Overwhelmed by the opioid epidemic, some prosecutors offer defendants a contract that forces them into recovery with no criminal record; Mr. Popovitch's struggle

By Jennifer Levitz and Scott Calvert

RUTLAND, Vt.—Stocking shelves in a local store, Todd Popovitch felt his skin flush hot with worry.

After years of using heroin, sometimes laced with the painkiller fentanyl, he had stayed clean for the summer, landing a job making $10 an hour. But by late September, his work had grown stressful. He and his girlfriend split, forcing him to find a new place to live.

He sought help not from family or friends, but from the state's top law-enforcement agency, which is pioneering a novel program seeking a way out of the country's drug crisis.

"I'm barely holding sh— together," he wrote in a Sept. 26 text to Ellen Wicklum, a liaison to the Vermont Attorney General's office.

"Don't use," she wrote back.

A new program in Vermont is steering low-level lawbreakers with drug addictions such as Todd Popovitch into treatment and other services instead of prison. Video/Photo: Robert Libetti/The Wall Street Journal. Warning: Strong Language

Ms. Wicklum and her colleagues are taking a chance on Mr. Popovitch, a 35-year-old former standout high-school basketball player and drug user for 15 years. In May, he was arrested twice in eight days for alleged heroin possession. If convicted, he could have faced up to two years in prison.

Instead, state officials decided to enroll him in a program that steers low-level lawbreakers with drug addictions into treatment and other services, bypassing incarceration and using the threat of prosecution as leverage. Operating entirely outside of a courtroom, prosecutors in participating counties can allow people arrested for drug crimes to move on with no charges if they adhere to a contract.

Bearded and heavily tattooed, Mr. Popovitch now faces a daily struggle over whether the program's ultimate payoff—a clean record and no jail, probation or work crew—is enough to motivate him to stay off heroin and fentanyl. For now, he is winning.

"I've been beat down and owned by it for so long," he says. "I'm not going to be owned by it anymore."

This idea is one of many local initiatives that have popped up all over the country to tackle the scourge of opioids, from Albany, N.Y., to Santa Fe, N.M.

"This is a big kind of newish idea," says Marc Fishman, a Johns Hopkins University School of Medicine faculty member who helped start such a program this year in Montgomery County, Md., adding, "We like the early signals."

In 2015, University of Washington researchers found participants in Seattle's Law Enforcement Assisted Diversion program were 58% less likely to be re-arrested than individuals in a control group.

Of 650 people referred to treatment in Jefferson County, Ky., soon after pleading guilty to misdemeanors, 142 picked up new charges, mostly drug offenses, through October. Still, Louisville prosecutor John Balenovich considers the 17-month-old "rocket docket" program a success, because in his experience "like 99%" of heroin addicts generally reoffend because of their addiction. "Right now we're losing, and we're losing bad," he said.

A street scene in West Rutland, Vt., Todd Popovitch's hometown. *PHOTO: TRISTAN SPINSKI FOR THE WALL STREET JOURNAL*

Vermont drew national attention in 2014 when Gov. Peter Shumlin devoted his annual address to the opioid scourge striking "every corner" of a state better known for its rural charm and fall foliage. State lawmakers that year passed legislation authorizing state prosecutors in each county to design a novel program to send repeat low-risk offenders with substance-abuse or mental-health problems into treatment, using the possibility of prosecution as leverage. The state appropriated $760,000 in 2015 for these and related initiatives.

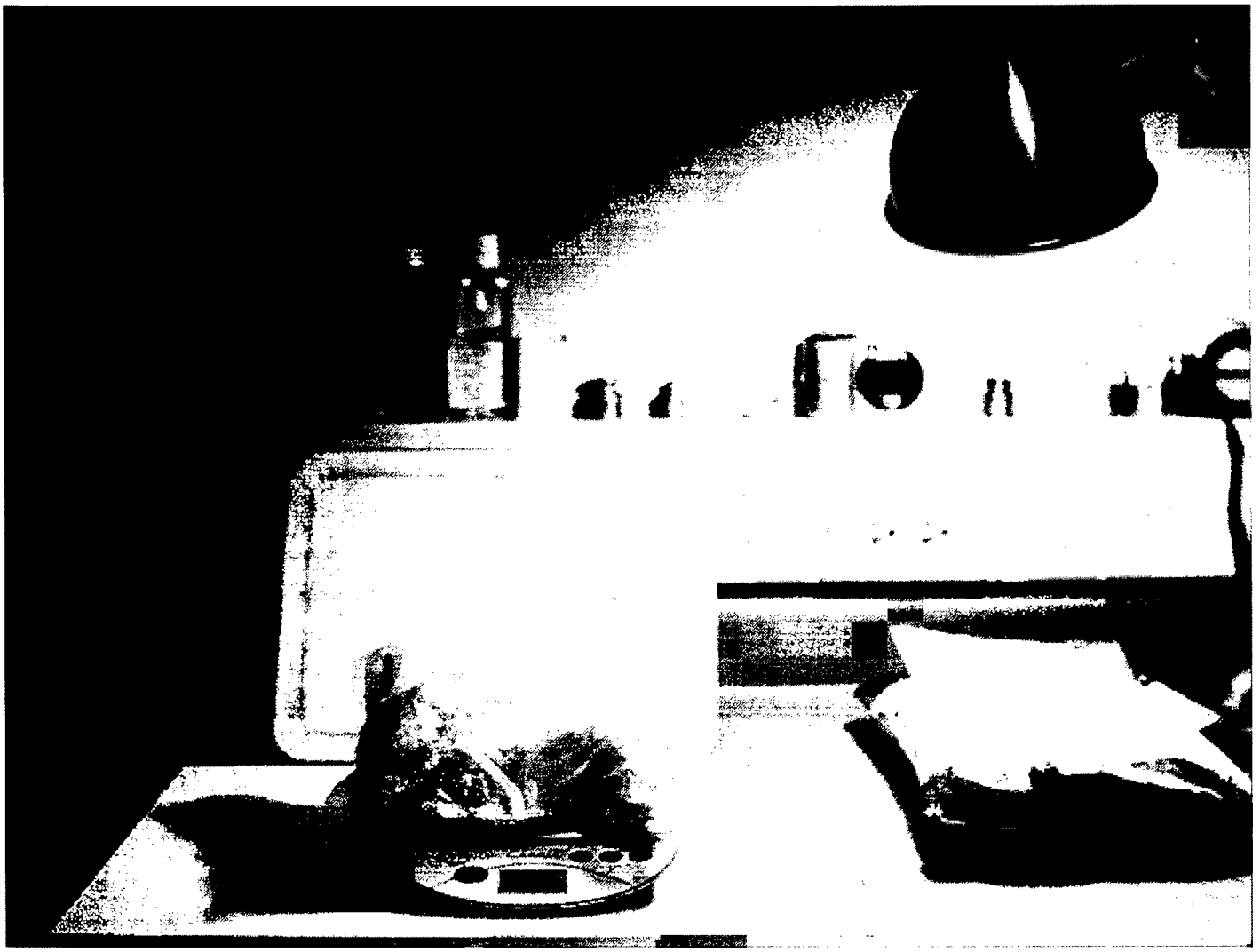
Some police and prosecutors don't like what they consider to be a soft-on-crime approach. "For us to just turn the cheek and say, 'Ok, now you have a clean slate,' I don't think that's right," said Ludlow Police Chief Jeffrey Billings, whose department arrested Mr. Popovitch. The chief said he wasn't "as forgiving as some people" when it came to drug users.

Similar programs have also drawn criticism from some African-American leaders, who believe public officials now frame the opioid epidemic as a public health crisis—rather than a criminal issue—because most opioid abusers are white.

During the crack cocaine epidemic in the mid-1980s to early 1990s, when the public's image of the user was a young black man, the response was "harshly punitive, with virtually nothing else," said Marc Mauer, the executive director of The Sentencing Project, a national nonprofit organization that advocates for criminal-justice change.

The Opioid Crisis

Continuing coverage of how synthetic painkillers became a global menace



- Hooked: One Family's Ordeal With Fentanyl
- The Chinese Connection Fueling America's Fentanyl Crisis
- For Small-Town Cops, Opioid Scourge Hits Close to Home
- The Pill Makers Next Door: How America's Opioid Crisis Is Spreading
- Tramadol: The Opioid Crisis for the Rest of the World
- This Is U-47700, Once a Lab Experiment, Now a Killer Opioid
- Fentanyl Billionaire Comes Under Fire as Death Toll Mounts From Prescription Opioids
- The Children of the Opioid Crisis
- Vermont's Radical Experiment to Break the Addiction Cycle
- The VA Hooked Veterans on Opioids, Then Failed Them Again

Participants such as Mr. Popovitch sign deferred prosecution agreements, known as "pre-charge contracts," and strive to abide by the terms over a specified time. The specter of prosecution isn't necessarily as strong as the pull of a longtime habit.

"I was going to stay clean. I had that mindset," said Robert Fitzgerald, who had gone from using opioid painkillers to heroin, often cut with fentanyl, to rehab as part of a precharge contract in Lamoille County, Vt., on a misdemeanor drug offense. After completing the contract in late March, the 26-year-old had no criminal record for the incident.

Then he went back to the "same environment," he said. He slipped and was arrested for alleged heroin trafficking in Massachusetts on May 16. He has pleaded not guilty to that charge.

"I thought it was going to be easier than it was," said Mr. Fitzgerald, who has a crew-cut and wore an orange uniform in an interview in late October near Springfield, Mass., at the Hampden County jail, where he is being held.

Mr. Popovitch once had different plans, too. The 1998 West Rutland High School yearbook lists Mr. Popovitch as the leading scorer for boys' varsity basketball, and into his adulthood he still had that athletic swagger. He captained two sports teams, and liked snowboarding, pizza, Mountain Dew and Chevrolet Blazers, said the school yearbook the next year, when Mr. Popovitch was a senior.

The yearbook listed his "future plans: To go to college and be successful."

But hints of pain show through. When Mr. Popovitch was 14 years old, he arrived home late from school and heard the screech of tires and his sister scream from the street. A car had struck and killed his mother. She had been waiting with his sister, then 8, for Todd to arrive so they could all go on an errand. He blamed himself, believing if he hadn't been tardy, his mother and sister wouldn't have taken that stroll.

Todd Popovitch carries a photo of his late mother during a visit to her grave outside of West Rutland.
PHOTOS: TRISTAN SPINSKI FOR THE WALL STREET JOURNAL

"It was the worst thing that ever happened" to the family, said Laurie Serrani, an aunt who later moved the siblings from the home they shared with their stepfather to her house in West Rutland.

In April his sister, by then 28, died of an apparent heroin overdose. "The burden she carried from the absence of her mother ultimately led her down the path of addiction," said her obituary in the Rutland Herald.

Grieving, he relapsed after just weeks clean. Unemployed and without his own place to live, he resumed dealing to get by, feed his habit and avoid becoming "sick" from withdrawal. "When you're sick, all you feel is how do I get it? Who do I have to hurt? What do I have to rob, steal, sell?" he said.

At 12:30 a.m. on May 11, Mr. Popovitch was on his way to Connecticut to buy a "bunch of drugs" when he stopped to use the bathroom at a convenience store in Ludlow, a historic town at the foot of the Green Mountains. A clerk thought he was using drugs in the market and called police. He denies that but said he "definitely did stuff like that. I would shoot up while driving."

Police stopped his 2010 Nissan minutes later on Route 103. They spotted a bag of heroin, and a needle and spoon inside a bandanna, the police report said. They arrested him on misdemeanor possession. Police also found between 100 and 150 empty baggies—the type used to package heroin—in the car.

Nine days later, at 1 a.m., Mr. Popovitch was returning from buying drugs in Connecticut when a Vermont police car pulled up behind him on the same road. His passenger nervously began hiding bags of heroin on himself, he said.

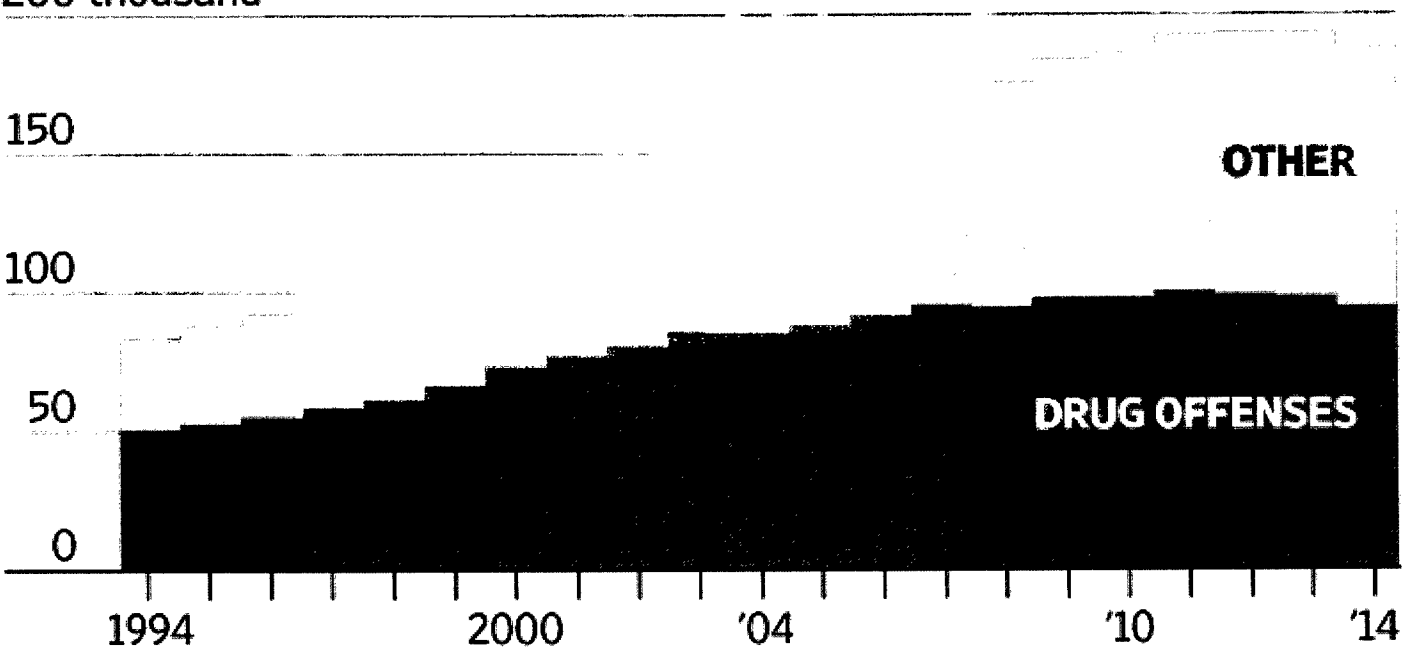
His car had crossed the right white line several times, and an officer thought he was high, according to the police report. He appeared "overly excited," wrote the officer who stopped him. He claimed he was returning from the Basketball Hall of Fame in Massachusetts before he looked down, "let out a sigh and then admitted to not going," police wrote. He also alluded to needing help for drug use, the report said.

Police arrested him for possession of one bag of heroin in his car, while arresting his passenger for 73 bags. Possible punishment ranged from probation to one year in prison for each offense if convicted.

Softer Justice

The number of federal prisoners sentenced to more than one year for drug offenses is declining, and they are taking up a smaller share of the inmate population.

Prisoners in federal custody, by most serious offense



Source: Bureau of Justice Statistics, Federal Justice Statistics Program

THE WALL STREET JOURNAL.

Reviewing the cases in his office in a circa 1890 building in White River Junction, Vt., Windsor County State's Attorney David Cahill could have thrown the book at him, by testing the empty baggies from the first stop for drugs to try to increase the charges.

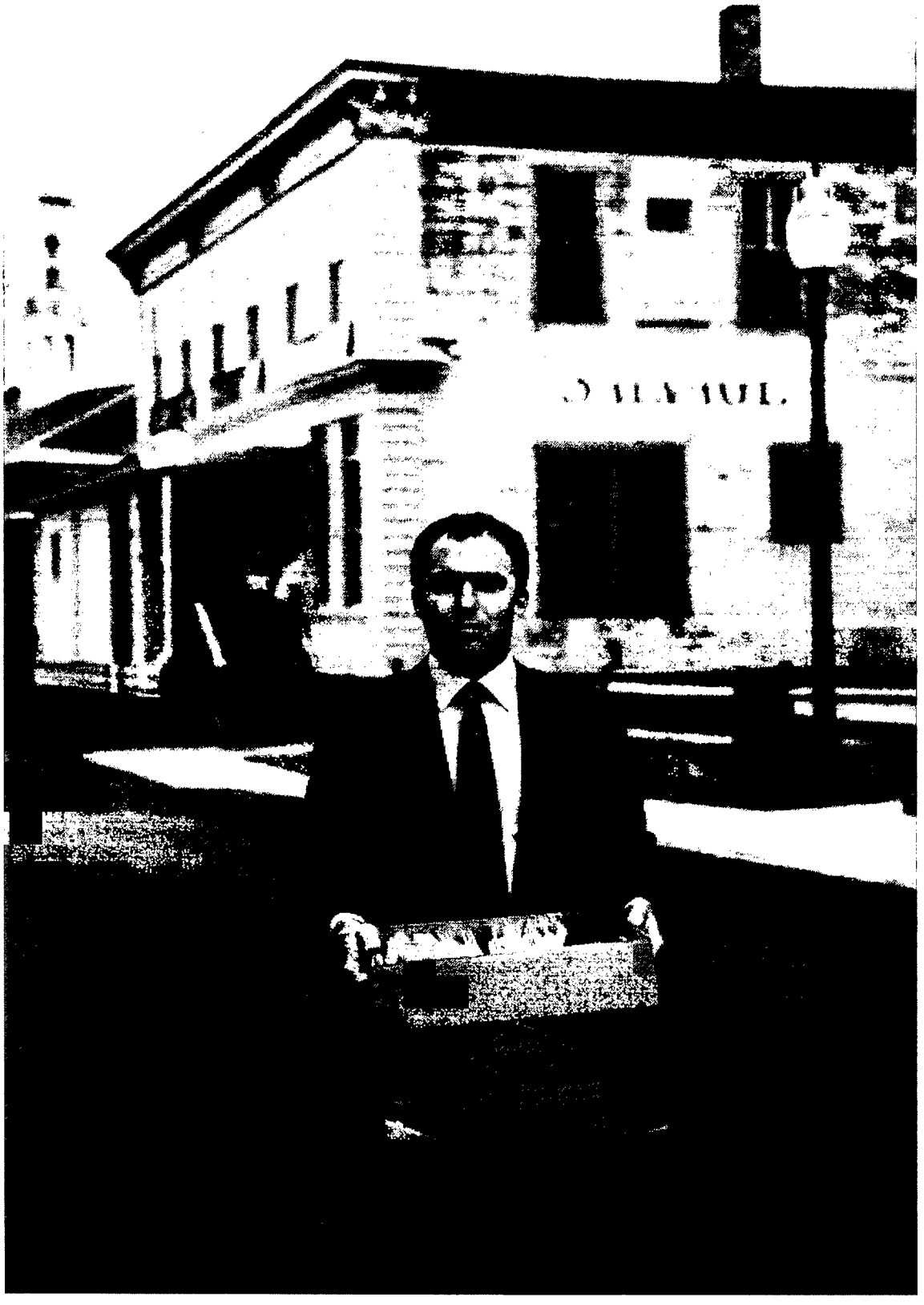
But Mr. Cahill, who is 37, says Mr. Popovitch struck him as being in a desperate place, someone in the throes of a full-blown opiate addiction. He reminded Mr. Cahill of some of the "tough nuts to crack" who cycled through his court. Many violated probation, and in jail, grew more depressed or still found drugs. They returned to "do it all over again," Mr. Cahill said, because of unaddressed underlying addictions or mental illness.

Convinced the old weapons in the war on drugs were failing, Mr. Cahill, a former director of a state agency overseeing Vermont state's attorneys and a Dartmouth College graduate, had looked into alternative strategies, including at a 2015 bipartisan criminal-justice summit whose sponsors included Koch Industries Inc.

"What I saw here and what I sometimes still see here is a socioeconomic divide where the quality of justice you receive depends on whether your parents can afford a good lawyer," Mr. Cahill says.

Some state's attorneys had balked at joining the precharge program, with concerns ranging from access to treatment in rural areas to public safety. "Do you make a mistake and put a guy in the street who might commit more harm?" said John Campbell, executive director of the Vermont Department of State's Attorneys and Sheriffs.

Mr. Cahill believed tackling the underlying addiction could be the best form of public safety. He began Windsor County's precharge program in May, and offered Mr. Popovitch the chance to qualify for a contract.



Ellen Wicklum oversees Todd Popovitch's compliance with treatment, while prosecutor David Cahill c rafted the contract that could keep him out of prison. Both work out of White River Junction, Vt. *PHOTOS: TRISTAN SPINSKI FOR THE WALL STREET JOURNAL*

If Mr. Popovitch successfully stabilized his life by Feb. 23, 2017, completing the contract, he would permanently avoid the charges. The contract would appear nowhere on his record or in the public sphere.

"I was blown away," Mr. Popovitch recalled. He knew that the collateral damage of a criminal record includes difficulty getting a job, scholarship or loan. "I was like, 'This is an opportunity to save the rest of my life.' "

To qualify, Mr. Popovitch, who was already pursuing addiction treatment again, underwent interviews with Ms. Wicklum, a 54-year-old social services staffer, who assists high-needs people at a state court in Windsor County. Soft-spoken and intense, she requires her 37 program participants to contact her weekly but invites them to call more often.

Each contract she oversees is unique. In two cases, Mr. Cahill directed participants to avoid a local motel known for drug activity. In another case, a heroin addict arrested for fraud had to send her $100 every payday, for restitution to his victim.

While participants aren't kicked out for a slip-up, they can be if they resume a pattern of drug using. One young mother facing possible charges of heroin possession—she was set to graduate in January—relapsed in October. "She has been battling for years," Ms. Wicklum said. But another young woman was set to graduate around Christmas, making her the first participant involved in an opioid-related case in the county program to do so. She made a "pretty remarkable transformation," Ms. Wicklum said.

Mr. Popovitch's contract required work. The idea was to keep him busy, give him a stake in the community and rebuild his self-esteem. He initially began landscaping, though he worried the unpredictable schedule could leave him dangerously unoccupied and vulnerable to his own worst impulses.

He also needed stable housing. After living with his grandmother, he moved out on his own in July to a "sober house" that supposedly prohibited drug use, only to find that his roommates smoked crack and offered to share. While there, temptation and a bad day—he doesn't remember why—drove him to text a heroin dealer one night. He was in his car before he snapped out of it.

The next call he made was to a mentor from his 12-step program. "I was just about to drive to the dope man's house," he told the mentor.

The dealer soon began sending text messages, asking Mr. Popovitch where he was. He deleted the numbers of dealers from his phone. He crashed on friends' couches to avoid going back to the house.

Still, drugs were everywhere. Tucked into the mountains, near renowned ski slopes, the small blue-collar city of Rutland was known by 2014 as "a place that somebody could go to buy and sell drugs, heroin in particular," said Commander Scott Tucker, of the Rutland City Police Department.

In August, Mr. Popovitch moved in with his girlfriend, and applied for a job at the Dollar General store, asking for as many hours as possible.

Manager Kelly Raiche knew him well. During her drug-dealing days a decade ago, she says she sold opioid pills to him and he and her husband got high together. The couple had left that lifestyle behind and had drifted apart from Mr. Popovitch because of his escalating drug habit. She recalled him as a good guy and a "pretty boy" with dark piercing eyes who always dressed well and smelled nice.

A marble quarry, once the economic foundation of West Rutland, is filled with water. *PHOTO: TRISTAN SPINSKI FOR THE WALL STREET JOURNAL*

Ms. Raiche didn't hold his past against him, but he needed to pass a drug test, something that foiled many job applicants. He passed, and she hired him.

His contract required him to stay in treatment. Ms. Wicklum was allowed to monitor his progress and get updates on results of his regular urine tests.

In late September, Mr. Popovitch had another close call. While defending his girlfriend, he said, he hit her younger stepbrother, a minor who was staying at the same house. Police didn't get involved—he believed he could explain the situation if they had—but he knew a criminal offense could get him kicked out of the program.

After the breakup that followed, he suddenly needed to move, and a temporary staffing snafu at the store had him extra busy at work.

"Way too much on my plate lately," he wrote in a Sept. 26 text to Ms. Wicklum.

Seated in her plant-filled office near the court in Windsor County, she could tell he was in pain. For an addict, recovery is tougher than jail, she said. After she warned him not to return to drugs, he responded: "Trust me. I don't plan on it," and said he would head to a 12-step meeting very soon.

Mr. Popovitch hid his turmoil from some relatives. He hadn't told his grandmother about what he considers his worst act: He stole $1,000 from her last winter and convinced her she lost it.

Yet, he slowly rebuilt trust with Ms. Serrani, his aunt. She no longer dreaded his calls. Now, he actually called to ask how her day had gone. That month, she rented him a $375-per month efficiency apartment she owns, a leap of faith.

"I want to believe in you," she cautiously told him.

In October, Ms. Raiche promoted Mr. Popovitch to full-time at the store. He worked "circles around the young kids" on staff, she said.

On a cigarette break one Saturday later that month, Mr. Popovitch spotted a drug deal outside. He rushed back inside the store.

"I can't deal with what's going on out there!" he told Ms. Raiche, upset at having himself or his customers exposed to drug pushers and users.

He urged her to call the police.

Last month, Mr. Popovitch began interviewing for a new job, at a local car dealership, that he thought could offer him more of a career path. His outgoing personality had prompted family members to urge him in the past to get into selling cars, but he had never been able to break into the field. "I don't know if they could smell the junkie on me or what," he said.

This time, he was landing interviews and in late November and early December, excitedly began posting about his progress on Facebook and saying he wasn't getting enough hours at his current job. Ms. Raiche saw the posts and expressed her displeasure on Facebook.

"I gave him a job when he needed it and now he's complaining about it," she wrote in a post.

Ms. Raiche fired him, but said it was related to his job performance, not the Facebook fracas. Mr. Popovitch believed he was let go because he "ruffled some feathers" by pursuing another job.

By mid-December, Mr. Popovitch was one week into unemployment, feeling a bit anxious and still hoping to land a job selling cars. Ms. Wicklum was helping him to get his paperwork together for the background check.

His family relationships only grew stronger with his sobriety. He stayed busy by focusing on them, including trying to rebuild his bond with a cousin with whom he had grown up in the same house. "Our relationship had been strained, because of me, pretty much," he said.

On Dec. 15, Mr. Popovitch posted on Facebook a bit of perspective circulated by recovering addicts online: "Ain't locked up. Ain't dope sick. Ain't hungover. It's a pretty good day. Can I get an Amen?"

"Very thankful to have a new version of the old you," his cousin wrote. "It's been too long, brother."

"Amen," Mr. Popovitch replied. "Happy to be back."

—Robert Libetti contributed to this article.

TOP

Vermont's Radical Experiment to Break the Addiction Cycle

By
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Updated Dec. 23, 2016 11:41 a.m. ET