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## MODEL OF EXPERT ASSESSMENT OF PSYCHIC DISORDERS IN PERSONS WITH DEPENDENCE FROM PSYCHOACTIVE SUBSTANCES, WHO DID CRIMINAL ACTIONS

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### Abstract

**Background.** Mental disorders as a result of various forms of addictions and high criminogenicity of such persons has led to the need for a number of legislative changes in the field of jurisprudence (law), medicine and expertise. **Materials and methods.** Mental state of 661 examinees persons was studied. The presence of states of dependence on psychoactive substances and their impact on the ability to apprehend the sense of one's actions and manage (ASAM) them and apprehend the sense of one's actions (ASA) was studied. **Objective:** to develop a model of forensic psychiatric expert assessment of the ability of persons with states of dependence on the psychoactive substances to apprehend their actions and (or) manage them in accordance with existing legislation. **Results and conclusions.** It was established that 1.1% of examinees could not ASAM completely in criminal proceedings, 93.2% could ASAM, and 5.7% could not ASAM. In the civil process, with a retrospective definition of the mental state at the time of the conclusion of an agreement, an expert decision on the significant impact of psychoactive substances was made in 45% of cases, on the preservation of the ability to ASAM - 31.7%, of the inability to ASAM - 23.3%. This testifies to the non-use of expert practice in making decisions on "restraint locus standi" in the widespread use of the category of "limited capacity" in the civil process, which leads to an unjustified restriction of judges in choosing medical and legal measures for the prevention of repeated crimes by persons with states of dependence on psychoactive substances.

**Key words: dependence on psychoactive substance, mental disorder, crime, forensic psychiatric examination.**

**Urgency.** Dependence on alcohol remains of paramount importance in Ukraine. According to statistical data and international studies, Ukraine is among the top five most drinking nations. In recent years, the number of Ukrainians abusing alcohol has tripled, mainly due to teenage and youth alcoholism [World Group Bank, 2017, Internet, 2018]. As a result, this is reflected in the mental health of Ukrainians. Mental disorders as a result of psychoactive substance (PAS) abuse occupy the first place in the structure of morbidity and prevalence of mental and behavioral disorders among the Ukrainian population [1].

The prevalence of alcoholism and other dependencies affects the increase in the number of forensic psychiatric examinations (FPE) with regard to persons abusing PAS, both in civil and in criminal proceedings. The number of PAS dependent persons is growing among prisoners [2-4].

The war in the East of Ukraine led to the emergence of a contingent of combatants with mental disorders. A particular problem of wartime is the growth of chemical and non-chemical addictions. PAS can cause not only emotional and positive reactions, but also neutralize emotionally-negative conditions, which is relevant in the context of combat operations [5-7].

The presence of mental disorders, often combined with syndrome of PAS dependence, the peculiarity of the psychological state and emotional response in conflict situations, contribute to the commission of the socially-dangerous acts (SDA) by combatants, whose numbers have been steadily increasing since the beginning of the armed conflict (official data of the Prosecutor General's Office, statistics of the Ministry of Health of Ukraine). This requires the development of modern therapeutic and preventive measures and social and rehabilitation measures taking into account the realities of Ukrainian society.

FPEs of persons abusing PAS are complex, since their mental disorders do not always affect the intellectual or volitional component of the legal criterion of capacity / disability, that is, the ability of a person to apprehend the sense of one's actions and manage them (ASAM). Dependence greatly affects volitional processes. Judicial psychologists and psychiatrists noted the necessity of studying the motivational sphere of a person whose violation may serve as a justification for the confession of a person with *restraint locus standi* [8].

Instead, since the introduction of the concept of "*restraint locus standi*" (2001) into the criminal law, and in the civil law the one of "*limited capacity*" (2004), these legal categories have hardly been practically applied in expert practice. Although law enforcement agencies and lawyers have an urgent request for the use of these categories in order to respect the rights of people with mental disorders and the application of differentiated medical and legal approaches to them [9, 10].

The problem of the steadily growing prevalence of mental disorders as a result of various forms of dependence and high criminogenicity of such persons has led to the need for a number of legislative changes in the field of jurisprudence (law), medicine and expertise.

In 2013, the Order of the Cabinet of Ministers of Ukraine approved the Strategy of the State Policy on Drugs for the period till 2020. The document states that "The need for the Strategy development is conditioned by the fact that the spread of drug addiction and drug crimes in Ukraine over the past ten years has become one of the most acute public problems, and its neglecting leads to human's health harm, negative impact on the social sphere, and is also a threat to the national security of the state "[11]. In particular, the plan of measures for 2019-2020 on the Strategy implementation provides to introduce alternative to deprivation of liberty measures for persons who are prosecuted for crimes related to the state of narcotic addiction in accordance with Commission on Narcotic Drugs Resolution 58/5 2016 (§ 13); the research on drug-related issues, namely the development of an algorithm for the use of compulsory medical measures (CMM) and the alternative to deprivation of will treatment for persons with mental and behavioral disorders due to the use of PAS (§ 16).

Alternative to punishment measures of treatment and rehabilitation of dependent individuals were foreseen in the past century by the United Nations Conventions "On Narcotic Drugs", 1961; "On Psychotropic Substances", 1971; "On the fight against the illicit circulation of narcotic drugs and psychotropic substances", 1988. Now Ukraine has begun reviewing amendments to legislation on the introduction of alternative deprivation of liberty for individuals who are prosecuted for drug-related crime in accordance with the Commission on Narcotic Drugs Resolution 58/5 (2016).

The introduction of alternative to punishment measures is an adequate and an inevitable process. At the same time, the choice of measures of influence on offenders is expanding and requires a deeper analytical and predictive assessment of the social danger of dependent persons in each criminal situation. In this regard, an expert assessment of mental disorders under the conditions of dependence on alcohol requires modern advances in

accordance with modern legislation, which determines the relevance of work and the prospects of researches in this direction.

**The objective:** to develop a model of forensic psychiatric expert assessment of the ability of persons with states of dependence on PAS to apprehend their actions and (or) manage them in accordance with the existing legislation.

**Material and methods.** Psychological state of 661 examinees with the dependence on PAS and their impact on the ability of ASAM (ASA) was investigated. 206 cases were subjects for FPEs in the civil process and 455 cases of those in criminal proceedings.

In the civil process the examinees were divided into two groups. The main group (MG) included persons with alcohol-related syndrome with civil *aminus injurandi*. Both posthumous and life-long FPEs were analyzed in this group. The comparative group (CG) was made up of alcohol dependent persons (ADP) for which the issue of civil capacity limits is determined in legal form with FPE mandatory appointment. The patients' choice was not limited by age, sex, stage of alcoholism. The patients with chronic mental illnesses accompanied by PAS abuse were excluded from the study. Within the framework of criminal proceedings, 368 persons with syndrome of PAS dependence were subject to FPE by a continuous sampling method. The contingent under examination was divided into two groups: I group included 156 ADP persons, II group included 212 persons with narcotic drug-related syndrome.

87 combatants formed a separate group – they were examined for their dependence on PAS, committed criminal offenses and concerning them FPEs were carried out in 2014-2017. As a result of the examination 45 combatants without signs of PAS dependence were excluded from the survey.

Psychopathological disorders in patients were diagnosed according to the criteria of the International Classification of Diseases (the 10th Review), section "Mental and behavioral disorders".

For analysis and data processing clinical-anamnestic, clinical-psychopathological, statistical methods and method of forensic psychiatric analysis were used.

**Results and discussion.** According to the gender analysis of the groups under study, PAS dependent males more often criminally offended than women with the same narcological pathology. The age distribution of the groups within the civil process and criminal proceedings varied, but the overwhelming majority was made up of persons of the most employable age (Table 1).

Table 1.

## Demographic characteristics of the groups under study

Indexes	Civil process		Criminal proceeding		
	Main group, n=120	Group of comparison n=86	AD, n=156	ND, n=212	Combatants, n=87
Age	min = 31 max = 81	min = 29 max = 80	min = 24 max = 66	min = 16 max = 52	min = 17 max = 51
Mean age	53.1	56.3	38.6	31.6	29.3
Male	109 (85%)	75(88.4%)	150(96.2%)	193(91%)	88(98.9%)
Female	18(15%)	11(11.6%)	6(3.8%)	19(9%)	1(1.1%)

The recidivism of unlawful actions of persons with dependence is the highest among all categories of mental patients. Criminal experience in the past had 62.8% of ADP and 76.4% of drug addicts. The overwhelming majority of them were prosecuted repeatedly. Almost a third of them was noted by the negative dynamics of criminal experience from less serious to capital offenses. Among combatants, criminal experience in the past had less than one-third of examinees (28.7%), which indicates this contingent relatively low recidivism and criminogenicity.

Analysis of expert decisions structure (Table 2) revealed significant differences in the assessment of mental disorders due to the dependence on PAS in criminal and civil proceedings. It was established that 1.1% of examinees were considered completely unable ASAM in the criminal proceedings, such that could ASAM were 93.2%, and could not ASAM- 5.7%. In the civil process, with a retrospective definition of the mental state at the time of the wrongdoing, an expert decision on the significant impact of psychic disorder was made in 45% of cases, about ASAM preservation - 31.7%, and about the inability ASAM – in 23.3% of cases. This testifies to the non-use of expert practice in making decisions on "restraint locus standi" and the widespread use of the category of "limited capacity" in the civil process, which leads to an unjustified restriction of judges in choosing medical and legal measures for the prevention of repeated crimes by persons with states of dependence on PAS. There is a tendency to delegate responsibilities for determining the degree of public danger, the prognosis and the choice of the type of CMM with the transfer of these tasks to the court. Such expert practice is due to professional, ideological, methodological and real-practical reasons.

Table 2

## The structure of expert decisions

		Could ASAM	Could not ASAM	Could, but not completely	Total
Civil process	MG	38(31.7%)	28(23.3%)	56(45%)	120
	CG	5(5.8%)	56(65.1%)	25(29.1%)	86
	together	43(20.9%)	84(40.8%)	79(38.3%)	206
Criminal proceeding	AD	138(88.4%)	16(10.3%)	2(1.3%)	156
	ND	205(96.8%)	5(2.3%)	2(0.9%)	212
	Together	343(93.2%)	21(5.7%)	4(1.1%)	368
	UBD	78(89.7%)	5(5.7%)	4(4.6%)	87

The clinical structure of psychiatric pathology was both exclusively narcological one (73.7% in AD group, 83% in the ND group), and combined mental pathology, the proportion of which in both groups was significantly meaningful (26.3% in AD group, 17% in ND group). Within the framework of exclusively drug addiction, the syndrome of dependence was complicated by psychotic disorders (delirium, polymorphic psychotic disorder), as well as non-psychotic disorders: personality disorders and cognitive disorders of varying degrees of severity, including alcoholic dementia. In the ND group, 36.3% of persons suffered from opioid dependence syndrome; 35.8% detected dependence syndrome due to the combined use of narcotic drugs and other PAS, which greatly complicated the clinical picture, prognosis and effectiveness of the further psychosocial rehabilitation.

In animus injurandi combatants, a high percentage of mental disorders (90.8%) was observed. Dependence on PAS was observed in 28.7% of cases, acute alcohol intoxication during the commission of the socially-dangerous act was registered in 48.3% of cases, and neurotic stress-related, mental disorders were met in 17.2% of cases. The absence of psychic disorder was observed in 9.2% of cases.

The study of psychic disorder influence of ASAM allowed to develop a three-level algorithm and criteria for an expert assessment of PAS dependence syndrome in criminal and civil proceedings. The expert judgment determines the syndromic level of the medical criterion.

In the criminal proceedings, the medical criterion of "lack of jurisdiction" is the psychosis of various origin (61.5%), delirium (30.8%), alcoholic dementia (7.7%). The criterion for "restraint locus standi" was emotional-volitional and / or cognitive impairment of a moderate or severe degree which participated in the genesis of an unlawful act.

In the civil procedure, the medical criterion of " lack of jurisdiction" is dementia due to narcological or combined organic pathology (58.3%), emotional-volitional and / or cognitive disorders (20.2%), psychosis (7.1%), delirium (5. 9%), amnestic syndrome (9.5%), disadaptation, lack of criticism. The criterion for " restraint locus standi " was also emotional-volitional and / or cognitive impairment of a moderate or severe degree that affects critical-prognostic functions, signs of growing maladaptation and reducing criticism.

Table 3

The structure of the medical criterion of expert decisions in accordance with ICD-10

Criminal Processing	Could ASAM n=435	Could not ASAM completely, n=8				Could not ASAM, n=26			
	ICDF1x.2	ICDF1x.2+	AD n=2	ND n=2	Com- batant n=4	ICDF1x.2+	AD n=16	ND n=5	Com- batant n=5
Criminal Processing	F1x.2	F07.0+ F07.8	2	2	4	F06.2	1	-	1
						F23.1.2	2	2	3
						F31.2	1	-	1
						F1x.4	8	-	-
						F1x.5	2	3	-
						F1x.73	2	-	-
Civil Process	Could ASSM N=41	PAS influence on the ability ASSM, n=81				Could not ASSM, n= 84			
	ICDF10.2	ICD F10.2+	MG n=56	CG n=25	ICDF F10.2+	MG n=28	CG n=56		
	F10.2	F07.0	2		F02.8	6	24		
		F07.0+07.8	8		F10.73	3	16		
		F10.71	27		F07.0+07.8	2	6		
		F10.74	2		F10.71+F10.74	2	1		
		F10.71+10. 74	17		F10.71+F07.8	3	3		
					F10.4	5	-		
				F10.5	4	2			
			F10.6	4	4				

Criteria for choosing medical and legal measures for the persons with mental disorders due to dependence on PAS, who have committed unlawful acts, are based on an expert judgment on the ability to apprehend the sense of one's actions and manage them, as well as on the definition of the level of social danger as an integrative indicator of the actual mental state, its dynamics, prognosis, severity of the committed criminal action and criminal

history. CMM can be applied to " non-triable" and "restraint locus standi" persons. Voluntary measures of medical and legal influence are aimed at involving the volitional component in solving the problems associated with the dependence on PAS, and therefore are applied only with the consent of the individual. Contraindications for voluntary measures are clinical factors: violation of criticism, volitional disorders at the level of psychopathology, severe cognitive impairments; social factors (homelessness, lack of living maintenance, and asocial microenvironment). Voluntary medical and legal measures can be applied both to "justiciable" and "limited justiciable persons". The final decision is taken by the court, taking into account expert recommendations (Fig.1).

The proposed model of forensic psychiatric evaluation of psychiatric disorders in individuals with dependence on PAS determines the goals of expert research, the algorithm for assessing medical and legal criteria, their integrative components. The expert decision is based according to the syndromic structure of the medical criterion, and on its basis the criteria of medical and legal measures choice are determined. This provides evidence to the expert conclusions, allows differentially choose medical and legal measures aimed to ensuring of justice, observance of the rights and freedoms of persons with psychic disorders, prevention of repeated crimes.

**Conclusions.** High rates of repeatability (recidivism) of criminal offenses among persons with dependence on PAS, negative dynamics of their criminal experience testifies to the ineffectiveness of existing preventive and corrective measures, the need of develop and implement of new approaches to the psychosocial rehabilitation of such persons in order to prevent recurrence of crimes that meets the requirements of the Strategy and European experience. In order to realize this aim, in our opinion, it is advisable to consider recommendations on the legislative introduction of alternative to deprivation of liberty measures against persons, who are prosecuted for crimes related with dependence on PAS in accordance with Commission on Narcotic Drugs Resolution 58/5 (2016); creation of a network of specialized forensic psychiatric centers for conducting psycho-rehabilitation measures for the persons committed criminal acts, including those with PAS dependence (combatants, juvenile offenders with mental disorders and other categories of forensic psychiatric patients).



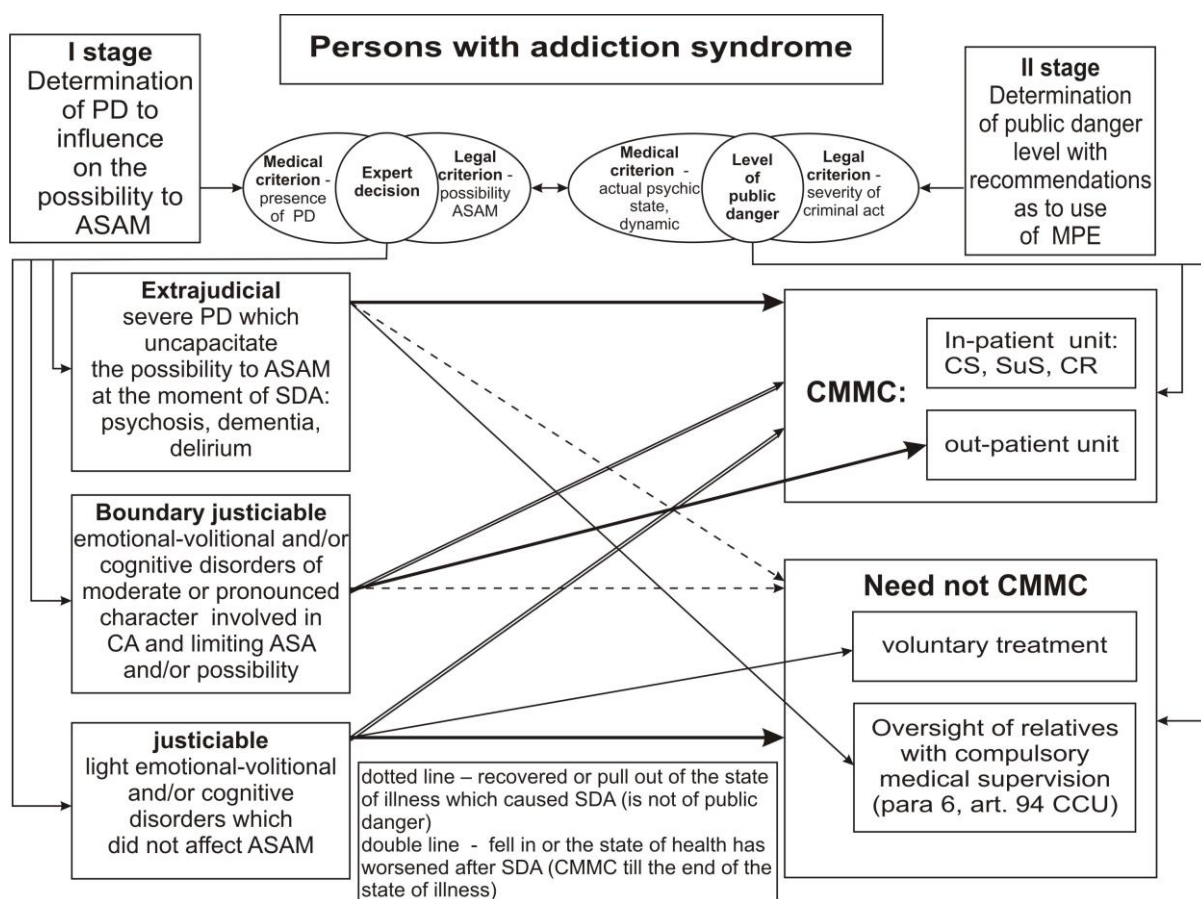


Fig. 1. Model of Forensic Psychiatric Evaluation of Psychiatric Disorders in Persons Depending on Psycho-Active Substances.

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**Abbreviations:**

CA-criminal action

MPE- measures of public enforcement

CS-close supervision

CR- customary regime

SuS- stepped-up surepvision