



Bureau of Justice Assistance (BJA)

Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP)

Screening and Assessment for Substance Use Disorders

April 2022

Judicial Brief

This brief is designed to inform judges and court officials about screening and assessment for substance use disorders (SUDs) among individuals appearing in criminal courts, as well as how judges and court officials can help incorporate these tools into court processes.

Readily available screening and assessment tools for detecting SUDs can support the diversion of individuals from the overburdened criminal justice system into treatment, enable alternatives, and inform critical decisions about immediate medical needs, release planning, and community supervision. Put simply, screening and assessment provide information that can help save and rebuild lives, reduce recidivism, and promote public safety.

The Need

Two-thirds of individuals in local jails who are sentenced have an SUD, and three-quarters of the same population reported regular use of drugs.¹ In a 2018 study, most of the individuals who used heroin in the past year and more than half with prescription opioid use disorder reported contact with the criminal justice system—compared to only 16 percent of those who did not use opioids in the past year (figure 1).²

In Action: Screening and assessment are critical for identifying individuals who might benefit from SUD treatment as an alternative to conviction and incarceration. For example, Ohio's application for Intervention in Lieu of Conviction provides a path for individuals with SUDs to access treatment rather than be incarcerated, with an opportunity for their conviction to be vacated.

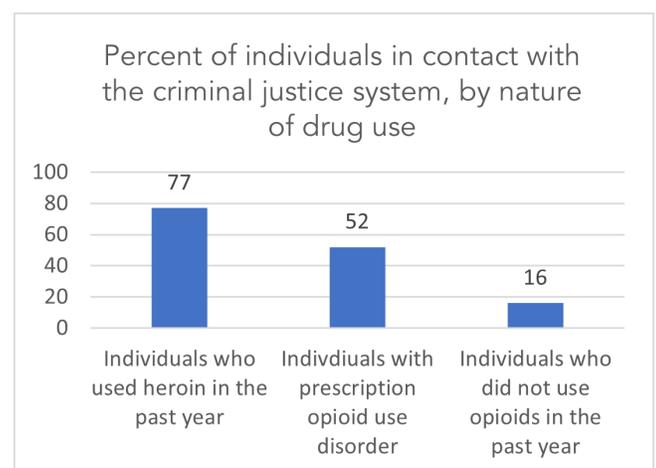


Figure 1

These numbers reveal an opportunity to engage people who may need SUD treatment, as identified through screening and assessment processes:

- ◀ **Screening** is a “brief, routine process designed to identify indicators . . . for the presence of mental health, substance use, or other issues that reflect an individual’s need for treatment and for alternative types of supervision or placement in housing or institutional settings.”³
- ◀ **Assessment** “provides a comprehensive examination of psychosocial needs and problems, including the severity of mental and substance use disorders, conditions associated with the occurrence and maintenance of these disorders, problems affecting treatment, individual motivation for treatment, and areas for treatment interventions.”⁴

Evidence-based screening and assessment tools are validated for the specific community with which they are being used, meaning the tools are field-tested and demonstrate accuracy. In some jurisdictions, specific instruments may be legislatively mandated or required by a funding agency.

Staff members are specifically trained on the respective tools to administer screening, while clinicians administer assessment. Proper administration includes explaining to the individual being screened the tool’s purpose, how results will be used, and privacy and confidentiality precautions. Sharing this same information with judges and court officials will foster common expectations.

Screening and Assessment in Criminal Justice

Evidence supports a multisystemic, cross-disciplinary approach to addressing SUDs among people involved in the criminal justice system.⁵ The earlier SUD is identified, the sooner individuals can be linked to treatment and services, possibly diverting them from entering the criminal justice

In Action: The Erie County Probation Department in New York includes findings from the Texas Christian University Drug Screen 5 (TCU V) in presentence investigation (PSI) reports for the court to consider during sentencing. Individuals on probation complete the free, self-administered tool after being assured that the information will not be used against them. Officers writing the PSI reports use the following template designed by Probation Officer Anita Robillard:

“On [date], a Texas Christian University Drug Screen 5 (TCU V) was completed by [defendant’s name]. The TCU V is a self-administered drug screen that serves to identify individuals with a history of heavy drug use or dependency. It is a useful and widely used tool in criminal justice settings for identifying offenders eligible for treatment services. The defendant scored a [number score], indicating a possible [no/mild/moderate/severe] substance use disorder based on the Diagnostic and Statistical Manual of Mental Disorders (DSM) and the National Institute of Mental Health (NIMH) Diagnostic Interview Schedule. The screening indicates a potential substance use issue regarding [drug].”

system and reducing their risk of adverse health outcomes—including death. SUD screening and assessment play roles throughout the justice process, as described below.

Detention and Court Hearings

Combining data from SUD screening and assessment tools with other pieces of information contributes to a more complete understanding of individuals undergoing a pretrial bail determination, bond review, or PSI.

Judges can champion the value of screening and assessment by acknowledging in the courtroom the connection between a referral or order and the client's outcomes. Public defenders may be more willing to share sensitive health-related information with judicial officials if they know that referrals to services or orders for pretrial release to treatment programs will benefit those they represent.

It is important that judicial orders be broad enough to allow trained clinicians to recommend the best course of clinical treatment for the individual. Mismatches between clinical needs and placement in treatment can have profound effects on an individual's recovery (e.g., ability to maintain employment, pay rent, complete education), as well as on the community's treatment capacity.

Due process is of primary concern when bringing screening and assessment information into court. How this information can and cannot be used must be clearly communicated to all parties. **Judges may consider requiring written agreements with prosecutors that clarify acceptable/unacceptable uses of information gleaned during screening and assessment.** For example, stipulations might prohibit new charges against an individual based on the information and prohibit the use of the defendants' statements made during screening or assessment in the trial.

Due to the sensitive nature of substance use, formal mechanisms (e.g., written agreements) are recommended to ensure the appropriate sharing of screening and assessment information among judges, court officials, community-based providers, and other associated parties. The Health Insurance Portability and Accountability Act (HIPAA) and the Confidentiality of Substance Use Disorder Patient Records

regulations (42 CFR Part 2) of the Public Health Service Act allow for limited, safe sharing of a person's protected health information.

Reentry and Community Corrections

Information collected from screening and assessment should be considered throughout an individual's time in the justice system and beyond. A coordinated information-sharing strategy will facilitate the transfer of screening and assessment findings from presentencing investigations to receiving facilities and to discharge planners. Sharing information can facilitate immediate connection to services in correctional facilities, reentry agencies, community corrections agencies, treatment providers, and other organizations, such as recovery housing. (Depending on the time elapsed and changes in circumstances, reassessments may be indicated.) Moreover, if individuals reappear before the court on technical violations or other offenses connected to SUDs or return to substance use, **insights from previous screening and assessment results can inform judges in their decision-making process.**

Resources

- ◀ For training and technical assistance (TTA) on screening and assessment in criminal justice settings, complete a TTA request form on BJA's COSSAP Resource Center at <https://www.cossapresources.org/Program/TTA/Request>.
- ◀ [Screening and Assessment of Co-Occurring Disorders in the Justice System](#), from the Substance Abuse and Mental Health Services Administration (SAMHSA)
- ◀ [Screening and Assessment Tools Chart](#), from the National Institute on Drug Abuse
- ◀ Information Sharing
 - [HIPAA for Professionals](#), from the U.S. Department of Health and Human Services (HHS)
 - [Frequently Asked Questions: When Does the Privacy Rule Allow Covered Entities to Disclose Protected Health Information to Law Enforcement Officials?](#) from HHS

- Substance Abuse Confidentiality Regulations, from SAMHSA
- Fact Sheet: SAMHSA 42 CFR Part 2 Revised Rule, from SAMHSA

Endnotes

1 Bonson, Jennifer, Jessica Stroop, Stephanie Zimmer, and Marcus Berzofsky, Revised 2020, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007–2009*, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, NCJ 250546, retrieved June 25, 2021 from <https://www.bjs.gov/content/pub/pdf/dudaspi0709.pdf>.

2 Winkelman, Tyler, Virginia Chang, and Ingrid Binswanger, 2018, "Health, Polysubstance Use, and Criminal Justice Involvement Among Adults With Varying Levels of Opioid Use," *JAMA Network Open* 1(3): e180558, retrieved June 25, 2021 from <https://doi.org/10.1001/jamanetworkopen.2018.0558>.

3 Substance Abuse and Mental Health Services Administration, 2019, *Screening and Assessment of Co-Occurring Disorders in the Justice System*, Rockville, MD: Substance Abuse and Mental Health Services Administration: 20-21, HHS Publication No. PEP19-SCREEN-CODJS, retrieved June 25, 2021 from <https://store.samhsa.gov/product/Screening-and-Assessment-of-Co-Occurring-Disorders-in-the-Justice-System/PEP19-SCREEN-CODJS>.

4 Ibid.

5 Sdrulla, Andrei, and Grace Chen, 2015, "The Multidisciplinary Approach to the Management of Substance Abuse" in Alan David Kaye, Nalini Vadivelu, and Richard Urman (eds.), *Substance Abuse*, Springer, New York, NY: Springer, retrieved June 25, 2021 from https://doi.org/10.1007/978-1-4939-1951-2_16.

Visit the COSSAP Resource Center at www.cossapresources.org.

About BJA

BJA provides leadership and services in grant administration and criminal justice policy development to support local, state, and tribal law enforcement in achieving safer communities. To learn more about BJA, visit www.bja.gov and follow us on Facebook (www.facebook.com/DOJBJA) and Twitter (@DOJBJA). BJA is part of the U.S. Department of Justice's Office of Justice Programs.

This project was supported by Grant No. 2019-AR-BX-K061 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.