



SUBSTANCE USE TESTING & SUBSTANCE USE DISORDER TREATMENT

Reference Guide
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[Abstract](#)

This guide provides background information, a legal framework, and policy considerations for substance use testing and substance use disorder treatment in the federal criminal justice system.

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Introduction

Substance use disorders can be present in individuals involved in the criminal justice system. By themselves or in conjunction with other risk factors, substance use disorders can propel unlawful behavior. To mitigate unlawful behavior by someone with a substance use disorder, courts may impose conditions or sentencing alternatives that require an individual to participate in testing and treatment. Treatment services include detoxification, residential treatment, individual counseling, family counseling, group counseling, and medication. One or more of these services may be provided to a person who uses illegal drugs, abuses prescription drugs or alcohol, and/or suffers from a substance use disorder. These services provide a means to address an individual's alcohol or drug use, thereby changing the behavior, and they provide additional monitoring tools to help officers satisfy their duties of supervision.

This guide provides a legal framework for imposing substance use testing and substance use disorder treatment, information on the types of substance use testing and substance use disorder treatment services available, and policy considerations for substance use testing and substance use disorder treatment as a supervision tool in the federal criminal justice system.¹

History of Substance Use Disorder Treatment

In 1978, Congress enacted the Contract Services for Drug Dependent Federal Offenders Act, codified at [18 U.S.C. § 3672](#), which transferred the authority to contract for drug treatment services from the Attorney General to the Director of the Administrative Office of the U.S. Courts (AO). Just under a decade later, in 1987, the program became multidimensional when the AO was given authority to contract for persons with alcohol dependency. The program was renamed the Substance Abuse Treatment Program and later renamed the Substance Use Disorder Treatment Program.

Authority to Impose Substance Use Testing and Substance Use Disorder Treatment

Pretrial

The court has authority to issue an order of release or detention pending trial to a person charged with an offense. [18 U.S.C. §§ 3141, 3142](#).² If released, the person may be released on personal recognizance, upon execution of an unsecured appearance bond, or on a condition or combination of conditions set forth in [18 U.S.C. § 3142\(c\)](#). [18 U.S.C. § 3142\(a\)](#). Under [18 U.S.C. § 3142\(g\)](#), the judge must consider several factors in determining whether there are conditions of release that will reasonably assure the courtroom appearance of the person charged with an offense and the safety of any other person and the community. If the judge determines that the release with conditions is appropriate, the least restrictive condition or combination of

¹ This resource guide is for general information purposes only. It does not create any legal rights or set any precedent.

² The court is also authorized to order the release or detention of a material witness. [18 U.S.C. § 3144](#).

conditions that will reasonably assure the appearance of the person as required and the safety of any other person and the community must be ordered. 18 U.S.C. § 3142(c)(1)(b). Alcohol and substance use restrictions and undergoing drug or alcohol dependency treatment are two types of conditions that may be appropriate and authorized under §§ 3142(c)(1)(B)(ix) and (x), respectively. In addition, the court may impose any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community. 18 U.S.C. § 3142(c)(1)(B)(xiv).

Post-Conviction

Probation

As an alternative to imprisonment, an individual may be statutorily eligible for probation.³ A sentence to probation may include mandatory conditions and/or discretionary conditions. *See* 18 U.S.C. §§ 3563(a)-(b); *see also* Overview of Probation and Supervised Release Conditions, *available at* <https://www.uscourts.gov/services-forms/overview-probation-supervised-release-conditions>; U.S.S.G. § 5B1.3. Under 18 U.S.C. § 3563(a)(5), if the offense of conviction is a felony, a misdemeanor, or an infraction, the individual must refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. This condition, however, may be waived or suspended by the court if reliable sentencing information indicates that the individual is at a low risk of future substance abuse.

In addition, under 18 U.S.C. § 3563(b)(7), the court may impose a condition that restricts the use of alcohol or any use of a controlled substance without a prescription by a licensed medical practitioner. The court may also direct the individual to undergo treatment of drug or alcohol dependency. 18 U.S.C. § 3563(b)(9).

Prerelease

Under 18 U.S.C. § 3624(c), the Federal Bureau of Prisons (BOP) is authorized to release a prisoner during the final months of the term of imprisonment under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for reentry into the community. The United States Probation System, to the extent practicable, offers assistance to a prisoner

³ Under 18 U.S.C. § 3561(a), “A defendant who has been found guilty of an offense may be sentenced to a term of probation unless (1) the offense is a Class A or B felony and the defendant is an individual; (2) the offense is an offense for which probation has been expressly precluded; or (3) the defendant is sentenced to a term of imprisonment at the same time for the same or a different offense that is not a petty offense.” The statutorily authorized terms of probation are one to five years for a felony; not more than five years for a misdemeanor; and not more than one year for an infraction. 18 U.S.C. § 3561(c). In addition, under 18 U.S.C. § 3607, if an individual is found guilty of an offense described in section 404 of the Controlled Substance Act (21 U.S.C. § 844), has no prior convictions relating to controlled substances, and has not previously been the subject of disposition under 18 U.S.C. § 3607, the court may place the individual, with the person’s consent, on probation for up to one year. A term of probation under § 3607 may result in dismissal of the proceedings if the individual is compliant with the conditions of probation.

during this prerelease custody period, including aiding in the continuity of alcohol and drug use disorder services. [18 U.S.C. § 3624\(c\)\(3\)](#).

Supervised Release

A term of supervised release after imprisonment may be required by statute or may be imposed at the discretion of the court. [18 U.S.C. § 3583\(a\)](#). Under [18 U.S.C. § 3583\(d\)](#), a person subject to a term of supervised release must refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court). This condition may be waived or suspended by the court if reliable sentencing information indicates that the individual is at a low risk of future substance abuse. When considering any action against a person under supervision who fails a drug test, the court must consider whether the availability of appropriate substance use disorder treatment programs, or an individual's current or past participation in such programs, warrants an exception from mandatory revocation. [18 U.S.C. § 3583\(d\)](#).

In conjunction with the mandatory conditions of supervised release, the court is permitted to impose any of the discretionary conditions authorized under [18 U.S.C. § 3563\(b\)](#) for probation, including alcohol and/or substance use restrictions and a directive to undergo treatment for drug or alcohol dependency.

How Testing and Treatment Work

Testing

Substance use testing makes use of technology to detect ingestion of alcohol or illegal substances. Testing of the urine, sweat, or breath of an individual are examples of testing methods that are randomly administered to help monitor and detect drugs and/or alcohol use.⁴

Substance Use Testing

Urine Testing

There are two main types of urine testing for the use of illegal substances: (1) immunoassay, and (2) gas chromatography/mass spectrometry (GC/MS). Often, immunoassay testing is used as a first-level screening, with GC/MS being used to confirm a positive screen.⁵

⁴ For persons on post-conviction release pursuant to a conviction for a felony or offense described in [18 U.S.C. § 3563\(a\)\(4\)](#), the Director of the AO, under [18 U.S.C. § 3608](#) and in consultation with the Attorney General and Secretary of Health and Human Services, must, if funding is available, establish a program of drug testing of federal offenders on post-conviction release. The program must include standards and guidelines that the Director determines necessary to ensure the reliability and accuracy of the drug testing programs. The chief probation officer of the judicial district must arrange for the drug testing.

⁵ [18 U.S.C. § 3563\(e\)](#) and [18 U.S.C. § 3583\(d\)](#) require that a drug test confirmation for an initial positive test result be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or another test that the Director of the AO, after consultation with the Secretary of Health and Human Services, may determine to be of

Below are three examples of urine testing methodologies used by federal probation and pretrial services offices:

(1) Non-Instrumented Drug Test (NIDT) Devices

NIDTs are handheld immunoassay testing devices that are available in many forms, including cups, cassettes, slides, and dipsticks. NIDTs are used for the first level of urine screening. If a result is positive and contested by the person under supervision, the sample must be submitted to the national drug testing laboratory for GC/MS confirmation.

(2) On-Site Laboratories

On-site laboratories use instrumented immunoassay testing devices that are used for the first level of screening. If a result is positive and contested by the person under supervision, the sample must be submitted to the national drug testing laboratory for GC/MS confirmation.

(3) National Drug Testing Laboratory

The contracted national drug testing laboratory provides immunoassay, specimen validity testing, and GC/MS confirmation.

Sweat Patch Testing

The sweat patch is a device that detects the presence of drugs in perspiration.⁶ Although it does not produce the immediate results of on-site urinalysis, the methodology provides a means of continuous detection and is less intrusive for officers and persons under supervision.

Alcohol Testing

Breath Testing

Breath testing can be done to detect alcohol in a person's body. The testing is administered by an officer or a treatment program.

Urine Testing

Urine testing for alcohol can be done the same way as urine testing for the use of illegal substances, as described above. However, urine testing for alcohol, even if random, is unlikely to provide an

equivalent accuracy. Other than the sweat patch, liquid chromatography/mass spectrometry, and liquid chromatography/mass spectrometry/mass spectrometry, no other types of testing have been approved for use.

⁶ 18 U.S.C. § 3563 requires that a urinalysis test be confirmed by GC/MS or any other test that the Director of the AO, in consultation with the Secretary of Health and Human Services, determines to be of equivalent accuracy. Sweat patch testing has met this approval.

accurate window of use because alcohol leaves the body quickly, at a rate of approximately one ounce per hour.

Alcohol Monitoring Devices

Alcohol monitoring devices (AMD) allow individuals with abstinence conditions to be continuously monitored for alcohol use. AMDs include both remote alcohol testing devices and transdermal alcohol monitoring devices.

Available Treatment Services

There are many judiciary treatment services available for use by federal probation and pretrial services offices for substance use disorder, as well as additional services available for co-occurring disorders.

Both inpatient and outpatient services may be available, depending on the individual’s geographic region. Outpatient services, commonly known as community-based treatment services, may include therapy sessions or self-help groups. These outpatient services are appropriate for individuals whose substance use disorder can most effectively be treated in an outpatient setting. Inpatient treatment tends to be more costly than outpatient services, but inpatient treatment may be preferred method for individuals exhibiting particularly severe addiction.

The following chart summarizes the major services currently available for persons on federal supervision:

Program	Overview	When to Use
Case Management Services	Methods of coordinating the care and services of those with substance use disorder.	Linking a reentry program to the clinicians and service providers who are involved with the care of those under supervision.
Intake Assessment and Report	<p>A comprehensive biopsychosocial intake assessment and report conducted by a state certified substance use disorder counselor or a clinician who meets the standards of practice established by his or her state’s regulatory board.</p> <p>The assessment is based upon the most current edition of the American Psychiatric Association’s <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM), as well as the person under supervision’s</p>	Identifying the substance use severity of the person under supervision.

	strengths, weaknesses, and readiness for treatment.	
Manualized Cognitive Behavioral Group Counseling	<p>Cognitive behavioral counseling groups led by a trained facilitator that offer a structured approach to address the criminal thinking component of substance use.</p> <p>Examples include: Moral Reconciliation Therapy®, Thinking for a Change®, Choices & Changes®, and The Change Companies®.</p>	Addressing substance use issues through specifically designed curriculum that aids in interventions with a person under supervision who has a substance use disorder. ⁷
Substance Use Counseling	<p>Clinical interactions between the person under supervision and a trained and certified counselor. The interactions are deliberate and based on various clinical modalities.</p> <p>Clinical interactions can include: individual counseling, group counseling, family counseling, group family counseling, intensive outpatient counseling, and a treatment readiness group.</p>	Changing behavior in a person with a substance use disorder.
Integrated Treatment for Co-Occurring Disorders	An integrated treatment service that provides individuals with substance use counseling and mental health services. The individual receives treatment from the same clinician and/or team in the same location to address both substance use disorders and mental health issues.	Helping individuals with co-occurring disorders, such as substance use and mental health disorders.
Residential Substance Use Treatment	In-house residential treatment facility where an individual	Providing a highly structured environment that incorporates counseling, drug testing, and

⁷ To ensure that officers have a common understanding of evidence-based practices, including cognitive behavioral techniques, the AO contracted with the University of Cincinnati Corrections Institute (UCCI) in 2016 to develop curricula for four audiences (treatment providers, officers, persons under supervision, and the families of persons under supervision) in five areas. Four of the areas pertain to the leading criminogenic needs identified in the federal supervisee population: antisocial thinking, antisocial networks, education and employment deficits, and alcohol and drug abuse. The fifth area relates to mitigating the risk of violence. The curricula supplement treatment provider and officer knowledge of how to address criminogenic needs and provide persons under supervision and others in the person's social network with resources that address specific criminogenic needs.

	remains for the duration of the program.	other approaches that involve cooperative living for people receiving treatment.
Medication-Assisted Treatment	The use of medications in combination with counseling to treat specific forms of a substance use disorder.	Providing physical stabilization to improve the success of treatment when traditional therapies are not effective in isolation.

As noted above, medication-assisted treatment (MAT) is one service available to persons on federal supervision who suffer from substance use disorders. MAT can provide the necessary physical stabilization to improve the success of treatment of alcohol use disorder and opioid use disorder when traditional therapies in isolation are not effective. Below is a chart summarizing the most used medication for MAT services:

Drug Name	Treatment Use	How It Works	Distribution Center	Objective
Methadone	Opioid use disorder	Full opioid agonist*	Only in federally approved opioid treatment programs. Typically, the individual needing the medication must take it at the clinic where it is dispensed.	All opioid receptors on nerve cells in the brain are fully activated, resulting in a relief of cravings, blocking of the euphoric effects associated with opioids, and preventing withdrawal.
Buprenorphine	Opioid use disorder	Partial opioid agonist**	Physicians who obtain specialized training may prescribe it at their private practice or their affiliated substance use disorder treatment facility or programs.	Opioid receptors on nerve cells in the brain are activated until a plateau is reached and maintained, reducing cravings and causing those with opioid addiction to not experience withdrawal symptoms.
Naltrexone	Opioid use disorder	Opioid antagonist***	It may be prescribed by a licensed physician.	Opioid receptors on nerve cells in the brain are blocked, thereby preventing neurons from responding to

				opioids. This ultimately results in a reversal of the effects of opioids and aids in the prevention of relapse.
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* An opioid agonist is a drug that activates the opioid (mu) receptors on nerve cells in the brain. A full opioid agonist continues to produce effects on the receptors until all receptors are fully activated or until the maximum effect is reached.

** A partial opioid agonist is a drug that activates the opioid (mu) receptors, but not to the same extent as a full agonist. The effects increase until a plateau is reached.

*** An opioid antagonist is a drug that binds to the opioid receptors with greater affinity than agonists but blocks the receptors instead of activating them.

Substance Use Testing and Substance Use Disorder Treatment in Practice

General Principles and Considerations

Substance use testing and substance use disorder treatment are most effective when imposed in conjunction with a federal supervision condition. Testing and treatment services, when combined with a supervision condition, also help ensure that the person enrolled in these services returns to court for any required appearances, obeys the law, and does not pose a danger to the community.

Alcohol and substance use testing may be imposed by the court as an independent condition or it may be imposed as a provision of a treatment condition. Through testing, officers can better gauge the level of substance use and make referrals or recommendations for substance use treatment if necessary. Under Judicial Conference policy, the frequency of testing should continuously be adjusted based on the identified risks of the individual being tested.⁸

Pretrial

A substance use restriction condition or a condition to undergo substance use disorder treatment can be imposed on an individual during pretrial release. These conditions may reduce the possibility that the individual will illegally consume mood-altering substances that may impact their risk of danger to the community and risk of nonappearance in court. The court may impose a substance use restriction condition or condition to undergo treatment when the individual is:

- charged with an alcohol- or drug-related offense;
- has a criminal history of alcohol- or drug-related charges;

⁸ See *Guide to Judiciary Policy*, Volume 8, Part C, Chapter 6 and Volume 8, Part E, Chapter 1.

- is identified as having current risk factors (nonappearance and/or danger to the community) that relate to substance use disorders;
- tests positive for illegal drugs; and
- has a history of substance abuse.

In keeping with the statutory requirements of imposing the least restrictive conditions, as well as the Judicial Conference's policy of applying the least restrictive interventions, it is important that the intensity of testing and/or treatment match the specific needs of the individual. Research indicates that providing services too intensely is detrimental to an individual's compliance and will impact the intended outcomes. Treatment interventions must be viewed as a continuum of care. Placement and movement within the treatment continuum should be based on ongoing assessments of current risk and aimed at how to best help the individual become capable of sustaining recovery.

Substance use restrictions and treatment conditions are most effectively monitored by use of pretrial services supervision that incorporates alcohol and substance use testing to ensure effective monitoring of these restrictions. Use of pretrial supervision over these conditions is also effective because officers have access to treatment providers and can monitor the individual's progress and compliance with treatment.

Probation

A substance use restriction condition, condition to submit to drug testing, and/or a condition to undergo treatment can be imposed on an individual on probation. A sentence to probation with such a condition or conditions serves as an alternative to detention for a person under supervision with substance use problems if the person's appearance and the community's safety can reasonably be assured with the imposition of this alternative.

Prerelease Custody

During pre-release custody, officers, to the extent practicable, have the opportunity to work with a person on pre-release custody to minimize risk and maximize continuity of services. The continuity of interventions to address issues such as thinking that supports criminal behavior, antisocial associations, and alcohol or drug use, is particularly important to achieving lawful self-management and success in the community.

Post-Conviction Supervision

A period of supervision is an opportunity for the person under supervision to develop the skills and motivation to become and remain lawful, eventually without the oversight and support of the justice system. Therefore, under Judicial Conference policy, the goal for each person under supervision is lawful self-management, meaning the individual has the tools to make a

personal choice not to engage in criminal behavior.⁹ Conditions of substance use testing and/or substance use disorder treatment while on supervised release can provide tools to help achieve sobriety and reduce the risk of danger in the community posed by those under supervision through monitoring, restrictions, and interventions. As with other discretionary conditions, substance use restrictions, testing, and treatment should be individualized and involve only such deprivation of liberty or property as is reasonably necessary to achieve the supervision objectives. Research suggests that higher risk individuals should receive the most intensive and extensive interventions.

Graduated Sanction

Substance use testing and/or substance use disorder treatment can be recommended as a sanction or action when addressing violations, but should be recommended only to address specific risks associated with a violation. *See* 18 U.S.C. § 3563(e); 18 U.S.C. § 3583(d). The frequency and type of testing and/or treatment should be based on the individual’s risk level.

Summary Chart

Phase in Federal Matter	Treatment Purpose
Pretrial	<ul style="list-style-type: none"> • Reduce risk of nonappearance by reducing or eliminating behavior that might interfere with appearance. • Reduce risk of danger to any other person or the community that is often associated with alcohol or drug use. • Help person choose to obey the law. • Help achieve sobriety so that the individual may participate more fully in their defense.
Probation	<ul style="list-style-type: none"> • Serve as an alternative to detention for individuals with substance use problems if their appearance and the community’s safety can reasonably be assured with the imposition of this alternative.
Prerelease Custody	<ul style="list-style-type: none"> • Maximize continuity of services and minimize risk to the community.
Post-Conviction	<ul style="list-style-type: none"> • Help the individual choose to obey the law and achieve lawful self-management. • Ensure compliance with conditions of supervision.
Graduated Sanction	<ul style="list-style-type: none"> • Reduce specific risks associated with a violation.

⁹ *Guide to Judiciary Policy*, Volume 8, Part E, Chapter 1 §150.

Sample Condition Language for Court Orders

The following language may provide guidance when imposing a substance use testing or substance use disorder treatment condition. While this section includes sample condition language for special conditions that is intended to be clear and legally sound, there may be cases where the court or the parties determine that different language is necessary to account for the individual circumstances in that case. There may also be case law in individual circuits requiring variations from the sample special condition language. For instance, circuits vary in the level of specificity required in conditions to prevent over-delegation of authority to officers. Each district should fashion special conditions that comport with circuit case law requirements.

Pretrial Release

Language for imposition of a condition of alcohol or substance use restriction or treatment is available on AO Form 199B (“Additional Conditions of Release”).

Post-Conviction Supervision

The following is sample language the court may use when imposing a condition of substance use restriction or treatment on a person under post-conviction supervision¹⁰:

You must participate in an [inpatient/outpatient] substance use disorder treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). [[You must pay the costs of the program.] [You must pay [\$___ per ___ (e.g., visit, week, month)] or [___% of the costs of the program.]]

You must participate in an [inpatient/outpatient] alcohol use disorder treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). [[You must pay the costs of the program.] [You must pay [\$___ per ___ (e.g., visit, week, month)] or [___% of the costs of the program.]]

You must not use or possess any controlled substances without a valid prescription. If you do have a valid prescription, you must disclose the prescription information to the probation officer and follow the instructions on the prescription.

You must submit to substance use testing to determine if you have used a prohibited substance. [[You must pay the costs of the testing.] [You must pay [\$___ per ___ (e.g., visit, week, month)] or [___% of the costs

¹⁰ The sample language, which was endorsed by the Criminal Law Committee, is also available on the United States Courts website. *See Overview of Probation and Supervised Release Conditions* document, *available at* <https://www.uscourts.gov/services-forms/overview-probation-supervised-release-conditions>.

of the testing.]] You must not attempt to obstruct or tamper with the testing methods.

You must not use or possess alcohol.

You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person’s physical or mental functioning, whether or not intended for human consumption, except with the prior approval of the probation officer.

Payment of Expenses Incurred for Substance Use Testing and Substance Use Disorder Treatment

Substance use testing and substance use disorder treatment can be costly but are often less costly than detention or incarceration. Inpatient treatment is also more expensive than outpatient treatment services.

The Judiciary typically pays for the treatment when the condition is imposed by the court; but, depending on an individual’s financial stability, a judge may order the individual to pay toward the cost of treatment partially or fully. When an individual on prerelease custody is obtaining treatment services, the BOP typically pays for those treatment services.

When the Judiciary funds a court-imposed testing or treatment condition, it is referred to as “contract” treatment.¹¹ Services that are not funded by the Judiciary are referred to as non-contract treatment. Non-contract services could be services that individuals pay for themselves, or that an agency, such as a non-profit or faith-based organization, provides.

¹¹ Under [18 U.S.C. § 3154](#), pretrial services offices have the authority to contract for treatment services. Under [18 U.S.C. § 3672](#), the Director of the AO has the authority to contract with treatment providers for persons under supervision, and may delegate this authority, under [28 U.S.C. § 602\(d\)](#), to each the chief judge of each district.