

How can healthcare providers advocate for their patients with Substance Use Disorders who are involved in the criminal justice system?

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Why should healthcare providers (HCP) care about this issue?

Providers may not always know how many of their patients with substance use disorders (SUD) are, or have been, involved with the criminal justice system. While data sources vary on the actual numbers, instance of substance use disorders among people who intersect with the justice system is significant, especially among those who are incarcerated.

While available limited data show that 8.5 percent¹ of the general public aged 18 and over has a substance use disorder, 58% of those incarcerated in prisons and 68% of those in jails have a SUD.² Prevalence data for persons incarcerated in county jails with a SUD is limited since the transient nature of this population makes it difficult to measure the instance of this and other healthcare conditions at the population level. However, most estimates in the literature and from HMA's experience in jails around the country is that at least 70% (and up to 90%) of jail detainees have a diagnosable SUD and another 10% were under the influence of drugs or alcohol when the offense was committed.

America's "war on drugs" has contributed to the number of individuals with SUD who end up in the criminal justice system. From 1980 to 2016, the number of individuals incarcerated for drug offenses increased from nearly 41,000 to more than 450,000—more than a tenfold increase.³ Individuals with less socio-economic resources⁴ or individuals of color with SUD or more likely to enter the criminal justice system than white and/or more affluent counterparts⁵.

Providers' ethical and clinical commitment to assuring their patients receive needed care for diagnosed health conditions extends to supporting continuation of care for people with SUD entering or returning from incarceration and otherwise involved in the justice system.

¹ https://www.samhsa.gov/data/sites/default/files/report_2790/ShortReport-2790.html

² <https://store.samhsa.gov/sites/default/files/d7/priv/sma16-4998.pdf>

³ <https://www.aafp.org/about/policies/all/incarceration.html>

⁴ <https://www.prisonpolicy.org/reports/income.html>

⁵ <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>
https://www.prisonpolicy.org/research/race_and_ethnicity/

How can HCP help patients with SUD navigate the criminal justice system?

The first step for providers in assuring appropriate treatment for their patients is to screen routinely for SUD. The US Preventive Services Task Force endorses drug and alcohol screening with a Grade B recommendation. This standardized SUD screening approach by HCP should include routinely inquiring about the potential negative impacts on their SUD condition such as arrest or incarceration. Another risk factor for previously incarcerated individuals is higher rates of HIV, latent tuberculosis, syphilis, and hepatitis C so the U.S. Preventive Services Task Force (USPSTF) recommends screening for these conditions as well.

HCP can assist individuals who indicate that they are involved in the criminal justice system by encouraging them to comply with treatment and other court or community supervision recommendations, and by offering referral to needed legal resources. Where drug courts exist an individual's legal counsel can advocate for referral to this court. (*See below for additional information about drug courts.*) HCP can also familiarize themselves with any medical-legal partnership organizations that may be available to assist their patients. The National Center for Medical-Legal Partnership has a mapping function to locate these resources.⁶ Legal Aid is another option in many counties or communities to help patients be aware of legal resources and supports available to them.

A person's stability in the community and thus ability to engage meaningfully in SUD treatment and attain recovery can be significantly disrupted by outstanding warrants. Legal Aid and other publicly available legal support resources can assist with determination of and response to outstanding warrants. Publicly available county databases have this information and the person's attorney, or other legal assistance, can help with finding and responding to this information.

What can individuals with SUD expect for treatment while incarcerated?

Incarcerated persons are guaranteed a right to health care by the 1976 U.S. Supreme Court decision *Estelle v. Gamble* although the type and quality of health care services for incarcerated persons differs across federal, state, and local jurisdictions because of variations in policies, budgets, and staffing.⁷

All detainees receive an intake health screening upon entry to jail or prison facilities and usually a comprehensive health assessment if incarcerated for more than 14 days. The intake screening includes questions about the person's current medications and substance use, mental health status, urgent health needs and infections. While individuals with SUD may be reluctant to disclose information about current illegal drug use, disclosure supports connection to care in the jail for their condition including treatment for withdrawal, behavioral health support, and continuation or initiation of MAT treatment for OUD. If individuals are self-reporting to respond to a warrant or a sentence, they may be able to bring their own supply of medications with them that the jail can administer through their healthcare personnel. Individuals responding to a scheduled sentence can inquire with the jail if this is an option and make arrangements to bring their medication with them on intake. If a short incarceration is anticipated for individuals currently receiving MAT, transitioning to a long-acting injectable form of MAT may be useful prior to reporting at the jail.

⁶ <https://medical-legalpartnership.org/>

⁷ <https://www.aafp.org/afp/2018/1115/p577.html>

Incarcerated individuals with SUD should be encouraged to continue MAT in the jail setting if it is available. HCP should encourage patients to participate in any and all behavioral health or self-help groups. Advise patients that some substance use disorder therapy and/or support groups do not consider MAT to be “clean” and therefore to not disclose receipt of MAT to others until this has been determined. Patients also can be coached by their provider on how to manage this situation so that they do not have to “hide” their treatment but have the resources to cope with disapproval or judgment they may experience.

How can HCP assist in community re-entry?

Incarcerated individuals with SUD have a significantly higher risk of overdose upon release from jail or prison than the general population. Overdose is the leading cause of death upon leaving incarceration with women having significantly higher risk.⁸ People with OUD are at even higher risk of death due to overdose, ranging from 40-70% higher risk of overdose in the first two weeks after release from custody.⁹ Assuring continuity of care for persons being released from jail for uninterrupted continued MAT treatment is essential to avoid relapse, overdose, and other adverse outcomes. Drug courts have their own probate systems and will typically facilitate connection to treatment as part of the rehabilitation plan. Probation and parole staff in some communities proactively incorporate engagement in SUD treatment in their supervision plans. HCP should be aware that there is variability in the support by community supervision departments for MAT, with some considering this to be a violation, i.e., “replacing a drug with another drug” for which probationers or parolees can have their community status revoked. HCP are best able to advocate for their patients with SUD when they understand the current state of substance use services access in their community, including support, or lack thereof, for MAT among justice system stakeholders.

HCP play an important role in engaging and supporting patients to return for treatment upon release. HCP can create an open and non-judgmental clinical environment that encourages patients who may be ashamed of their incarceration to come back for care. HCP can work with the jail and SUD system of care in their community to promote distribution of Narcan upon release to all individuals with OUD. HCP who become aware that their patient must report for a sentence can consider prescribing Narcan prior to incarceration and communicating with their patient to engage family members in Narcan training. Narcan should be prescribed for patients with OUD as soon as possible after release from jail or prison.

⁸ Health Justice. 2020 Dec; 8: 18. Published online 2020 Jul 10. doi: 10.1186/s40352-020-00113-7
PMCID: PMC7349469; PMID: 32651887

⁹ Ranapurwala, S.I., Shanahan, M.E., et al. Opioid Overdose Mortality Among Former North Carolina Inmates: 2000–2015. *Am J Public Health*. 2018 September; 108(9): 1207–1213. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6085027/>

What resources exist to help individuals with SUD who become involved in the criminal justice system?

Some jurisdictions have implemented **drug courts**--specialized court docket programs that target criminal defendants and offenders, juvenile offenders, and parents with pending child welfare cases who have alcohol and other drug dependency problems.

Drug courts vary in target population, program design, and service resources but are generally based on a comprehensive model involving screening and risk assessment, treatment and rehabilitation services, and monitoring with sanctions and incentives.

Individuals whose cases are referred to drug courts have the right to continue treatment with their current HCP, including MAT-prescribers. The court may require additional oversight or drug-testing. Some HCP may want to transition care to other HCP in the community during the supervision period or HCP can work with the drug court to continue care that meets both the patient's needs and the requirements of the drug court. The National Association of Drug Court Professionals has published best practice standards for medications for addiction treatment for individuals served in Drug Court.¹⁰ Generally drug courts will specify the roles and responsibilities of the HCP which may include agreeing to work collaboratively with the treatment of the court team, share pertinent information as necessary to coordinate participant care, and respond in a timely manner to questions or concerns about the treatment plan. In communities where drug courts do not adhere to best practice standards for MAT, as specified by NADCP, HCP may offer education and advocacy to support movement toward best practice.

¹⁰ <https://www.ndci.org/standards/>
https://www.ndci.org/wp-content/uploads/2021/05/NADCP_MOUD_toolkit_Final.pdf