The District Attorney's Office has been working long and hard with providing both Pre-charge and Post-charge opioid related referrals to this program. They are traditionally understaffed and overworked, having to manage caseloads that are off the charts. Then, add to this, the number of serious and violent related crimes have increased dramatically, requiring staff to focus their efforts in keeping the public safe. Additional staff could ease their system somewhat, perhaps creating an even faster trail of referrals to our program. We can only hope that their selfless efforts continue in the months and years ahead.
- Though our program has recently been afforded modest amounts for participant incentives, and we are eternally grateful for such, it would benefit greatly to have access to limited term monies to pay for initial entry fees and costs in sober living environments. Many participants could benefit from leaving a using environment and having several months in a safe and sober place. All too often, it can be the desired goal, but with limited or lack of work income, it is more often not feasible.

These are examples of problem areas with potential for change. This program will continue to promote healing and healthy living for all participants. This program represents life improvement, reflected in the various disciplines of criminal justice, public and private health and wellness, and community relations and coordination.