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Stigma in the Statute: When the Language of the Law Injures

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ABSTRACT

Jurists frequently consider the extent to which a writer's or speaker's harmful statements may be actionable under the law. But what should be done when the law itself contains harmful language? Consider the case of individuals with alcohol use disorder (AUD). Hundreds of federal and state statutes refer to these individuals as "addicts," "abusers," "alcoholics," "drunkards," "inebriates," and "intemperates." These statutes exist notwithstanding research showing that these words provoke negative thinking by others, including thinking that individuals with AUD are more deserving of punishment and less deserving of treatment. These laws persist in the face of research showing that these words increase the affected individual's sense of shame and anxiety and decrease the individual's likelihood of seeking and remaining in treatment. These laws remain on the books despite research and case law showing that these words reinforce structural, public, and self-stigma associated with AUD. Inspired by the Author's former clients, many of whom had substance

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use disorders, this Article develops an original, alcohol-related language taxonomy that challenges the continued use of injurious statutory language. If enacted, the proposals set forth in this Article will bridge the fields of law and medicine and reduce the stigma associated with mental health conditions.

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INTRODUCTION

Jurists frequently consider the extent to which a writer or speaker's harmful statements may be actionable under the law.[1] But what should be done when the law itself contains harmful language? Consider the case of individuals with alcohol use disorder (AUD), defined by the American Psychiatric Association as a "problematic pattern of alcohol use leading to clinically significant impairment or distress."[2] Hundreds of federal and state statutes refer to individuals with AUD as "addicts," "abusers," "alcoholics," "drunkards," "inebriates," and "intemperates."[3] These statutes exist notwithstanding research showing that these words provoke negative thinking by others,[4] including thinking that individuals with AUD are more deserving of punishment and less deserving of treatment.[5] These laws persist in the face of research showing that these words increase the affected individual's sense of shame and anxiety and decrease the

1. *See, e.g.*, Williams v. Tr. Co. of Ga., 230 S.E.2d 45, 47 (Ga. App. 1976) (analyzing whether Atlanta merchant Richard Rich defamed civil rights leader Hosea Williams when Rich referred to Williams as a "drunkard" in a speech delivered to students graduating from Emory University School of Business); Morgan v. Kennedy, 64 N.W. 912, 914 (Minn. 1895) (deciding whether statements indicating that a man was "on a drunken debauch lasting for a week" and was "getting other people drunk" were actionable as slander).

2. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 490-91 (5th ed. 2013) [hereinafter DSM-5] (providing this definition as well as eleven diagnostic criteria, two of which must be met within a twelve-month period for a diagnosis of AUD); *infra* note 72 (listing the eleven diagnostic criteria).

3. *See* Stacey A. Tovino, *Distilling the Language of the Law*, 111 KY. L.J. (forthcoming 2023) (manuscript at 7-8) (on file with author) (collecting more than 400 state statutes that refer to alcohol-related activities, alcohol-related states, and alcohol-related health conditions).

4. *See* Robert D. Ashford, Austin M. Brown, Jessica McDaniel & Brenda Curtis, *Biased Labels: An Experimental Study of Language and Stigma Among Individuals in Recovery and Health Professionals*, 54 SUBSTANCE USE & MISUSE 1376, 1382 (2019) ("Labels such as 'addict' and 'substance abuser' have been found to elicit implicit and explicit stigma among the general public [and] ... stigmatizing labels have the potential to influence ... medical practitioner perceptions of individuals with substance use disorders and should be avoided.").

5. *See* John F. Kelly, Sarah J. Dow & Cara Westerhoff, *Does Our Choice of Substance-Related Terms Influence Perceptions of Treatment Need? An Empirical Investigation with Two Commonly Used Terms*, 40 J. DRUG ISSUES 805, 805, 807, 815 (2010) (finding that individuals referred to as "substance abusers" were perceived as a greater social threat, engaging in willful misconduct, and more deserving of punishment than individuals referred to as "having a substance use disorder," concluding that "[t]he 'abuser' label may perpetuate stigmatizing attitudes and serve as a barrier to help-seeking").

individual's likelihood of seeking and remaining in treatment.[6] These laws remain on the books despite research and case law showing that these words reinforce structural, public, and self-stigma associated with AUD.[7] This Article develops an original, alcohol-related language taxonomy that challenges the continued use of injurious statutory language and explores the role linguistic amendments have in ameliorating such injury.

As background, prior scholarship has carefully reviewed research studies investigating the relationship between language and stigma in the context of substance use disorders, including AUD.[8] This research shows that slang, medically inaccurate, and non-person-first[9] terms invite negative judgments about individuals with AUD and that lay and professional community members regard individuals described in these terms as blameworthy, untrustworthy, and

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6. *See* John F. Kelly & Cassandra M. Westerhoff, *Does It Matter How We Refer to Individuals with Substance-Related Conditions? A Randomized Study of Two Commonly Used Terms*, 21 INT'L J. DRUG POL'Y 202, 205 (2010) ("[M]any individuals with substance-related problems may internalize these stigmatizing beliefs, thereby increasing their sense of shame and anxiety, creating a barrier to honest self-disclosure, and diminishing the likelihood of seeking treatment.").

7. *See* Nora D. Volkow, Joshua A. Gordon & George F. Koob, *Choosing Appropriate Language to Reduce the Stigma Around Mental Illness and Substance Use Disorders*, 46 NEUROPSYCHOPHARMACOLOGY 2230, 2230 (2021) (recognizing the "persistence of implicitly stigmatizing terms like 'addict,' 'alcoholic,' 'abuser,' and so on"); Pooja R. Sarkar, *Spirits from the Past: Stigma in Historical Medical Literature on Alcohol Addiction and Implications for Modern Practice*, 16 AM. J. PSYCHIATRY RESIDENTS' J. 8, 8 (2021) (arguing that the writings of nineteenth-century physicians attributing problematic alcohol use to moral depravity contributed to the stigma against individuals with AUD; reminding readers that what is written and said about individuals with disordered drinking "can shape how a disease is perceived and experienced for centuries"); Chaddock v. Briggs, 13 Mass. (12 Tyng) 248, 254 (1816) (stating that the word "drunkard" could "stigmatize[ ] [a person's] general character"); Morgan v. Kennedy, 64 N.W. 912, 914 (Minn. 1895) (stating that the defendant's use of the words "drunken" and "drunkenness" in regard to the plaintiff could "injuriously affect the social standing of the plaintiff").

8. Tovino, *supra* note 3, at 9-12.

9. Person-first language places the person before the person's diagnosis or condition. In the context of AUD, an example of person-first language is "[p]erson with alcohol use disorder." *See generally* SHATTERPROOF, ADDICTION LANGUAGE GUIDE 3, 5 (2021), https://www.shatterproof.org/sites/default/files/2021-02/Stigma-AddictionLanguageGuide-v3.pdf [https://perma.cc/HM76-E2XY] (discussing the importance of person-first language in the context of substance use disorders and providing examples of non-person-first language). In the context of AUD, examples of non-person-first language include "abuser," "addict," "alcoholic," "drunkard," "inebriate," and "intemperate." *Id.*

dangerous.[10] Prior scholarship also has collected hundreds of state statutes containing references to alcohol-related activities, alcohol-related states, and alcohol-related health conditions, showing that a startling number of these statutes incorporate slang, medically inaccurate, and non-person-first terminology.[11] Notwithstanding, prior scholarship has yet to study the origins of alcohol-related statutory language, explore the impact such history has on society's current perception of disordered drinking, or develop an alcohol-related language taxonomy capable of guiding future law and policy in the context of AUD. This Article completes these important yet outstanding tasks.

This Article proceeds as follows: Part I examines the origins and history of a variety of slang, medically inaccurate, and non-person-first words used in the context of individuals who consume alcohol. These words include "abuser," "addict," "alcoholic," "drunk," "drunkard," "inebriate," and "intemperate."[12] Part I shows how these words have been used in medical, legal, literary, and popular contexts from the Middle Ages to the present. Part I finds that these terms were heavily relied on during time periods in which there was great misunderstanding regarding the etiology of AUD. Part I argues that these words, when used today, reflect and reinforce society's age-old misunderstanding regarding problematic alcohol use. Disordered drinking has long been associated with voluntary madness, moral weakness, deficit of will, disorder of personality, lack of worth, intentionality of abuse, evil, vice, and sin.[13] Part I confronts these myths and misconceptions, explaining the science behind AUD. Changes in brain regions related to the execution of motivated behaviors and the control of stress and emotionality occur in individuals with AUD, making it difficult for such individuals to stop drinking without proper treatment.[14]

Part II of this Article develops an original and innovative taxonomy of alcohol-related statutory language. This taxonomy

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10. Tovino, *supra* note 3, at 12-14; *see infra* note 89 and accompanying text (referencing a variety of language recommendations relevant to substance use disorders; opposing the use of words that connote blame, danger, and a lack of worth).

11. Tovino, *supra* note 3, at 14-52.

12. *See supra* note 3 and accompanying text.

13. *Infra* Part I.

14. *Infra* Part I.

classifies alcohol-related terms by their primary legislative function, such as "defining," "titling," "establishing," "excluding," "removing," "penalizing," "protecting," "preventing," "treating," "equalizing," "funding," and "mitigating." Within each legislative function, the risks and benefits of using particular alcohol-related terms are considered and statutory amendments designed to minimize risks and maximize benefits are offered. The goal of Part II is to alert lawmakers to the nuanced relationship between language and stigma as well as to guide lawmakers in the future drafting (or amending) of legislation affecting individuals with AUD.

Part III provides justification and context for the statutory proposals set forth in Part II. In particular, Part III carefully analyzes a variety of self-initiated writings of individuals with AUD. These self-initiated writings provide substantial evidence of the perception of public stigma (the negative attitudes and beliefs of others about an individual that lead to fear, rejection, and avoidance of the individual) and label avoidance (an individual's hesitancy or refusal to obtain treatment in order to avoid stigmatizing labels) in the context of AUD.[15] Part III also situates the proposals set forth in Part II within legal scholarship more generally. Language-related scholarship conducted in other fields is examined, parallels are drawn, and distinctions and criticisms are addressed. A conclusion underscores the expressive function of law, including the role of law in creating attitudes and judgments about particular individuals. Moral judgments and condescending attitudes towards individuals with AUD have no place in the language of the law.

I. CONCEPTION AND TERMINOLOGY: PAST AND PRESENT

A. Myth and Misconception

What do the words "abuser," "addict," "alcoholic," "drunk," "drunkard," "inebriate," and "intemperate" mean? When were these words first used and in what contexts were they employed? Some background information regarding alcohol may be helpful before proceeding. Derived from the Arabic word "al-kuhul,"[16] alcohol is

15. *Infra* Part III.A.

16. *See* Johanna Mayer, *The Origin of the Word 'Alcohol,'* SCI. FRIDAY (Oct. 2, 2018),

naturally produced when yeast ferments sugar into ethanol.[17] Although prehistoric humans likely consumed alcohol in decaying fruits and berries, human-made alcoholic beverages are traceable to approximately 7000 BC.[18] Historians, scientists, and clinicians have long noted alcohol's practical and functional uses, including its medical, nutritional, antiseptic, and disinfectant applications.[19] Historians, scientists, clinicians, novelists, playwrights, and others also have given significant attention to alcohol's intoxicating effects.[20] For example, a Greek play dating from the fourth century BC depicts the effects on an individual of the consumption of ten kraters of diluted wine.[21] According to the play, the first krater leads to good health and the second to love and pleasure.[22] The fifth krater, however, leads to shouting, the sixth to drunken revel, the

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https://www.sciencefriday.com/articles/the-origin-of-the-word-alcohol/ [https://perma.cc/FC8Q-KH48] (explaining the etymology of the word "alcohol").

17. Robert Dudley, *Ethanol, Fruit Ripening, and the Historical Origins of Human Alcoholism in Primate Frugivory*, 44 INTEGRATIVE & COMPAR. BIOLOGY 315, 315 (2004).

18. *See* ROD PHILLIPS, ALCOHOL: A HISTORY 6, 8, 12 (2014) (providing a 9,000-year cultural and economic history of alcohol). *See generally* MARK FORSYTH, A SHORT HISTORY OF DRUNKENNESS: HOW, WHY, WHERE, AND WHEN HUMANKIND HAS GOTTEN MERRY FROM THE STONE AGE TO THE PRESENT (2017) (tracing the use of alcohol from the primates to prohibition).

19. *See* Sean M. Robinson & Bryon Adinoff, *The Classification of Substance Use Disorders: Historical, Contextual, and Conceptual Considerations*, 6 BEHAV. SCIS. 1, 4-5 (2016) (explaining that ancient Egyptians used beer and wine for medical and nutritional purposes and further noting that the ancient Chinese generated significant revenue from the sale of alcohol); SETH C. RASMUSSEN, THE QUEST FOR AQUA VITAE: THE HISTORY AND CHEMISTRY OF ALCOHOL FROM ANTIQUITY TO THE MIDDLE AGES 1 (2014) (referencing modern chemical and medical applications of alcohol); Gerald McDonnell & A. Denver Russell, *Antiseptics and Disinfectants: Activity, Action, and Resistance*, 12 CLINICAL MICROBIOLOGY REVS. 147, 148, 151 (1999) (noting that alcohol and other chemical agents are used by hospitals and other health care institutions for antiseptic and disinfectant purposes).

20. *See, e.g.*, Christopher C.H. Cook, Helen Tarbet & David Ball, *Classically Intoxicated: Correlations Between Quantity of Alcohol Consumed and Alcohol Related Problems in a Classical Greek Text*, 335 BRIT. MED. J. 1302, 1302-03 (2007) (providing a fourth-century BC performance example of alcohol's successive intoxicating effects); Elizabeth Ralevski, Tamas L. Horvath, Marya Shanabrough, Ryan Hayden, Jenelle Newcomb & Ismene Petrakis, *Ghrelin Is Suppressed by Intravenous Alcohol and Is Related to Stimulant and Sedative Effects of Alcohol*, 52 ALCOHOL & ALCOHOLISM 431, 431, 435-37 (2017) (reviewing the role of ghrelin on alcohol's stimulant and sedative effects).

21. Cook et al., *supra* note 20, at 1303.

22. *Id.*

seventh to black eyes, the eighth to summons, the ninth to bile, and the tenth to madness.[23]

Throughout history, considerable attention also has been given to the nature and character of individuals who consume alcohol.[24] Much of this attention focuses on the question of whether problematic alcohol use is a voluntary behavior, bad habit, character flaw, moral vice, or disease.[25] The answer to this question is important. On the one hand, conditions classified as voluntary behaviors or bad habits are believed to be subject to personal control.[26] On the other hand, individuals are believed to have less control over diseases.[27]

The view that problematic alcohol use is a voluntary behavior, bad habit, character flaw, and/or moral vice was espoused early in time. Writing during the post-Augustan age of Latin literature, Roman philosopher Seneca explained that "drunkenness is nothing but voluntary madness."[28] In his multivolume *The History of America*, historian and clergyman William Robertson similarly believed that drunkenness resulted from moral, rather than physiological, causes.[29] Likewise, the High Court of Errors and Appeals of

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23. *Id.*

24. *See infra* notes 28-45 and accompanying text.

25. *See* MARIANA VALVERDE, DISEASES OF THE WILL: ALCOHOL AND THE DILEMMAS OF FREEDOM 2, 39 (1998) (discussing the ability of individual will to flex itself against problematic alcohol use; asking from a historical perspective whether problematic alcohol use is "a moral vice, a bad habit, or a mental disease").

26. *See* Mariana Valverde, *'Slavery from Within': The Invention of Alcoholism and the Question of Free Will*, 22 SOC. HIST. 251, 256 (1997) (explaining historical beliefs regarding "alcoholism," specifically referring to the beliefs of members of the American Lunacy Commissioners that "alcoholism was (unlike insanity) not a true disease, precisely because the only sure cure lay in the exercise of the patient's own will:

> The problem of self-abasement or self-redemption is entirely within his control, provided he exercise a continuous determination of his will not to partake. The key to the riddle of this *alleged* disease lies in man's own will, and without this will effort, no physician can cure or even relieve him

(quoting John Ordronaux, *Is Habitual Drunkeness a Disease?*, AM. J. INSANITY 439 (1874))).

27. *See* NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, UNDERSTANDING ALCOHOL USE DISORDER 1 (2021), https://www.niaaa.nih.gov/sites/default/files/publications/Alcohol_Use_Disorder_0.pdf [https://perma.cc/6QEF-86V4] ("Alcohol use disorder (AUD) is a medical condition characterized by an impaired ability to stop or control alcohol use despite adverse social, occupational, or health consequences.").

28. Anna Lydia Motto & John R. Clark, *Seneca on Drunkenness*, 32 RIVISTA DI CULTURA CLASSICA E MEDIOEVALE 105, 110 (1990).

29. 4 WILLIAM ROBERTSON, THE HISTORY OF AMERICA 398 (1777) ("Such a [s]imilarity of ta[s]te [for alcohol], among people in [s]uch different [s]ituations, mu[s]t be a[s]cribed to the influence of [s]ome moral cau[s]e, and cannot be con[s]idered as the effect of any phy[s]ical or

Mississippi explained in 1860 that a father who was "addicted to intemperance" would be unable to impart to his children principles of "virtue and morality" and would contaminate his children with his "immoral conduct."[30]

The characterization of disordered drinking as a physiological disease gained a tentative foothold in the early nineteenth century. In 1810, Scottish naval physician Thomas Trotter stated, "I consider drunkenness, strictly speaking, to be a disease; produced by a remote cause, and giving birth to actions and movements in the living body, that disorder the functions of health."[31] Trotter was one of the first medical authorities to remove the blame associated with drinking from the individual and transfer it to a "remote cause" that was beyond the individual's control.[32] Trotter was not the only physician of his time to characterize problematic alcohol use as a disease rather than moral failure. American physician Benjamin Rush stated early in the nineteenth century that dependence on ardent spirits was an "odious disease (for by that name it should be called)."[33] Although Rush classified disordered drinking as a disease, his treatment recommendations included practicing Christianity and experiencing guilt and shame,[34] suggesting continued belief in moral causes. Physicians were not the only individuals to understand problematic alcohol use in disease terms in the early nineteenth century. In 1829, Reverend Nathan Beman declared: "[D]runkenness is itself a disease.... When the taste is formed, and the habit established, no man is his own master."[35]

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con[s]titutional want.").

30. Cocke v. Hannum, 39 Miss. 423, 440-42 (1860).

31. THOMAS TROTTER, AN ESSAY, MEDICAL, PHILOSOPHICAL, AND CHEMICAL, ON DRUNKENNESS AND ITS EFFECTS ON THE HUMAN BODY 18 (4th ed., London, Longman, Hurst, Rees & Orme 1810).

32. JAMES R. MILAM & KATHERINE KETCHAM, UNDER THE INFLUENCE: A GUIDE TO THE MYTHS AND REALITIES OF ALCOHOLISM 125 (1981).

33. BENJAMIN RUSH, AN INQUIRY INTO THE EFFECTS OF ARDENT SPIRITS UPON THE HUMAN BODY AND MIND: WITH AN ACCOUNT OF THE MEANS OF PREVENTING, AND OF THE REMEDIES FOR CURING THEM A2 (8th ed., Bos., James Loring 1823).

34. Katie Witkiewitz, Raye Z. Litten & Lorenzo Leggio, *Advances in the Science and Treatment of Alcohol Use Disorder*, 5 SCI. ADVANCES 1 (2019).

35. Harry Gene Levine, *The Discovery of Addiction: Changing Conceptions of Habitual Drunkenness in America*, 2 J. SUBSTANCE ABUSE TREATMENT 43, 49 (1985) (quoting NATHAN S. BEMAN, BEMAN ON INTEMPERANCE 6-7 (N.Y. 1829)).

Over the next two hundred years, physicians, clergy, judges, lawyers, and other stakeholders continued to grapple with how best to characterize problematic drinking. In 1867, the Supreme Court of the District of Columbia stated that a litigant "was suffering under a disease called alcoholism, a disease of the brain and nerve centers."[36] In 1882, Reverend John E. Todd authored a book titled *Drunkenness a Vice, Not a Disease* in which Todd firmly disagreed: "[D]runkenness ... is a vice, and not a disease."[37] In 1954, lawyer-turned-alcohol-therapist Edward J. McGoldrick opposed the viewpoint that drunkeness is a disease, explaining that "[a]lcoholism is no more a disease than thievery ... or lynching; like these, it is the product of a distortion of outlook, a way of life bred out of ignorance and frustration."[38]

In 1956, a board of the American Medical Association (AMA) passed a resolution urging hospitals to "admit patients with alcoholism equally with patients treated for other diseases."[39] Frequently referred to as the first organizational recognition of disordered drinking as a disease in the United States,[40] this AMA resolution was subsequently agreed with by the American Psychiatric Association, American Public Health Association, American Hospital Association, American Psychological Association, National Association of Social Workers, and American College of Physicians.[41] However, non-medically-trained persons did not readily accept the medical community's understanding of disordered drinking as a disease. In 1979, Congressman (and former actor and radio show host) Robert K. Dornan testified that the cause of the condition was the "absence of self-discipline."[42] These types of myths and

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36. Harmon v. Johnston, 8 D.C. (1 MacArth.) 139, 140 (1873), *aff'd sub nom*. Johnson v. Harmon, 94 U.S. 371 (1876).

37. JOHN E. TODD, DRUNKENNESS A VICE—NOT A DISEASE 15 (Hartford, Lockwood & Bainard Co.1882).

38. EDWARD J. MCGOLDRICK, JR., MANAGEMENT OF THE MIND: HOW TO CONQUER ALCOHOL AND OTHER BLOCKS TO SUCCESSFUL LIVING, at x (1954).

39. Karl Mann, Derik Hermann & Andreas Heinz, *One Hundred Years of Alcoholism: The Twentieth Century*, 35 ALCOHOL & ALCOHOLISM 10, 12-13 (2000).

40. *Id.* at 13.

41. *See* Kathy Bettinardi-Angres & Daniel H. Angres, *Understanding the Disease of Addiction*, 1 J. NURSING REGUL. 31, 31 (2010); Ernest Kurtz, *Alcoholics Anonymous and the Disease Concept of Alcoholism*, 20 ALCOHOLISM TREATMENT Q. 5, 30 (2002).

42. MILAM & KETCHAM, *supra* note 32, at 8.

misunderstandings—that lawmakers and other non-medically-trained authorities imparted—filtered down to the general public.

By the late twentieth century, much of the public still considered individuals with disordered alcohol use to be "moral degenerate[s] who choose[ ] a life of abasement and, through lack of will power and maturity, allow[ ] [themselves] to lose [their] job[s], ... famil[ies], and ... self-respect."[43] Prominent psychologist James R. Milam explained in 1981 that "[e]very aspect of the disease is confused, distorted by myth and misconception, and colored by opinions which have no firm basis in fact."[44] Milam further explained: "The typical alcoholic, the myth informs us, is a person who would rather be drunk than sober ... who is riddled with guilt and shame over past sins and misdeeds, yet lacks the strength of character to change his ways, and who has no guiding purpose or motivation in life."[45]

B. The DSM: Alcohol Use Disorder

The leading authority on the classification and diagnosis of mental disorders is the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association (APA).[46] A review of all five editions of the DSM, published between 1952 and 2013, shows how the APA's conception of problematic alcohol use and related terminology changed over time, understandably leading to confusion and bewilderment among professionals and laypersons alike.[47] The APA published the first edition of its DSM (DSM-I) in 1952.[48] The DSM-I conceptualized a condition called "alcoholism" not as a stand-alone diagnosis but as arising from a primary personality disorder called sociopathic personality

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43. *Id.* at 10.

44. *Id.*

45. *Id.*

46. *DSM-5 Frequently Asked Questions*, AM. PSYCHIATRIC ASS'N, https://psychiatry.org/psychiatrists/practice/dsm/feedback-and-questions/frequently-asked-questions [https://perma.cc/3N4M-CWFQ] ("The [DSM] is the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders.").

47. *See infra* notes 48-74 and accompanying text (reviewing the conception of problematic alcohol use in all five editions of the DSM).

48. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (1952) [hereinafter DSM-I].

disturbance.[49] The DSM-I also identified certain nondiagnostic terms that health care professionals could use in hospital records, including "[a]lcoholic intoxication (simple drunkenness)."[50] In the early 1950s, then, the APA understood problematic alcohol use as a form of sociopathic personality disorder and supported the use of the words "alcoholism" and "drunkenness."

The APA published the second edition of its DSM in 1968 (DSM-II).[51] The DSM-II explained that a diagnosis of "alcoholism" was appropriate for "patients whose alcohol intake is great enough to damage their physical health, or their personal or social functioning, or when it has become a prerequisite to normal functioning."[52] Unlike its first edition predecessor, however, the DSM-II encouraged a separate diagnosis of "alcoholism" even when the "alcoholism" was "due to another mental disorder."[53] The DSM-II recognized three types of "alcoholism" including "[e]pisodic excessive drinking," "[h]abitual excessive drinking," and "[a]lcohol addiction."[54] In the late 1960s, then, the APA supported the use of the words "alcoholism" and "addiction" but no longer used the word "drunkenness" and no longer understood problematic alcohol use solely in terms of sociopathic personality disturbance.

The APA published the third edition of its DSM in 1980 (DSM-III).[55] The DSM-III departed from psychoanalytic custom by establishing consensus-based diagnostic categories,[56] including the category of "[s]ubstance [u]se [d]isorders"[57] as well as criteria for diagnoses within such categories, including the diagnoses of "[a]lcohol [a]buse" and "[a]lcohol [d]ependence."[58] The DSM-III described

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49. *Id.* at 7 (Code 322.1).

50. *Id.* at 8 (Code 322.0).

51. *See* AM. PSYCHIATRIC ASS'N, DSM-II DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (2d ed. 1968) [hereinafter DSM-II].

52. *Id.* at 45.

53. *Id.* at 10 (showing a separate diagnostic code (303) for "[a]lcoholism"); *see id.* at 45 (providing an explanation of the diagnosis).

54. *Id.* at 45.

55. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3d ed. 1980) [hereinafter DSM-III].

56. *See* Robinson & Adinoff, *supra* note 19, at 11 (explaining that the DSM-III "broke with psychoanalytic tradition and instituted consensus based diagnoses and diagnostic criteria").

57. DSM-III, *supra* note 55, at 163 (setting forth the diagnostic category of "[s]ubstance [u]se [d]isorders").

58. *Id.* at 169-70.

"[a]lcohol [a]buse" as a "pattern of pathological use for at least a month that causes impairment in social or occupational functioning"[59] and "[a]lcohol [d]ependence" as "either a pattern of pathological alcohol use or impairment in social or occupational functioning due to alcohol, and either tolerance or withdrawal."[60] Although the DSM-III completely omitted the words "drunkenness" and "addiction," reasoning that they were pejorative and stigmatizing, the DSM-III did use the word "alcoholism" in a nod to the past when it explained "[a]lcohol [d]ependence has also been called [a]lcoholism."[61]

In 1994, the APA published the fourth edition of its DSM (DSM-IV).[62] In a chapter titled "Substance-Related Disorders" and in a subsection titled "Alcohol-Related Disorders," the DSM-IV identified two "[a]lcohol [u]se [d]isorders" including "[a]lcohol [d]ependence" and "[a]lcohol [a]buse."[63] According to the DSM-IV, the essential feature of "[a]lcohol [d]ependence" was "a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues use of [alcohol] despite significant [alcohol]-related problems"[64] and the essential feature of "[a]lcohol [a]buse" was "a maladaptive pattern of [alcohol] use manifested by recurrent and significant adverse consequences related to the repeated use of [alcohol]."[65] For the first time in its history, the DSM completely omitted three words—"drunkenness," "alcoholism," and "addiction"—because the words were considered pejorative and stigmatizing.[66]

In 2013, the APA published its current (fifth) edition of the DSM (DSM-5).[67] In a chapter renamed "Substance-Related and Addictive

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59. *Id.* at 169.

60. *Id.*

61. *Id.*; *see also* Richard J. Rosenthal & Suzanne B. Faris, *The Etymology and Early History of "Addiction,"* 27 ADDICTION RSCH. & THEORY 437, 437 (2019) (stating that the DSM-III omitted the term "addiction" because it was pejorative and stigmatizing).

62. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 1994) [hereinafter DSM-IV].

63. *Id.* at 195.

64. *Id.* at 176, 195.

65. *Id.* at 182, 196.

66. *See id.* at 196-204; Rosenthal & Faris, *supra* note 61, at 437 (stating that the DSM-IV omitted the term "addiction" because it was pejorative and stigmatizing).

67. *See* DSM-5, *supra* note 2.

Disorders" and in a subsection titled "Alcohol-Related Disorders," the DSM-5 identified just one disorder: AUD.[68] According to the DSM-5, AUD is characterized by "a cluster of behavioral and physical symptoms ... includ[ing] withdrawal, tolerance, and craving."[69] AUD may be classified as mild, moderate, or severe depending on the number of symptoms that are present during a twelve-month period.[70] The presence of two or three criteria during a twelve-month period is recognized as mild, the presence of four or five criteria is recognized as moderate, and the presence of six to eleven criteria is recognized as severe.[71] Illustrative criteria include drinking alcohol in larger amounts or over a longer period of time than intended; having a persistent desire or making unsuccessful efforts to stop or control drinking; spending a great deal of time trying to obtain, use, or recover from alcohol; and failing to fulfill major responsibilities at work, school, or home due to recurrent alcohol use.[72] Like its fourth edition predecessor, the DSM-5 omitted

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68. *Id.* at xxv, 490-92.
69. *Id.* at 492.
70. *Id.* at 490-91.
71. *Id.* at 491.
72. The eleven diagnostic criteria for AUD formally read:

> 1. Alcohol is often taken in larger amounts or over a longer period than was intended.
> 2. There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
> 3. A great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects.
> 4. Craving, or a strong desire or urge to use alcohol.
> 5. Recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home.
> 6. Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol.
> 7. Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
> 8. Recurrent alcohol use in situations in which it is physically hazardous.
> 9. Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol.
> 10. Tolerance, as defined by either of the following:
>
> a. A need for markedly increased amounts of alcohol to achieve intoxication or desired effect.
>
> b. A markedly diminished effect with continued use of the same amount of alcohol.
>
> 11. Withdrawal, as manifested by either of the following:

the words "drunkenness" and "alcoholism" completely. The DSM-5 also omitted the word "addiction" from its official diagnostic terminology, reasoning that "addiction" had an "uncertain definition and ... potentially negative connotation."[73] The DSM-5 further omitted the word "abuse" due to the word's strong association with negative judgments and punishment.[74]

Today, the medical community understands AUD as a chronic health condition and a disease of the brain.[75] The Surgeon General of the United States has repeatedly stated that AUD is a medical condition, not a character flaw, and that AUD must be treated like other physiological diseases, including heart disease, diabetes, and cancer.[76] Scientists report that AUD is accompanied by long-lasting changes to brain regions that affect "the execution of motivated behaviors and ... the control of stress and emotionality."[77] These

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a. The characteristic withdrawal syndrome for alcohol.

b. Alcohol (or a closely related substance, such as a benzodiazepine) is taken to relieve or avoid withdrawal symptoms.

Id. at 490-91.

73. *Id.* at 485; *see* Rosenthal & Faris, *supra* note 61, at 437 ("The word [addictive] has recently been reintroduced in DSM-5 (APA 2013), where it appears in the name for a new category, 'Substance-Related and Addictive Disorders,' yet the text [of the DSM-5] observes that *addiction* has been 'omitted from the official DSM-5 substance use disorder diagnostic terminology because of its uncertain definition and its potentially negative connotation.'" (quoting DSM-5, *supra* note 2, at 485)).

74. *See* NAT'L INST. ON DRUG ABUSE, WORDS MATTER: TERMS TO USE AND AVOID WHEN TALKING ABOUT ADDICTION 2 (2021), https://nida.nih.gov/sites/default/files/nidamed_words_matter_terms.pdf [https://perma.cc/LV5T-M4BA].

75. *See* NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, *supra* note 27, at 1 (describing AUD as a "medical condition"); Emma K. Erickson, Emily K. Grantham, Anna S. Warden & R.A. Harris, *Neuroimmune Signaling in Alcohol Use Disorder*, 177 PHARMACOLOGY, BIOCHEMISTRY & BEHAV. 34, 34 (2019) (describing AUD as a "widespread [brain] disease").

76. *See* U.S. DEP'T HEALTH & HUM. SERVS., FACING ADDICTION IN AMERICA: THE SURGEON GENERAL'S REPORT ON ALCOHOL, DRUGS, AND HEALTH, at v, 2-1 (2016) [hereinafter SURGEON GENERAL REPORT] ("For far too long, too many in our country have viewed addiction as a moral failing.... We must help everyone see that addiction is not a character flaw—it is a chronic illness that we must approach with the same skill and compassion with which we approach heart disease, diabetes, and cancer.... [S]evere substance use disorders, commonly called *addictions*, were once viewed largely as a moral failing or character flaw, but are now understood to be chronic illnesses characterized by clinically significant impairments in health, social function, and voluntary control over substance use."); Robert A. Matano & Stanley F. Wanat, *Addiction Is a Treatable Disease, Not a Moral Failing*, 172 W.J. MED. 63, 63 (2000) ("Patients and providers need to know that addiction is a treatable disease not a moral failing." (citing Norman S. Miller & Lorinda M. Sheppard, *The Role of the Physician in Addiction Prevention and Treatment*, 22 PSYCHIATRIC CLINIC N. AM. 489 (1999))).

77. Witkiewitz et al., *supra* note 34, at 2.

changes, which occur in the midbrain, the limbic system, the prefrontal cortex, and the amygdala, make it difficult for individuals with AUD to stop drinking and make such individuals vulnerable to relapse.[78] As the U.S. Office of National Drug Control Policy explained, "addictive substances can lead to dramatic changes in brain function and reduce a person's ability to control his or her substance use, and ... repeated use of these substances powerfully alters brain chemistry and the function of brain circuitry to create a neurobiological disorder."[79] Notwithstanding, most individuals with AUD have a promising prognosis if they receive proper treatment.[80] As with other physical diseases, medications have been developed to treat AUD. Three medications—including naltrexone, acamprosate, and disulfiram—have been approved by the U.S. Food and Drug Administration and can be used alone or in combination with behavioral treatments and/or mutual support programs to help treat or support individuals with AUD.[81]

Today, government agencies, professional medical associations, and mental health advocates recommend the use of neutral, "person-first" language when a third party that has no knowledge of how a particular individual self-identifies wishes to refer to an individual with AUD.[82] Person-first language places the person before the person's attribute, characteristic, or health condition in a sentence, clause, or phrase.[83] The goal of person-first language is to communicate that AUD is just "one aspect of a person's life, not the defining" aspect.[84] An example of person-first language would be "individual with alcohol use disorder" but not "abuser," "addict," "alcoholic," "drunkard," "inebriate," or "intemperate."[85] Government agencies, professional medical associations, and mental health advocates also encourage neutral language over language that implies

78. *See id.* at 2-7 (reviewing the evidence for a variety of treatments for AUD); NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, *supra* note 27, at 1.

79. EXEC. OFF. OF THE PRESIDENT, OFF. OF NAT'L DRUG CONTROL POL'Y, CHANGING FEDERAL TERMINOLOGY REGARDING SUBSTANCE USE AND SUBSTANCE USE DISORDERS (2017).

80. DSM-5, *supra* note 2, at 493.

81. *See* NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, *supra* note 27, at 2-3.

82. *See* Tovino, *supra* note 3, at 12-14; *infra* note 89 (referencing a variety of sources strongly recommending person-first language in the context of substance use disorders).

83. *See* Volkow et al., *supra* note 7, at 2231.

84. *Id.*

85. *See id.*

negative value judgements.[86] For example, the word "use" is considered preferable to the word "abuse" because the latter can imply malintent, cruelty, and violence.[87] Language that "[r]espects the worth and dignity of all persons," "[f]ocuses on the medical nature of substance use disorders and treatment," and "[a]voids perpetuating negative stereotypes and biases through the use of slang and idioms" is also recommended.[88] Examples of words that perpetuate negative stereotypes and biases and should be avoided include "abuser," "addict," "alcoholic," "bombed," "dependence," "drunk," "habit," "inebriate," "intemperate," and "smashed."[89] Examples of neutral terms that respect the worth and dignity of individuals with AUD and that focus on the medical nature of AUD

86. *See id.*; Lauren M. Broyles, Ingrid A. Binswanger, Jennifer A. Jenkins, Deborah S. Finnell, Babalola Faseru, Alan Cavaiola, Marianne Pugatch & Adam J. Gordon, *Confronting Inadvertent Stigma and Pejorative Language in Addiction Scholarship: A Recognition and Response*, 35 SUBSTANCE ABUSE 217, 218 (2014).

87. *See* Volkow et al., *supra* note 7, at 2231.

88. *See* Broyles et al., *supra* note 86, at 218.

89. *See, e.g.*, NAT'L INST. ON DRUG ABUSE, *supra* note 74, at 2 (opposing the use of these terms); NAT'L INST. ON DRUG ABUSE, YOUR WORDS MATTER: LANGUAGE SHOWING COMPASSION AND CARE FOR WOMEN, INFANTS, FAMILIES, AND COMMUNITIES IMPACTED BY SUBSTANCE USE DISORDER 3-4 (2021), https://nida.nih.gov/sites/default/files/nidamed_words_matter_women_infants_families.pdf [https://perma.cc/TZH9-CPX5] (same); *Language and Terminology Guidance for* Journal of Addiction Medicine (JAM) *Manuscripts*, J. ADDICTION MED., https://journals.lww.com/journaladdictionmedicine/pages/instructions-and-guidelines.aspx [https://perma.cc/H5AX-LN7G] (same); E. Vaughan Gilmore, *It's Not Just Semantics: Examining the Language of Addiction Treatment and Recovery*, NAT'L INST. FOR ALCOHOLISM & DRUG ABUSE COUNSELORS (Oct. 1, 2019), https://www.naadac.org/assets/2416/evaughan_gilmore_ppt.pdf [https://perma.cc/2E2H-JKW7] (same); OFF. OF NAT'L DRUG CONTROL POL'Y, *supra* note 79, at 2-3 (same); *Words Matter: The Language of Addiction*, P'SHIP TO END ADDICTION (June 2017), https://drugfree.org/article/shouldnt-use-word-addict [https://perma.cc/9UBN-TE58] (same); Colleen Walsh, *Revising the Language of Addiction*, HARV. GAZETTE (Aug. 28, 2017), https://news.harvard.edu/gazette/story/2017/08/revising-the-language-of-addiction/ [https://perma.cc/CX2E-BGBV] (same); *Data Journalism Chapter Debuts in 2017 AP Stylebook*, ASSOCIATED PRESS, May 31, 2017, https://www.ap.org/press-releases/2017/data-journalism-chapter-debuts-in-2017-ap-stylebook [https://perma.cc/9ZHX-M8XK] (same); OHIO LANGUAGE FIRST TEAM, USING PERSON-FIRST LANGUAGE ACROSS THE CONTINUUM OF CARE FOR SUBSTANCE USE DISORDERS & OTHER ADDICTIONS: WORDS MATTER TO REDUCE STIGMA 5-9 (2017) (same); *Statements and Guidelines Addiction Terminology*, INT'L SOC'Y ADDICTION J. EDS., https:// www.isaje.net/addiction-terminology.html [https://perma.cc/FRL9-S9A6] (same); NAT'L ALL. ADVOCS. FOR BUPRENORPHINE TREATMENT, THE WORDS WE USE MATTER: REDUCING STIGMA THROUGH LANGUAGE (June 2008) (same); COMM. ON DISABILITY ISSUES PSYCH., *Guidelines for Nonhandicapping Language in APA Journals*, APA STYLE (Apr. 1992), https://apastyle.apa.org/6th-edition-resources/nonhandicapping-language [https://perma.cc/RE62-TXB7] (same).

include "individual with alcohol use disorder" or "individual with AUD."[90]

C. "Drunk," "Drunkard," and "Drunkenness"

Since 2013, then, the APA has used the term "alcohol use disorder" to refer to individuals with problematic alcohol use who meet at least two diagnostic criteria set forth in the DSM-5.[91] From the Middle Ages until recently, however, these individuals were described using a wide variety of other terms. What do these terms mean, and what connotations do they carry? Let us begin with "drunk," "drunkard," and "drunkenness." These words descend from "fordrunken," a Middle English word meaning "addicted to drink."[92] An illustrative literary use of "fordrunken" may be taken from the prologue to *The Miller's Tale*, the second of Geoffrey Chaucer's *The Canterbury Tales*, written at the end of the fourteenth century. There, Chaucer describes the behavior and appearance of the Miller as "for dronken" and "pale."[93] Progeny of "fordrunken" have been used in a range of lay and professional contexts in the centuries since. Colonial Americans, for example, singled out individuals who were periodically or frequently intoxicated and called them "drunkards," "common drunkards," or "habitual drunkards."[94] By further example, Scottish naval physician Thomas Trotter defined "drunkenness" in 1810 as "the offspring of habitual intoxication" and specifically referred to individuals with this condition as "drunkard[s],"

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90. *See supra* note 89; CAN. CTR. ON SUBSTANCE USE & ADDICTION, OVERCOMING STIGMA THROUGH LANGUAGE: A PRIMER 7-8 (2019), https://www.ccsa.ca/sites/default/files/2019-09/CCSA-Language-and-Stigma-in-Substance-Use-Addiction-Guide-2019-en.pdf [https://perma.cc/UB3K-TD62].

91. DSM-5, *supra* note 2, at 490-91.

92. *See* Olga Khazan, *A History of 'Drunk' Words*, THE ATLANTIC (Jan. 8, 2015), https://www.theatlantic.com/health/archive/2015/01/a-history-of-drunk-words/384325/ [https://perma.cc/ 9AZF-XVJZ] ("The grandfather of 'drunk,' 'fordrunken,' is a Middle English word that appears in Chaucer's tales."); *Fordrŏnken*, UNIV. MICH. LIBR. MIDDLE ENG. COMPENDIUM, https://quod. lib.umich.edu/m/middle-english-dictionary/dictionary [https://perma.cc/D94V-5HLF] (enter "fordronken" into search bar; click "Search"; then select entry for "fordronken") (defining "fordrŏnken" as "addicted to drunkenness").

93. *The Miller's Prologue and Tale*, HARV.'S GEOFFREY CHAUCER WEBSITE, https://chaucer.fas.harvard.edu/pages/millers-prologue-and-tale [https://perma.cc/V9CN-45HD].

94. Levine, *supra* note 35, at 45.

"habitual drunkards," "drunken people," and "drunken m[e]n" in his medical writings.[95]

Historically, the words "drunk," "drunkard," and "drunkenness" were associated with vice, evil, sin, and detestation as well as a lack of morals, character, earnestness, industry, and worth. In 1708, for example, Cotton Mather referred to "drunkenness" as the "engine of the Devil."[96] In 1816, the Supreme Judicial Court of Massachusetts held that the word "drunkard" could "stigmatize[ ] [a person's] general character."[97] In 1831, the Court of Appeals of Kentucky referenced society's "detestation towards drunkenness, on account of the moral and physical evils with which it afflicts mankind."[98] In 1855, the Supreme Court of Indiana described "drunkenness" as "an evil, both to the individual and to the state."[99] That same year, the Supreme Court of Georgia referred to "drunkenness" as a "vice."[100] In 1882, in reference to a defendant alleged to have been "drunk" and "drunken," the Supreme Court of North Carolina explained that the offense of public intoxication was designed in part to prevent the "evil example of such immoral conduct."[101] That same year, Reverend John E. Todd placed "drunkards" at the bottom of society when he stated, "[e]very human soul is worth saving; but what I mean is, that if a choice is to be made, drunkards are about the last class to be taken hold of."[102] The following year, the Supreme Court of Michigan referred to a defendant as a "habitual drunkard" before stating that the defendant was engaged in the "evil habit of drink."[103] In 1892, the Supreme Court of Kentucky described a "drunkard" in terms of his shiftlessness and recklessness as well as his lack of earnestness and industry.[104] In

95. TROTTER, *supra* note 31, at 22, 63, 106, 112.

96. Levine, *supra* note 35, at 45 (citing COTTON MATHER, SOBER CONSIDERATIONS ON A GROWING FLOOD OF INIQUITY 7 (Bos., John Allen 1708)).

97. Chaddock v. Briggs, 13 Mass. (12 Tyng) 248, 254 (1816).

98. *In re* Hubbard's Will, 29 Ky. 58, 59 (1831).

99. Beebe v. State, 6 Ind. 501, 542 (1855) (opinion of Gookins, J.).

100. Perdue v. Ellis, 18 Ga. 586, 600 (1855).

101. State v. McNinch, 87 N.C. 567, 569-70 (1882).

102. TODD, *supra* note 37, at 14.

103. Kline v. Kline, 15 N.W. 541, 542 (Mich. 1883).

104. Azbill v. Azbill, 14 Ky. L. Rptr. 105, 105-06 (1892) (describing the defendant "drunkard" as a "reckless, wandering man" and a "drinking, shiftless" husband; further stating that the defendant followed no occupation "industriously or earnestly").

1895, the Supreme Court of Minnesota held that the defendant's use of the words "drunken" and "drunkenness" in regard to the plaintiff could "injuriously affect the social standing of the plaintiff" and that the words involved "moral turpitude."[105] As discussed in more detail in Part II, current state statutes continue to use the words "drunk," "drunkenness," and "drunkard." For example, Alabama makes it an offense for any person to be "drunk" around a polling place.[106] Alabama also identifies "habitual drunkenness" as a statutorily permitted cause for divorce.[107]

D. "Inebriate" and "Inebriety"

Although "fordrunken" and its descendants have been used since the mid-fourteenth century,[108] other words were also used during this time period to refer to individuals with problematic alcohol use. "Inebriate" is a late Middle English term drawing from the Latin word "*inebriatus*," which is based on "*inebriare* 'to make drunk'" and "*ebrius* 'drunk.'"[109] "*Inebriatus*" is the grandparent of several nineteenth-century English words including "*inebriety* (1801)," "*inebriant*, noun (1808)," "*inebriant*, adjective (1828)," and "*inebriacy* (1842)."[110] "Inebriate," "inebriates," and "inebriety" were heavily used by health care institutions, medical associations, and medical journals that were founded in the United States in the nineteenth century. The Inebriates' Home was incorporated in Fort Hamilton, New York, in 1866, for example, and the Kings County Inebriate Home was established in Brooklyn, New York, in 1867.[111] A group of physicians and institutional superintendents founded

105. Morgan v. Kennedy, 64 N.W. 912, 914 (Minn. 1895).

106. ALA. CODE § 17-17-51 (2022).

107. *Id.* § 30-2-1(a)(6).

108. *See supra* notes 92-93 and accompanying text.

109. *Inebriate (v.)*, ONLINE ETYMOLOGY DICTIONARY, https://www.etymonline.com/word/inebriate [https://perma.cc/7QLM-JTMR].

110. *Id.*

111. *See* JOHN WILLETT, THE DRUNKARD'S DISEASED APPETITE, WHAT IS IT? IF CURABLE, HOW? BY MIRACULOUS AGENCY OR PHYSICAL MEANS—WHICH? (Fort Hamilton1877) (including a photograph of The Inebriates Home on the inside cover page and stating, "[The Inebriates' Home] is the Best-constructed and the Best-furnished Institution for the Care and Treatment of Inebriates in Existence"); Thomas D. Crothers, *American Inebriate Asylums*, 21 J. AM. MED. ASS'N 471, 472 (1893) (stating that Kings County Inebriate Home was a large institution that did "good work" for inebriates).

the American Association for the Cure of Inebriates (Association) in 1870.[112] The Association was later renamed the Association for the Study and Cure of Inebriety.[113] In 1876, the Association began publishing the *Quarterly Journal of Inebriety*, which fostered research and discussion on alcohol-related matters until the cessation of its publication in 1914.[114] "Inebriate" and "inebriety" were also frequently used by physicians in their nineteenth-century writings. American physician Thomas Davison Crothers authored *Inebriate Maniacs* in 1886 and *Specifics for the Cure of Inebriety* in 1892, for example.[115]

In legal contexts, "inebriate" and "inebriety" have long been associated with immorality, vice, degradation, and disgrace. In 1851, the petitioners in *In re Paddock's Petition*, a case before the Supreme Court of New York County, described a trustee as "an inebriate, and notoriously immoral."[116] In 1857, the Supreme Court of North Carolina in *Graham v. Little* labeled a physician as an "inebriate" with a "degrading and inveterate habit."[117] In 1895, the Supreme Court of Kansas in *Rogers v. Morrill* cited several biblical passages in support of its statement that, "[h]abitual inebriety ... has been condemned as a great immorality in all ages of the world ... and the apostle to the gentiles has classed drunkenness with other great vices.... Inebriety is a vice that cannot well be hidden."[118] The Supreme Court of Kansas further explained that the disordered drinking of the plaintiff—a state university regent—was "disgraceful and injurious" and that "the inebriety of the regent" was "immorality in office."[119] In 1909, a concurring opinion by the Supreme Court of Idaho in *In re Crocheron's Estate* stated that an

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112. Leonard Blumberg, *The American Association for the Study and Cure of Inebriety*, 2 ALCOHOLISM: CLINICAL & EXPERIMENTAL RSCH. 235, 235 (1978).

113. *Id.*

114. *See William White Papers: Journal of Inebriety*, CHESTNUT HEALTH SYS., https://www.chestnut.org/william-white-papers/68/journal-of-inebriety/items/ [https://perma.cc/HS7Q-ZQ9B] (making available copies of all issues of the *Quarterly Journal of Inebriety* from 1876 to 1914).

115. *See* Thomas Davison Crothers, *Inebriate Maniacs*, 30 POPULAR SCI. MONTHLY 109 (1886); Thomas Davison Crothers, *Specifics for the Cure of Inebriety*, 41 POPULAR SCI. MONTHLY 732 (1892).

116. 6 How. Pr. 215, 215 (N.Y. Sup. Ct. 1851).

117. 56 N.C. (1 Jones Eq.) 152, 164 (1857).

118. 42 P. 355, 357 (Kan. 1895).

119. *Id.*

"inebriate" would be unfit to serve as a guardian for children due to his "immoral habits and practices."[120]

"Inebriates" also are frequently contrasted with individuals of good moral character. In 1891, for example, the Supreme Court of Wisconsin in *Burnham v. Burnham* examined a codicil to a father's will.[121] The codicil stated that the father's "inebriate" son should not receive the father's estate unless the son "reformed" and became a "respectable citizen of good moral character."[122]

Finally, as discussed in more detail in Part II, current state statutes continue to use the words "inebriate" and "inebriety." For example, West Virginia defines "inebriate" to include certain individuals who are incapable of conducting themselves by reason of "periodical [sic], frequent or constant drunkenness."[123] By further example, Virginia has detoxification programs for "public inebriate[s]" as an alternative to arrest and jail.[124]

E. "Intemperate" and "Intemperance"

Still, other terms were used during the late Middle Ages to refer to individuals with problematic alcohol use. The adjective "intemperate" ("characterized by excessive indulgence in a passion or appetite") is a late fourteenth-century term that draws from the Latin "*intemperatus*" ("excessive, immoderate"), opposite of "*temperatus*" ("restrained, regulated, limited, moderate, sober, calm, steady").[125] In the United States, both lay and professional communications frequently used the nouns "intemperate" and "intemperance" from the nineteenth century onward to refer to the problems associated with alcohol use. For example, a one-page poster printed in Boston in 1830 titled "A Mirror for the Intemperate" contains pictures and text importing the dangers of alcohol.[126] One picture on the poster

120. 101 P. 741, 747 (Idaho 1909) (Ailshie, J., concurring in denial of rehearing).

121. 48 N.W. 661, 661 (Wis. 1891).

122. *Id.*

123. W. VA. CODE § 27-1-4 (2022).

124. VA. CODE ANN. §§ 9.1-176(A), 18.2-388 (2022).

125. *Intemperate (adj.)*, ONLINE ETYMOLOGY DICTIONARY, https://www.etymonline.com/word/intemperate#etymonline_v_9383 [https://perma.cc/CTL4-BG82].

126. Henry Bowen, *A Mirror for the Intemperate* (poster), *in* GILDER LEHRMAN COLLECTION (c. 1830), https://www.gilderlehrman.org/history-resources/spotlight-primary-source/mirror-intemperate-ca-1830 [https://perma.cc/SNE4-C7CL].

shows a bar room brawl, and a second picture shows a drinker being overtaken by an intemperate monster with multiple heads, each representing a different type of liquor.[127] By further example, a lithograph printed in Philadelphia in 1832 titled "Intemperance & Temperance" depicts the unhealthy (due to intemperance) and healthy (due to temperance) effects of alcohol on individuals, families, livestock, and real estate.[128]

In legal contexts, "intemperate" and "intemperance" have long been associated with evil, vice, viciousness, and immorality. In 1816, the Supreme Judicial Court of Massachusetts in *Chaddock v. Briggs* referred to "intemperance" as a "gross vice."[129] In 1847, in *Thurlow v. Commonwealth*, the Supreme Court of the United States also associated "intemperance" with evil, vice, and immorality:

> The train of evils which mark the progress of intemperance is too obvious to require comment. It brings with it degradation of character, impairs the moral and physical energies, wastes the health, increases the number of paupers and criminals, undermines the morals, and sinks its victims to the lowest depths of vice and profligacy.[130]

In 1858, the Supreme Court of Georgia in *Southwestern Railroad Co. v. Paulk* quoted witnesses who testified as to the value of the plaintiff's decedent.[131] These witnesses tied the decedent's "intemperate" behavior to the conclusion that the decedent was an "immoral man" of low value.[132] In 1860, the High Court of Errors and Appeals of Mississippi in *Cocke v. Hannum* ruled that a father who was "addicted to intemperance" could not impart to his children "principles of virtue and morality" and would contaminate his children with his "immoral conduct."[133] In 1890, the Supreme Court

127. *Id.*

128. Alexander Rider, *"Look Upon This Picture and on This." Intemperance & Temperance* (lithograph), *in News Media and the Making of America, 1730-1865* (c. 1832), AM. ANTIQUARIAN SOC'Y, https://americanantiquarian.org/earlyamericannewsmedia/items/show/89 [https://perma.cc/43WU-75YG].

129. 13 Mass. (12 Tyng) 248, 254 (1816).

130. 46 U.S. (1 How.) 504, 521 (1847). The Supreme Court also described "intemperance" as "an evil of all-pervading magnitude." *Id.*

131. 24 Ga. 356, 359-60 (1858).

132. *Id.*

133. 39 Miss. 423, 440-42 (1860).

of Nebraska quoted a codicil to a father's will that would give his son certain property but only if the son was "reformed of his intemperate habits" and "immoral consortings and evil associations."[134] In 1900, the Supreme Court of Minnesota in *Murray v. Board of Commissioners of Ramsey County* referred to "[t]he evils of intemperance," explaining that they festered in both large cities and less populous communities.[135] In the 1914 Supreme Court of Kentucky case of *Mutual Protective League v. Cole*, the defendant life insurance company refused an insurance payment to the decedent's wife on the ground that the decedent's death "result[ed] from his own vicious, intemperate and immoral habits and acts."[136] In 1935, the Supreme Court of Colorado held in *People ex rel. Axtell v. Milliken* that a Denver police officer's wife could not recover his pension when the officer died as a "result of immoral conduct, or immoral or intemperate habits."[137]

As discussed in more detail in Part II, current state statutes also continue to use the words "intemperate" and "intemperance." For example, Rhode Island permits a family member or employer of a "[h]abitually intemperate person" to request a liquor licensee not to sell the person liquor.[138] If the liquor licensee sells liquor to the person within twelve months of the request, then a cause of action may be brought for resulting damages.[139]

F. "Alcoholic" and "Alcoholism"

Unlike "drunkard," "inebriate," and "intemperate," which have their roots in Middle English, "alcoholic" ("of or pertaining to alcohol") was first used as an adjective in 1790 to describe substances containing or pertaining to alcohol (for example, an "alcoholic" beverage).[140] The noun "alcoholism" was first used in 1849 by Dr. Magnus Huss, a Swedish physician, to describe the adverse effects

134. Hawke v. Euyart, 46 N.W. 422, 423 (Neb. 1890).
135. 84 N.W. 103, 104 (Minn. 1900).
136. 170 S.W. 184, 185 (Ky. 1914).
137. 42 P.2d 195, 196 (Colo. 1935).
138. 3 R.I. GEN. LAWS § 3-11-2 (2022).
139. *Id.*
140. *Alcoholic (adj.)*, ONLINE ETYMOLOGY DICTIONARY, https://www.etymonline.com/search?q=alcoholic [https://perma.cc/5VB8-FZ7Q].

of an individual's regular and heavy consumption of alcohol, including the inability to manage personal and work matters.[141] At that time, "alcoholism" was understood as a deficit of will and was associated with poverty in "both sexes and middle- and upper-class women."[142] The term subsequently was applied broadly and liberally to individuals who drank daily or heavily.[143] "Alcoholic" was first used as a noun ("one who is addicted to drinking in excess, chronic drunkard, old rounder") in 1891.[144] A similar word ("*alcoholist*") was used slightly earlier, in 1877, to mean "a drinker of alcohol."[145]

The nouns "alcoholic" and "alcoholism" were popularized in the United States in 1935 through the founding of Alcoholics Anonymous (AA) by New York stockbroker Bill Wilson and Akron surgeon Bob Smith.[146] The terms' popularity spread with AA's publication in 1939 of *Alcoholics Anonymous: The Story of How Many Thousands of Men and Women Have Recovered from Alcoholism* (the Big Book).[147] The first (1939), second (1955), and third (1976) editions of the Big Book reached circulations of 300,000, 1,150,500, and 19,550,000 copies, respectively.[148] The current (fourth) edition (2001) has been translated into over seventy languages[149] and is used by over 2 million fellowship members worldwide.[150]

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141. *See* PHILLIPS, *supra* note 18, at 212.

142. *Id.*

143. *See id.* at 212, 290; Elvin Morton Jellinek, Note, *Phases of Alcohol Addiction*, 13 Q.J. STUD. ON ALCOHOL 673, 673-74 (1952) (explaining that the term "alcoholism" became "extended to all excessive drinking irrespective of whether or not there is any physical or psychological pathology involved").

144. *Alcoholic (adj.)*, *supra* note 140.

145. *Id.*

146. *See The Start and Growth of A.A.*, ALCOHOLICS ANONYMOUS, https://www.aa.org/the-start-and-growth-of-aa [https://perma.cc/H589-R6SM]; Brooke A. Lewis, The History of the Disease Concept of Substance Dependency 21-22 (May 2016) (M.S. thesis, Northern Michigan University) (NMU Commons).

147. *See* ALCOHOLICS ANONYMOUS: THE STORY OF HOW MANY THOUSANDS OF MEN AND WOMEN HAVE RECOVERED FROM ALCOHOLISM (1st ed. 1939) [hereinafter THE BIG BOOK]; Lewis, *supra* note 146, at 21-22.

148. ALCOHOLICS ANONYMOUS WORLD SERVS., INC., ALCOHOLICS ANONYMOUS: THE STORY OF HOW MANY THOUSANDS OF MEN AND WOMEN HAVE RECOVERED FROM ALCOHOLISM, at xi (4th ed. 2001).

149. *About the Big Book*, ALCOHOLICS ANONYMOUS, https://www.aa.org/the-big-book [https://perma.cc/8X8Q-X7SF].

150. *A.A. Around the World*, ALCOHOLICS ANONYMOUS, https://www.aa.org/aa-around-the-world [https://perma.cc/4ZVD-E9K6].

In legal contexts, the words "alcoholic" and "alcoholism" have long evoked evil, lack of willpower, defect of character, and deterioration of morals. For example, in 1904, the United States Court of Claims referred to the "evils of alcoholism."[151] In 1938, the Court of Appeals of Maryland heard testimony from "distinguished doctors" that individuals who suffered from "chronic alcoholism" had a lack of "will power, and moral fibre."[152] In 1943, the Supreme Court of Missouri stated that the sale of intoxicating liquors could injure the "morals of society" by "stimulat[ing] the appetite for alcoholics."[153] In 1946, an article published in the *Yale Law Journal* referenced the "moral deterioration which gradually overtakes many alcoholics."[154] In 1949, the Supreme Court of North Carolina explained that chronic "alcoholism" deprived the defendant of, among other things, "moral perception."[155] In 1971, the U.S. Army Court of Military Review stated in *United States v. Smith* that "garden variety alcoholism [is] a character defect."[156] In 1974, the Supreme Court of Kings County, New York, referred to the defendant as an "alcoholic, a woman of loose morals who has frittered away her life on liquor and immorality."[157]

As discussed in more detail in Part II, current state statutes continue to use the words "alcoholic" and "alcoholism." For example, the District of Columbia permits its public defender service to represent persons subject to commitment due to being "chronic alcoholics."[158] By further example, Colorado has an official policy that "alcoholics" may not be subject to criminal prosecution because of their consumption of alcohol and that they should be treated instead.[159]

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151. South Carolina v. United States, 39 Ct. Cl. 257, 288 (1904), *aff'd*, 199 U.S. 437 (1905).

152. New Eng. Mut. Life Ins. Co. v. Hurst, 199 A. 822, 825 (Md. 1938).

153. Zinn v. City of Steelville, 173 S.W.2d 398, 401 (Mo. 1943) (en banc) (quoting 30 AM. JUR. § 279).

154. W. Norwood East, *Sexual Offenders—A British View*, 55 YALE L.J. 527, 543 (1946).

155. State v. Creech, 51 S.E.2d 348, 356 (N.C. 1949).

156. 44 C.M.R. 292, 296 (A.C.M.R. 1971).

157. Josephs v. Josephs, 358 N.Y.S.2d 326, 329 (N.Y. Sup. Ct. 1974).

158. D.C. CODE § 2-1602(a)(1)(F) (2022).

159. COLO. REV. STAT. § 44-3-503(1)(e) (2022).

G. "Addict"

The noun "addict" ("one given over to some practice") was first used in 1909 in the context of morphine.[160] The noun "addict" comes from the verb "addict" ("to devote or give up (oneself) to a habit or occupation"), first used in the early sixteenth century and derived from the Latin "*addictus*," past participle of "*addicere*" ("to deliver, award, yield; make over, sell").[161] Throughout the mid-twentieth century, physicians, lawyers, and other stakeholders who referred to alcohol "addicts" tended to do so in negative terms. For example, writing in 1964, physician John Clancy described the treatment of "alcohol addicts" as "baffl[ing]," "frustrat[ing]," and "disappoint-[ing]."[162] Writing in 1966, a UCLA physician and a San Diego judge characterized the "alcohol addict" as a "disturbance" and a "burden."[163]

Common law and testimonial references to alcohol and other substance "addicts" also tended to be negative and included associations with evil, vice, immorality, ugliness, and a lack of will power. In 1923, for example, the Supreme Court of Alabama in *Naro v. State* associated being an "addict" with "unpalliated vice."[164] In 1926, in *Prather v. Commonwealth*, the Court of Appeals of Kentucky reported the testimony of physician experts regarding an "addict" who was without "moral ... responsibility" and "utterly without will power."[165] In 1929, in *Kelly v. Maryland Casualty Co.*, the United States District Court for the Western District of Virginia referenced the "degrade[d] ... moral nature of ... addicts."[166] In 1936, in *Hayes v. Morgan*, the Supreme Court of Mississippi referred to the appellant as an "addict to drunkenness" with "immoral

160. *Addict (n.)*, ONLINE ETYMOLOGY DICTIONARY, https://www.etymonline.com/search?q=abuser [https://perma.cc/8QWV-AKEB].

161. *Id.*; Rosenthal & Faris, *supra* note 61, at 439-40, 442-43.

162. John Clancy, *Motivation Conflicts of the Alcohol Addict*, 25 Q.J. STUD. ON ALCOHOL 511, 511 (1964).

163. Keith S. Ditman & George G. Crawford, *The Use of Court Probation in the Management of the Alcohol Addict*, 122 AM. J. PSYCHIATRY 757, 757 (1966).

164. 96 So. 761, 762 (Ala. 1923).

165. 287 S.W. 559, 559-60 (Ky. 1926), *overruled by* Commonwealth v. Tate, 893 S.W.2d 368, 370 (Ky. 1995).

166. 45 F.2d 782, 785 (W.D. Va. 1929), *aff'd*, 45 F.2d 788 (4th Cir. 1930).

habits."[167] In 1959, in *In re Suey Chin*, the United States District Court for the Southern District of New York held that a fifteen-year "addict" was not "of good moral character."[168] In 1965, a City of New York Civil Court grouped "addicts" with "other malodorous and evil characters."[169] In 1971, in *Ishmal v. Division of Alcoholic Beverage Control*, the Supreme Court of New Jersey discussed a municipal board's association of "addicts" with "immoral activity."[170] In 1973, in *United States v. Moore*, the United States Court of Appeals for the District of Columbia Circuit explained that an "addict's" physical craving for a substance can cause him to "commit acts that violate his moral standards."[171] In 1976, in *State Department of Pensions and Security v. Hornbuckle*, the Court of Civil Appeals of Alabama referred to an "addict" as "a basely immoral woman" before giving custody of the woman's child to a state agency that would protect the child from the "ugliness which produced her."[172]

As discussed in more detail in Part II, current state statutes continue to use the noun "addict." For example, Louisiana's treatment court statute refers to "alcoholic[s] or drug addict[s]."[173]

H. "Abuse" and "Abuser"

The noun "abuse" derives from the fourteenth-century Old French word "*abus*" ("improper practice"), the Latin word "*abusus*" ("a using up"), and the earlier Middle English word "*abusion*" ("wicked act or practice, shameful thing, violation of decency").[174] The noun "abuse" was first used in reference to drugs in 1961.[175] The noun "abuser" derives from the mid-fifteenth century and means "one who uses (something) improperly."[176]

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167. 164 So. 880, 880 (Miss. 1936).
168. 173 F. Supp. 510, 512-13, 515 (S.D.N.Y. 1959).
169. Remedco Corp. v. Bryn Mawr Hotel Corp., 257 N.Y.S.2d 525, 528 (N.Y. Civ. Ct. 1965).
170. 277 A.2d 532, 533 (N.J. 1971).
171. 486 F.2d 1139, 1145 (D.C. Cir. 1973) (per curiam).
172. 336 So. 2d 1372, 1374-75 (Ala. Civ. App. 1976).
173. LA. STAT. ANN. § 13:5303(1), (3)-(4) (2022).
174. *Abuse (n.)*, ONLINE ETYMOLOGY DICTIONARY, https://www.etymonline.com/word/abuser [https://perma.cc/25VT-GYPF].
175. *Id.*
176. *Abuser (n.)*, ONLINE ETYMOLOGY DICTIONARY, https://www.etymonline.com/word/abuse [https://perma.cc/WF9K-2EWT].

In legal contexts involving individuals with substance use disorders, the nouns "abuse" and "abusers" are frequently associated with evil and sin. In 1985, in *State v. Puckett*, the Court of Appeals of Ohio explained that the purpose of a statutory amendment relating to driving while intoxicated was to combat "the evils arising from the ingestion of alcohol and/or drugs of abuse and the operation of vehicles."[177] In 1986, in *Amalgamated Transit Union v. Mass Transit Administration*, the Court of Appeals of Maryland reported the testimony of a transit manager, who stated that an on-duty transit operator's "abuse of alcohol" was a "'cardinal sin.'"[178] In 1987, in *Federated Distributors, Inc. v. Johnson*, an Illinois appellate court stated that a law imposing higher taxes on hard liquor compared to wine sought to curtail "the evil of alcohol abuse."[179] In 1988, in *Rushton v. Nebraska Public Power District*, the United States Court of Appeals for the Eighth Circuit reviewed a First Amendment challenge by employees to a provision in their Employee Assistance Program (Program) that stated "alcoholism is recognized as an illness for which there is effective treatment and rehabilitation."[180] The employees, conservative Christians who believed that alcoholism was a sin, wanted an amendment to the Program that would provide "[s]ome ... persons and groups regard drug and alcohol abuse as a sin rather than an illness" and that would allow employees to attend "treatment programs run by religious groups."[181] In the 1989 case of *Ware v. Valley Stream High School District*, parents of school-aged children characterized required "alcohol and drug abuse" instruction as an "evil," arguing that it violated the Free Exercise Clause of the First Amendment.[182] In the 1990 case of *United States v. Lizasuain*, the defendant Army sergeant argued that a military judge erred by allowing into evidence the "evils of drug and alcohol abuse" rather than information directly relating to

177. No. 1516, 1985 WL 11119, at *4 (Ohio Ct. App. June 13, 1985).

178. 504 A.2d 1132, 1133 (Md. 1986).

179. 516 N.E.2d 471, 475 (Ill. App. Ct. 1987), *aff'd in part, rev'd in part*, 530 N.E.2d 501 (Ill. 1988).

180. 844 F.2d 562, 564 (8th Cir. 1988).

181. *Id.* at 565 n.8.

182. 545 N.Y.S.2d 316, 317-18 (N.Y. App. Div. 1989) (per curiam), *aff'd as modified*, 550 N.E.2d 420 (N.Y. 1989).

the appellant's alleged offense.[183] That same year, in *Bajrangi v. Department of Business Regulation*, the Fifth District Court of Appeal of Florida discussed a Florida agency's desire "to protect the underaged [Florida residents] from the evils of alcohol abuse."[184] In 1994, in *Dick v. City of Portales*, the Supreme Court of New Mexico reported that a number of citizens testified as to the "evils associated with alcohol abuse."[185]

As discussed in more detail in Part II, current state statutes continue to use the nouns "abuse" and "abuser" in the contexts of individuals with substance use disorders. In South Carolina, for example, health maintenance organizations (HMOs) are required to cover "[b]asic health care services," although services for "alcohol or drug abuse" are excepted from the definition thereof.[186] In Utah, by further example, public long-term disability insurance is not payable for "substance abuse."[187]

II. AN ALCOHOL-RELATED LANGUAGE TAXONOMY

So far, this Article has examined the origins and usage of a variety of alcohol-related words, including "abuse," "abuser," "addict," "alcoholic," "drunk," "drunkard," "inebriate," and "intemperate." This Article has demonstrated that these words have long associations with voluntary madness, moral weakness, deficit of will, disorder of personality, lack of worth, intentionality of abuse, evil, vice, and sin. Notwithstanding these associations, hundreds of current state statutes continue to use these words in a variety of criminal, educational, employment, family, health, insurance, military, property, tax, tort, and other legal contexts.[188] To better understand these language uses, Part II develops an innovative taxonomy of alcohol-related language in state statutes.[189] As

183. 30 M.J. 543, 544 (A.C.M.R. 1990).

184. 561 So. 2d 410, 412 (Fla. Dist. Ct. App. 1990).

185. 883 P.2d 127, 130 (N.M. 1994).

186. S.C. CODE ANN. § 38-33-20(1) (2022).

187. UTAH CODE ANN. § 49-21-405(3) (LexisNexis 2022).

188. *See* Tovino, *supra* note 3, at 14-50 (collecting more than 400 state statutes containing alcohol-related language).

189. Alcohol-related statutory language includes, but is not limited to, language referencing alcohol-related activities, alcohol-related states, and alcohol-related conditions. An example of a statute that may be said to reference an alcohol-related activity (for example, driving) is

discussed in more detail below, this taxonomy classifies alcohol-related statutory language by its primary legislative function, including "defining," "titling," "establishing," "excluding," "removing," "penalizing," "protecting," "preventing," "treating," "equalizing," "funding," or "mitigating." This Part also considers the risks and benefits of using alcohol-related statutory language to accomplish these functions.

A. Defining

Certain alcohol-related statutory language may be classified as "defining" language. Language that falls into this category may be used to define a professional practice. For example, Delaware psychology law defines the "[p]ractice of psychology" to include "alcoholism and substance abuse."[190] Florida professional regulation law similarly defines the "practice of clinical social work" to include the treatment of "alcoholism [and] substance abuse."[191] Language that falls into the defining category may also be used to define certain classes of persons. For example, Idaho health and safety law defines an "[a]lcoholic" as a person who has the disease of "alcoholism."[192] Illinois adoption law defines an "[u]nfit [adoptive] person" to include persons who have "[h]abitual drunkenness."[193] Indiana guardianship law defines an "[i]ncapacitated person" as a person "who ... is unable ... to manage ... [the person's] property ... [or is unable] to provide self-care [due to] ... habitual drunkenness."[194] Michigan welfare law defines a "[d]runkard" as a person

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N.Y. VEH. & TRAF. LAW § 1192(1) (McKinney 2022). This statute prohibits a person from "operat[ing] a motor vehicle while ... impaired." *Id.* An example of a statute that may be said to reference an alcohol-related state (for example, the state of being impaired) is ALA. CODE § 17-17-51 (2022), which makes it an offense to be "drunk or intoxicated" around a polling place. Finally, an example of a statute that references an alcohol-related health condition (for example, AUD, sometimes referred to as "alcoholism" by nonmedically trained individuals) is HAW. REV. STAT. § 353G-4(a)(4) (2022). This statute requires certain individuals in certain contexts who admit to "alcoholism" to undergo certain screenings and treatments. *Id.* Although this Article focuses only on state statutes, additional research in the context of federal statutes, as well as federal and state regulations, is needed.

190. DEL. CODE ANN. tit. 24, § 3502(5) (2022).

191. FLA. STAT. § 491.003(8) (2022).

192. IDAHO CODE § 39-302(2) (2022).

193. 750 ILL. COMP. STAT. 50/1(1)(D)(k) (2022).

194. IND. CODE § 29-3-1-7.5(2) (2022).

who uses "alcoholic, spirituous, malt, brewed, fermented or vinous liquors, or morphia, laudanum, cocaine, opium or other narcotic to such an extent as to deprive him or her of a reasonable degree of self-control."[195] Mississippi public health law defines an "[a]lcoholic" as "any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or any person who, while chronically under the influence of alcoholic beverages, endangers public morals, health, safety or welfare."[196] New Hampshire public health law defines "[c]lient[s]" as certain "person[s] who voluntarily seek[ ] substance abuse treatment."[197] Ohio mental health law defines an "[a]lcoholic" as "a person suffering from alcoholism."[198] Rhode Island health and safety law defines "[a]lcoholic" as "a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his or her health is substantially impaired or endangered or his or her social or economic function is substantially disrupted."[199] Texas guardianship law defines an "incapacitated person" to include "a habitual drunkard."[200] Vermont health law defines an "[a]lcoholic" as a person with "alcoholism" and defines "[a]lcoholism" with reference to the "chronic absence of control ... over the frequency or the volume of ... alcohol intake[ ] and [the] inability of the [individual] to moderate consistently his or her drinking practices in spite of the onset of a variety of consequences deleterious to his or her health."[201] By final illustrative example, West Virginia mental health law defines an "inebriate" as a person who is incapable of appropriate conduct due to "periodical [sic], frequent or constant drunkenness, induced ... by the use of alcoholic or other liquors."[202]

There are benefits to using alcohol-related terms in defining statutory language. For example, public health laws, mental health laws, and welfare laws make available health and social services to

195. MICH. COMP. LAWS § 404.203 (2022).
196. MISS. CODE ANN. § 41-31-1(a) (2022).
197. N.H. REV. STAT. ANN. § 172:1(IX-a) (2022).
198. OHIO REV. CODE ANN. § 5119.01(A)(4) (LexisNexis 2022).
199. 23 R.I. GEN. LAWS § 23-1.10-2(1) (2022).
200. TEX. EST. CODE ANN. § 1001.003(5) (West 2021).
201. VT. STAT. ANN. tit. 18, § 4802(1), (2)(A)-(B) (2022).
202. W. VA. CODE § 27-1-4 (2022).

different classes of individuals, including individuals with alcohol-related health conditions.[203] By specifically recognizing and including individuals with alcohol-related health conditions, defining language ensures that these individuals are legally entitled to available benefits and services.[204] However, risks associated with using certain alcohol-related terms in defining statutory language exist. One risk is that a medically incorrect definition will legitimize a myth or misunderstanding regarding the defined person. For example, Mississippi public health law defines an "[a]lcoholic" as a "person who, while chronically under the influence of alcoholic beverages, endangers public morals."[205] The "morals" portion of the definition is medically inaccurate. The Surgeon General of the United States has repeatedly stated that AUD and other substance use disorders are not moral failings but are chronic illnesses that impair an individual's ability to voluntarily control the individual's substance use.[206] The Mississippi law's use of this definition supports and perpetuates the misconception of disordered drinking as a moral failing.[207]

A second risk of using terms such as "abuse," "alcoholic," "alcoholism," "drunkard," "drunkenness," and "inebriate" in defining statutory language is the promotion and propagation of the stigma associated with these terms. Recall from Part I of this Article that these words have long been associated with voluntary madness, moral weakness, deficit of will, disorder of personality, lack of worth, intentionality of abuse, evil, vice, and sin.[208] Further recall that these particular words were heavily used by physicians, judges, attorneys, testifying experts, and other stakeholders during the nineteenth and twentieth centuries, time periods in which the

203. *See supra* notes 196-98 and accompanying text.

204. *See supra* notes 196-98 and accompanying text.

205. MISS. CODE ANN. § 41-31-1(a) (2022).

206. SURGEON GENERAL REPORT, *supra* note 76, at v, 2-1 ("For far too long, too many in our country have viewed addiction as a moral failing.... We must help everyone see that addiction is not a character flaw—it is a chronic illness that we must approach with the same skill and compassion with which we approach heart disease, diabetes, and cancer.... [S]evere substance use disorders, commonly called *addictions*, were once viewed largely as a moral failing or character flaw, but are now understood to be chronic illnesses characterized by clinically significant impairments in health, social function, and voluntary control over substance use.").

207. *See id.*; MISS. CODE ANN. § 41-31-1(a) (2022).

208. *See supra* Part I.

etiology of AUD was markedly misunderstood.[209] The stereotypes these words evoke have persisted, dramatically impacting how disordered drinking is perceived today.[210] Because today's statutory language will shape and influence the legal community's and the public's understanding of disordered drinking well into the future, statutory language needs to be chosen with care. Lawmakers must avoid using misconceived and stigmatizing language in statutory definitions, choosing neutral, medically accurate terminology instead.

As an illustration, a Rhode Island health and safety law currently defines "[a]lcoholic" as "a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his or her health is substantially impaired or endangered or his or her social or economic function is substantially disrupted."[211] Lawmakers in Rhode Island could amend this statute by eliminating the defined word "[a]lcoholic," substituting the phrase "alcohol use disorder" in its place, and defining the phrase "alcohol use disorder" consistent with the current edition of the DSM.[212] As a further illustration, a Texas guardianship law currently defines an "incapacitated person" to include a "habitual drunkard."[213] Lawmakers in Texas could amend this statute to delete the phrase "habitual drunkard" and to include in its place something like "persons who are unable to perform the functions and duties of a guardian due to a physical or mental health condition." This statutory amendment incorporates neutral language that neither exemplifies individuals with AUD nor summons negative stereotypes.

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209. *See supra* Part I.

210. *Cf.* Sarkar, *supra* note 7, at 8 ("Revisiting earlier works of prominent [nineteenth century] physicians, such as Benjamin Rush, Thomas Sewall, and Samuel Pearson, is more than a lesson in history; it is a reminder that what the medical community writes and says can shape how a disease is perceived and experienced for centuries.").

211. 23 R.I. GEN. LAWS § 23-1.10-2(1) (2022).

212. *See id.*; DSM-5, *supra* note 2, at 490-91 (defining AUD as "[a] problematic pattern of alcohol use leading to clinically significant impairment or distress" and providing eleven diagnostic criteria, two of which must be met within a twelve-month period for a diagnosis of AUD); *supra* note 72 (listing the eleven diagnostic criteria).

213. TEX. EST. CODE ANN. § 1001.003(5) (West 2021).

A third risk of using certain alcohol-related terms in defining statutory language relates to label avoidance.[214] As background, one purpose of health professional licensing law is to identify permitted health care professions and to encourage state residents who would benefit from relevant services to seek services from licensed (and therefore carefully screened) service providers, not unlicensed individuals.[215] Using stigmatizing language to describe the health conditions for which an individual may wish to seek diagnosis and treatment may only exacerbate existing barriers to care.[216] For example, Delaware psychology law currently defines the "[p]ractice of psychology" to include "alcoholism and substance abuse."[217] Florida professional regulation law similarly defines the "practice of clinical social work" to include the treatment of "alcoholism[ ] and substance abuse."[218] Given the stigma associated with these terms, individuals with disordered drinking may hesitate to seek treatment from psychologists and social workers who advertise their scopes of practice and/or services consistent with these statutory definitions.[219] Lawmakers in Delaware and Florida could minimize this label avoidance, however, by substituting the phrase "alcohol use disorder and other substance use disorders" for the phrase "alcoholism and substance abuse."

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214. *See* Patrick W. Corrigan, *Challenging the Stigma of Mental Illness: Different Agendas, Different Goals*, 66 PSYCHIATRIC SERVS. 1347, 1347 (2015) (defining "label avoidance" in terms of an individual's refusal to seek or obtain evidence-based mental health services in order to avoid stigmatizing labels); Kelly & Westerhoff, *supra* note 6, at 205 ("Referring to an individual as a 'substance abuser' may elicit and perpetuate stigmatizing attitudes that appear to relate to punitive judgments and perceptions that individuals with substance-related conditions are recklessly engaging in willful misconduct.... [M]any individuals with substance-related problems may internalize these stigmatizing beliefs, thereby increasing their sense of shame and anxiety, creating a barrier to honest self-disclosure, and diminishing the likelihood of seeking treatment."); *infra* notes 355-60 and accompanying text (providing first-person examples of label avoidance).

215. *The State of Occupational Licensing: Research, State Policies and Trends*, NAT'L CONF. ON STATE LEGISLATURES, https://www.ncsl.org/Portals/1/HTML_LargeReports/occupationallicensing_final.htm [https://perma.cc/SD53-XYXM].

216. *See supra* note 214 and accompanying text.

217. DEL. CODE ANN. tit. 24, § 3502(5) (2022).

218. FLA. STAT. § 491.003(8) (2022).

219. *See infra* notes 355-60 and accompanying text (providing first-person examples of label avoidance).

B. Titling

Additional alcohol-related statutory language may be described as "titling" language. Language that falls into this category is used as part of the formal title of a statutory chapter or a particular statute. As an illustration, Delaware has an entire statutory chapter called the "Substance Abuse Treatment Act."[220] Similarly, Idaho has an "Alcoholism and Intoxication Treatment Act."[221] Michigan has a statute titled "Indigent Addicts" (in the statutory table of contents) and "Indigent liquor or drug addict" (in the title of the statutory provision).[222] Georgia has an entire statutory chapter devoted to the hospitalization and treatment of "Alcoholics, Drug Dependent Individuals, and Drug Abusers."[223] Mississippi has an entire statutory chapter titled the "Commitment of Alcoholics and Drug Addicts for Treatment."[224] Missouri has an entire statutory chapter devoted to civil detention procedures pertaining to individuals with "Alcohol and Drug Abuse."[225] Montana has an entire statutory chapter relating to "Alcoholism and Drug Dependence."[226] As a final illustrative example, South Dakota has an entire statutory chapter focusing on the "Treatment and Prevention of Alcohol and Drug Abuse."[227]

There are benefits to using alcohol-related terms in titling language. Lawyers who conduct word searches in online databases using terms such as "alcohol" or "drugs" will quickly locate relevant statutory chapters and statutory provisions, which may be helpful to clients who need services these statutes authorize. However, there are risks associated with using certain alcohol-related terms in titling language. For example, lawyers and judges frequently reference statutory titles in their written complaints, answers, motions, opinions, and orders as well as during oral arguments.[228]

220. DEL. CODE ANN. tit. 16, §§ 2201-2232 (2022).
221. IDAHO CODE § 39-302 (2022).
222. MICH. COMP. LAWS § 404.201 (2022).
223. GA. CODE ANN. § 37-7 (2022).
224. MISS. CODE ANN. §§ 41-31-1 to -23 (2022).
225. MO. REV. STAT. § XL-631 (2022).
226. MONT. CODE ANN. § 53-24 (2022).
227. S.D. CODIFIED LAWS § 34-20a (2022).
228. *See, e.g.*, People v. Williams, 486 N.E.2d 333, 334 (Ill. App. Ct. 1985) (opinion by Justice Nash stating that the defendant appealed an order denying the defendant's petition

These statutes are also referenced in secondary sources (including law review articles[229] and legal reports),[230] teaching materials (including textbooks and syllabi),[231] media communications (including newspaper articles),[232] and other written, spoken, and online communications and reports.[233] The use—and repeated re-use—of stigmatizing statutory language can perpetuate stereotypes about individuals with alcohol-related health conditions.

C. Establishing

Additional alcohol-related statutory language may be described as "establishing" language. Language that falls into this category is used as part of a statute that establishes a position, board, program, institution, office, division, department, or agency. For example, an Arkansas statute requires a state medical school to establish a "Chair on Alcoholism and Drug Abuse Prevention."[234] An Ohio statute requires the Ohio State University College of Medicine to establish a research program on "alcoholism" and to establish facilities for the care of "alcoholics."[235] A Pennsylvania statute authorizes certain county commissioners to establish an "inebriate

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to receive treatment pursuant to the "Alcoholism and Substance Abuse Act").

229. *See, e.g.*, Chris Michael Kallianos, Note, *Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients*, 64 N.C. L. REV. 1535, 1539 n.54 (1986) (law review note referencing North Carolina's "Mental Health, Mental Retardation, and Substance Abuse Act of 1985").

230. *See, e.g.*, William Jordan, *North Carolina Court Declines to Apply Absolute Privilege to Attorney's Statements to Media About Lawsuit*, 45 PROF'L LIAB. RPTR. 6 (2020) (legal report referencing North Carolina's "Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985").

231. *See, e.g.*, SHAMIR ALLY KHAN, CCPX 5030: ETHICAL AND PROFESSIONAL ISSUES IN CLINICAL PSYCHOLOGY 20 (2021), https://www.shamirkhan.com/storage/app/media/ccpx-5030-syllabus-110821-revised.pdf [https://perma.cc/57AW-HXQS] (Columbia University Teacher's College syllabus referencing the "Alcoholism and Substance Abuse Act").

232. *See, e.g.*, *New Bills Would Expand Mental Health Parity Provisions*, 6 EMP.'S GUIDE TO SELF-INSURING HEALTH BENEFITS NEWSL. (Thompson Pub'g Grp.), May 1999, at 5 (newsletter referencing a bill introduced in Congress in 1999 titled the "Mental Health and Substance Abuse Parity Act").

233. *See, e.g.*, NAT'L INST. OF JUST., SEARCHING FOR ANSWERS: ANNUAL EVALUATION REPORT ON DRUGS AND CRIME: 1992, at 119, 122 (1993) (government report containing multiple references to the "Anti-Drug Abuse Act of 1988").

234. ARK. CODE ANN. § 6-64-412 (2022).

235. OHIO REV. CODE ANN. § 3335.151 (LexisNexis 2022).

asylum."[236] A different Pennsylvania statute authorizes the Pennsylvania Department of Health to establish a "Program of Alcoholic Studies and Rehabilitation" to study, among other issues, the problems of "alcoholism."[237] By final illustrative example, a Tennessee statute establishes a state "Board of alcohol and drug abuse counselors" that oversees licensed "alcohol and drug abuse counselors" in the state.[238]

The selection of neutral, medically accurate language for use in "establishing" language is particularly important. The positions, boards, programs, institutions, offices, divisions, departments, and agencies established by such legislation may exist for decades and, in some cases, centuries. Consider the National Institute on Drug Abuse (NIDA), established in 1974 and still in operation almost five decades later.[239] Further consider the federal Substance Abuse and Mental Health Services Administration (SAMHSA), established in 1992 and still in operation three decades later.[240] NIDA is the leading federal agency that supports scientific research on substance use, and SAMHSA is the leading federal agency charged with advancing behavioral health and reducing substance use.[241] Institutions that support research on (and that are charged with reducing) substance use should not use stigma-inducing language, such as "abuse," in their titles and, more importantly, their outreach materials.[242] The

236. 16 PA. STAT. AND CONS. STAT. ANN. § 5528 (West 2022).

237. 50 PA. STAT. AND CONS. STAT. ANN. § 2101 (West 2022).

238. TENN. CODE ANN. § 68-24-601 (West 2022).

239. *See National Institute on Drug Abuse (NIDA)*, NAT'L INSTS. HEALTH (Mar. 3, 2022), https://www.nih.gov/about-nih/what-we-do/nih-almanac/national-institute-drug-abuse-nida#legislation [https://perma.cc/X94R-83K2] (providing a timeline of important events in NIDA history).

240. *See Frequently Asked Questions*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (Aug. 4, 2022), https://www.samhsa.gov/about-us/frequently-asked-questions#about [https://perma.cc/WKP9-CRV9].

241. NAT'L INST. ON DRUG ABUSE, https://nida.nih.gov [https://perma.cc/3QNV-S8RG]; *About Us*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (July 15, 2022), https://www.samhsa.gov/about-us [https://perma.cc/B7A3-YCG5].

242. *See* JOHN KELLY & VALERIE EARNSHAW, SOC'Y OF BEHAV. MED., END THE FATAL PARADOX: CHANGE THE NAMES OF OUR FEDERAL INSTITUTES ON ADDICTION 1 (2020), https://www.sbm.org/UserFiles/image/abuse-language-brief20_FINAL.pdf [https://perma.cc/5RZL-7JEU] (noting that the word "abuse" has been found to implicitly induce stigmatizing attitudes and arguing against the use of these terms in federal agency names, including NIDA and SAMHSA); Press Release, U.S. Dep't Health & Hum. Servs., Statement by HHS Secretary Becerra on the President's Fiscal Year 2023 Budget (Mar. 28, 2022), https://www.

word "abuse" is not used in the current edition of the DSM; it "provides no particular [benefits] in terms of clinical precision or public health communication," and its removal could result in "net clinical and public health [advantages]."[243]

There is precedent for institutional name change in the context of substance use disorders. For example, Illinois changed the name of its Illinois Division of Alcoholism and Substance Abuse (DASA) to the Division of Substance Use Prevention and Recovery (DSUPR) in 2018.[244] Illinois reasoned that the division's new name "removes stigmatizing language and supports the commitment of [DSUPR] for prevention of and recovery from substance use disorders."[245] Illinois went further, asking state agencies for "cooperation in replacing all references to ... other stigmatizing language such as 'alcoholism,' 'addiction,' 'addict,' 'abuse' and 'dependence' in ... manuals, policies and other related documents."[246]

D. Excluding

Additional alcohol-related statutory language may be described as "excluding" language. Language that falls into this category is used as part of a statute that excludes an individual with an alcohol-related health condition from an institution or activity. For example, students with "a history of drug/alcohol abuse" are excluded from admission to Alabama's Marion Military Institute.[247] Individuals

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hhs.gov/about/news/2022/03/28/statement-hhs-secretary-becerra-presidents-fiscal-year-2023-budget.html [https://perma.cc/PZ5H-BNNR] (noting that the President's 2023 budget proposes to remove the word "abuse" from the agency names within the Department of Health and Human Services—including the Substance Use and Mental Health Services Administration, the National Institute on Alcohol Effects and Alcohol-Associated Disorders, and the National Institute on Drugs and Addiction because "[i]ndividuals do not choose to 'abuse' drugs and alcohol; they suffer from a disease known as addiction. It is a high priority for this Administration to move past outdated and stigmatizing language that is harmful to the individuals and families that suffer from addiction").

243. KELLY & EARNSHAW, *supra* note 242, at 1.

244. *See* Anastasia Tuskey, *New Name for the Division of Alcohol and Substance Abuse*, WILL CNTY. ILL. (Apr. 27, 2018), https://www.willcountyillinois.com/County-Offices/Special-Services/Substance-Use-Initiatives/News/new-name-for-the-division-of-alcohol-and-substance-abuse-3 [https://perma.cc/W4FZ-SC76].

245. *Id.*

246. *Id.*

247. ALA. CODE § 16-60-337(a) (2022).

who are "habitually inebriated," "acute inebriate[s]," and "inebriate[s]" are excluded from admission to veterans' homes in Florida,[248] Iowa,[249] and South Dakota,[250] respectively. "[H]abitual drunkard[s]" are excluded from eligibility for a driver's license in Delaware.[251] "[H]abitual drunkard[s]" also are excluded from eligibility for a driver's license in Florida, Idaho, Kansas, Maryland, Mississippi, Missouri, North Carolina, Rhode Island, South Dakota, Tennessee, and West Virginia.[252] "[H]abitual drunkard[s]" are or may be excluded from juror eligibility in Mississippi[253] and Nebraska,[254] respectively. As a final illustrative example, "drunken" vehicle operators are excluded from commercial motor vehicle employment eligibility in Wisconsin.[255]

One substantive problem with this type of "excluding" language is that individuals with alcohol-related health conditions are singled out for exclusion even though other individuals, logically, should also be excluded. For example, the driver's license exclusions are presumably designed to prohibit individuals from driving while impaired and causing injury to third parties and/or property.[256] Logically, then, the driver's license exclusions should also apply to other individuals whose physical or mental health conditions, including vision impairments, seizure disorders, and sleeping disorders, prevent them from safely operating a motor vehicle.[257] Individuals with these other conditions are rarely listed in statutory

248. FLA. STAT. § 296.07 (2022).

249. IOWA CODE § 35D.2(2) (2022).

250. S.D. CODIFIED LAWS § 33A-4-34 (2022).

251. DEL. CODE ANN. tit. 21, § 2707(b)(3) (2022).

252. FLA. STAT. § 322.05(7) (2022); IDAHO CODE § 49-303(6) (2022); KAN. STAT. ANN. § 8-237(d) (2022); MD. CODE ANN., TRANSP. § 16-103.1(2) (LexisNexis 2022); MISS. CODE ANN. § 63-1-9(1)(c) (2022); MO. REV. STAT. § 302.060(1)(4) (2022); N.C. GEN. STAT. § 20-9(c) (2022); 31 R.I. GEN. LAWS § 31-10.3-15(a)(3) (2022); S.D. CODIFIED LAWS § 32-12-31 (2022); TENN. CODE ANN. § 55-50-303(a)(3) (2022); W. VA. CODE § 17B-2-3(a)(4) (2022).

253. MISS. CODE ANN. § 13-5-1 (2022).

254. NEB. REV. STAT. § 29-2006(8) (2022).

255. WIS. STAT. § 346.64 (2022).

256. *See First Drunk Driving Arrest*, HIST. (Oct. 14, 2021), https://www.history.com/this-day-in-history/first-drunk-driving-arrest [https://perma.cc/4SSR-4FTP].

257. *See, e.g.*, Daniel Yetman, *Driving and Narcolepsy: What You Need to Know*, HEALTHLINE (Apr. 27, 2022), https://www.healthline.com/health/can-you-drive-with-narcolepsy [https://perma.cc/MK4B-DE2C] ("Most people with narcolepsy are legally allowed to drive within the United States. However, ... [such individuals are] at higher risk of motor vehicle collisions than people without narcolepsy.").

excluding language, however.[258] The result is undue statutory attention to alcohol-related health conditions, exacerbating the stigma associated therewith. This undue statutory attention can be corrected by removing alcohol-specific language and inserting in its place general language that refers to any individual who has a physical or mental health condition that prevents the individual from safely operating a motor vehicle or engaging in another regulated activity. Precedent for this correction exists. In 2015, the North Dakota Legislature deleted a provision prohibiting the issuance of a license to "habitual drunkard[s]" but kept a more general provision prohibiting the issuance of licenses to individuals who are incompetent by reason of mental disabilities and diseases.[259]

A second substantive problem with statutory language that excludes a certain person (for example, "acute inebriate," "habitual drunkard," and "inebriate") is that such language does not separate the person from the disease.[260] As background, scientists and clinicians believe that separating the person from the disease may help persons with diseases experience fewer feelings of guilt, shame, and judgment and be more willing to accept recommended treatment.[261] Although excluding statutory language occasionally references a disease or behavior,[262] more typically this language references a person.[263] Language excluding persons incorrectly suggests that a person's disease or behavior cannot be treated or modified.[264] Language excluding persons also incorrectly suggests that such

258. Kingman P. Strohl, *Keeping Sleepy People off the Road: The Responsibility of Drivers, Doctors, and the DMV*, 10 VIRTUAL MENTOR 578, 580 (2008).

259. *See* Tovino, *supra* note 3, at 52 (providing this example and referencing N.D. CENT. CODE § 39-06-03(3) at Historical and Statutory Notes (2021)).

260. *See, e.g.*, MILAM & KETCHAM, *supra* note 32, at 13-14 (arguing that stakeholders need to distinguish the person from the disease).

261. *See Separating the Person from the Illness*, INSIDE OUT, https://insideoutinstitute.org.au/resource-library/separating-the-person-from-the-illness [https://perma.cc/N5DF-E3DF] (suggesting separating the person from the disease in the context of eating disorders); Joseph N. Ranieris, *Separating the Person from the Illness*, DISCOVERY INST. (Aug. 15, 2019), https://www.discoverynj.org/separating-the-person-from-the-illness/ [https://perma.cc/2ZAK-E6JM] (suggesting separating the person from the disease in the context of substance use disorders).

262. *See supra* note 247 and accompanying text.

263. *See supra* notes 248-55 and accompanying text.

264. *See supra* notes 80-81 and accompanying text (explaining that the U.S. Food and Drug Administration has approved medications, including naltrexone, acamprosate, and disulfiram, to treat AUD and that individuals with AUD who receive treatment have a good prognosis).

persons are not—and never can be—more than their disease or behavior.[265] Finally, language excluding persons incorrectly implies that persons with alcohol-related conditions are unworthy of participation in society rather than correctly offering that, for safety reasons, participation must be paused during periods of active illness or dangerous behavior.[266] Statutory language that excludes persons rather than diseases can be easily corrected. Rather than excluding "habitual drunkards" from participation, for example, statutory language could make "active alcohol use disorder" a temporarily disqualifying feature.

E. Removing

Additional alcohol-related statutory language may be described as "removing" language. Language that falls into this category is used in statutes that remove a permission, authority, position, or status from an individual. In Alabama, for example, judges, district attorneys, sheriffs, tax collectors, tax assessors, county treasurers, coroners, notaries public, and constables may be removed from office due to "[i]ntemperance in the use of intoxicating liquors."[267] In Alabama, Mississippi, Oklahoma, and South Carolina, a polygraph examiner's license may be removed if the examiner has been determined to be a "habitual drunkard."[268] In Idaho, the license of a genetics counselor may be removed for "[h]abitual drunkenness."[269] In Iowa, a veterinarian's license may be removed if the veterinarian is unable to safely practice due to "drunkenness."[270] Also in Iowa, a judge may be unseated if the judge has "unrehabilitated alcoholism."[271] In Kansas, Texas, Vermont, and Wyoming, a podiatrist's license may be removed if the podiatrist cannot safely practice due to "alcoholism," "drunkenness," "habitual or excessive use or abuse

265. *See* KELLY & EARNSHAW, *supra* note 242, at 1 (discussing how using terms like "abuse" and "abuser" perpetuates stigmatization and discrimination).

266. *See Challenging Drug and Alcohol Stigma*, NHS INFORM, https://www.nhsinform.scot/campaigns/challenging-drug-and-alcohol-stigma [https://perma.cc/Z7BE-S83F].

267. ALA. CODE § 36-11-1(b)(4) (2022).

268. *Id.* § 34-25-32(10); MISS. CODE ANN. § 73-29-31(1)(j) (2022); OKLA. STAT. ANN. tit. 59, § 1468(A)(10) (West 2022); S.C. CODE ANN. § 40-53-180(j) (2022).

269. IDAHO CODE § 54-5614(1)(h) (2022).

270. IOWA CODE § 169.13(1)(h) (2022).

271. *Id.* § 602.1218.

of ... alcohol," or "[a]lcoholism or habitual use of controlled substance," respectively.[272] In Louisiana, the license of a sanitarian, barber, chiropractor, cosmetologist, electrologist, and podiatrist may be removed due to "[h]abitual drunkenness."[273] In Massachusetts, Mississippi, Montana, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, and Tennessee, a barber's license can be removed due to "habitual drunkenness."[274] In Minnesota, a physician assistant's license can be removed due to "drunkenness."[275] In Mississippi, a public officer can be removed from office for "habitual drunkenness."[276] In Missouri, students enrolled in state teachers colleges can be removed for "drunkenness or immoral conduct,"[277] and presidents, professors, and teachers employed by state colleges and universities may be removed for "drunkenness or immoral conduct."[278] In Oregon, seated judges may be removed or suspended for "[h]abitual drunkenness."[279] In Pennsylvania, firepersons and policepersons who become "habitual drunkard[s]" may have their pensions removed or redirected to their families.[280] In Texas, public officers and employees may be removed from office for "habitual drunkenness."[281] In Vermont, a chiropractor's license can be removed due to "habitual drunkenness."[282] As a final illustrative example, "habitual drunkenness" is a ground for removing a public officer from office in West Virginia.[283]

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272. KAN. STAT. ANN. § 65-2006(a)(10) (2022); TEX. OCC. CODE ANN. § 202.253(a-1)(15) (West 2021); VT. STAT. ANN. tit. 26, § 375(c)(8) (2022); WYO. STAT. ANN. § 33-9-110(a)(iv) (2022).

273. LA. STAT. ANN. §§ 37:2114(3), 37:372(6), 37:2816(A)(3), 37:600(A)(7), 37:3075(A)(3), 37:624(A)(3) (2022).

274. MASS. GEN. LAWS ch. 112, § 87EE (2022); MISS. CODE ANN. § 73-5-25(1)(e) (2022); MONT. CODE ANN. § 37-31-331(1)(e) (2021); NEB. REV. STAT. § 71-217(6) (2022); N.M. STAT. ANN. § 61-17A-21(A)(5) (2022); N.Y. GEN. BUS. LAW § 441(a)(3) (McKinney 2022); N.C. GEN. STAT. § 86A-18(4) (2022); N.D. CENT. CODE § 43-04-40(4) (2021); OHIO REV. CODE ANN. § 4709.13(A)(2) (LexisNexis 2022); OKLA. STAT. ANN. tit. 59, § 199.11(A)(5) (West 2022); TENN. CODE ANN. § 62-3-121(a)(5) (2022).

275. MINN. STAT. § 147A.13(1)(11) (2022).

276. MISS. CODE ANN. § 97-11-23 (2022).

277. MO. REV. STAT. § 174.120 (2022).

278. *Id.* § 174.150(1).

279. OR. CONST. art. VII, § 8(1)(f) (2020).

280. 53 PA. STAT. AND CONS. STAT. §§ 23618, 23663 (West 2022).

281. TEX. GOV'T CODE ANN. § 665.052(a)(3) (West 2021).

282. VT. STAT. ANN. tit. 26, § 541(11) (2021).

283. W. VA. CODE § 6-6-1(c) (2022).

There are risks associated with using certain alcohol-related terms in removing language. For example, use of the terms "alcohol abuse" and "alcoholism" risks perpetuating the misconceptions associated with these terms, including deficit of will and moral weakness.[284] Using the phrase "alcohol use disorder" instead can minimize these risks. By further example, use of the phrase "habitual drunkard" fails to separate the person from the disease, which can increase the person's guilt, shame, and judgment and make the individual less likely to accept recommended treatment.[285] Use of the phrase "habitual drunkard" in removing language also suggests that individuals with alcohol-related conditions are unworthy of serving society rather than correctly submitting that, for safety reasons, service must be paused during periods of active illness or dangerous behavior.[286] Focusing on the disease rather than the person can minimize these concerns.[287] Instead of removing an individual, for example, a statute could make the individual's "active and untreated severe alcohol use disorder" a temporary disqualifying feature.

F. Penalizing

Further alcohol-related language may be classified as "penalizing" language. This language penalizes an individual who engages in an alcohol-related activity, appears in an alcohol-related state, or has an alcohol-related condition. For example, Alabama makes it a punishable offense for any person to be "drunk or intoxicated" around a polling place.[288] Alabama also authorizes courts-martial to punish certain persons who are subject to the state's military code and are found "drunk on duty."[289] Courts-martial are given similar punitive authority over service persons who are "drunk" on duty in Arizona, Connecticut, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Maryland,

284. Nora Volkow, *Addressing the Stigma that Surrounds Addiction*, NAT'L INST. ON DRUG ABUSE (Apr. 22, 2020), https://nida.nih.gov/about-nida/noras-blog/2020/04/addressing-stigma-surrounds-addiction [https://perma.cc/F2ZG-E55S].

285. *See, e.g.*, Ranieris, *supra* note 261 (suggesting separating the person from the disease in the context of substance use disorders); *Separating the Person from the Illness*, *supra* note 261 (suggesting separating the person from the disease in the context of eating disorders).

286. *See supra* note 266 and accompanying text.

287. *See* Ranieris, *supra* note 261.

288. ALA. CODE § 17-17-51 (2022).

289. *Id.* § 31-2A-112.

Massachusetts, Missouri, Nevada, New Mexico, New York, Ohio, Rhode Island, South Dakota, Tennessee, and Wisconsin.[290] California makes it a punishable offense to sell or furnish intoxicating liquors to any "habitual or common drunkard."[291] Georgia and Pennsylvania penalize individuals for "[p]ublic drunkenness,"[292] Mississippi penalizes individuals for public "[p]rofanity or drunkenness,"[293] and Missouri penalizes individuals for public "[d]runkenness."[294] Rhode Island penalizes individuals who have custody or control of a child if they allow their home to become unfit by reason of "drunkenness."[295] Georgia similarly penalizes parents and guardians whose children or wards are found neglected due to "habitual drunkenness."[296]

There are several risks associated with using certain alcohol-related terms in penalizing language. Use of the terms "drunk," "drunkard," and "drunkenness" risks conjuring vice, evil, sin, and detestation as well as a lack of morals, character, earnestness, industry, and worth.[297] More neutral language, such as "while intoxicated" or "while under the influence of a substance," may be substituted for "drunk" or "drunkenness," and "alcohol use disorder" may be substituted for "drunkard." More broadly, though, state legislatures should reconsider punishing individuals for the public exhibition of a disease or disability through crimes such as public intoxication. By way of analogy, individuals with epilepsy are not punished when they publicly display physical body movements that may be unsafe. Similarly, individuals with intellectual disability are

290. ARIZ. REV. STAT. ANN. § 26-1112 (2022); CONN. GEN. STAT. § 27-250 (2022); HAW. REV. STAT. § 124A-146 (2022); IOWA CODE § 29B.107 (2022); KAN. STAT. ANN. § 48-3035 (2022); KY. REV. STAT. ANN. § 35.650 (West 2022); LA. STAT. ANN. § 29:212 (2022); MD. CODE ANN., PUB. SAFETY § 13A-1022(a) (LexisNexis 2022); MASS. GEN. LAWS ANN. ch. 33A, § 113 (West 2022); MO. REV. STAT. § 40.380 (2022); NEV. REV. STAT. § 412.538 (2022); N.M. STAT. ANN. § 20-12-48 (2022); N.Y. MIL. LAW § 130.107 (McKinney 2022); OHIO REV. CODE ANN. §§ 5924.112, 5924.113 (LexisNexis 2022); 30 R.I. GEN. LAWS § 30-13-111 (2022); S.D. CODIFIED LAWS § 33-10-280 (2022); TENN. CODE ANN. § 58-1-627 (2022); WIS. STAT. §§ 322.112-113 (2022).

291. CAL. PENAL CODE § 397 (West 2022).

292. GA. CODE ANN. § 16-11-41 (2022); 18 PA. CONS. STAT. § 5505 (2022).

293. MISS. CODE ANN. § 97-29-47 (2022).

294. MO. REV. STAT. § 574.075(1) (2022).

295. 11 R.I. GEN. LAWS § 11-9-5(a) (2022).

296. GA. CODE ANN. § 19-7-4.

297. *See supra* notes 96-105 and accompanying text (reporting character traits historically associated with "drunk," "drunkard," and "drunkenness").

not punished when they publicly make decisions that may be unwise from the perspective of an individual who does not have an intellectual disability.

Precedence for a nonpunitive approach to individuals with AUD exists in a number of states. In Alaska, for example, individuals with AUD are required to be treated instead of criminally prosecuted for their public consumption of alcoholic beverages.[298] In Colorado and Idaho, by further example, individuals with AUD shall not be subject to criminal prosecution and should be treated instead for their public consumption of alcohol.[299] By final example, political subdivisions in Idaho, Kansas, Montana, Nebraska, New Mexico, Rhode Island, and Tennessee are not permitted to adopt or enforce laws that include "being a common drunkard" as an element of an offense.[300]

G. Protecting

Additional alcohol-related language may be characterized as "protecting" language. Language in this category protects an individual from civil liability or criminal prosecution. With respect to protection from civil liability, Illinois provides tort immunity to individuals who participate in certain interventions involving an "alcoholic or drug addict."[301] Virginia similarly offers civil immunity to health care professionals involved in certain peer review processes and who, as part of such processes, investigate complaints that "alcoholism or drug addiction" has impaired the ability of another health care professional to practice.[302] With respect to protection from criminal prosecution, Nevada provides that "the status of drunkard" cannot be an element of a criminal offense.[303] Similarly, Vermont provides that "alcoholism and alcohol abuse are correctly perceived as health and social problems rather than criminal

298. *See* Tovino, *supra* note 3, at 15 (citing ALASKA STAT. ANN. § 47.37.010 (West 2022)).

299. *See id.* at 15-16 (citing COLO. REV. STAT. ANN. § 44-3-503(1)(e) (West 2022); IDAHO CODE ANN. § 39-301 (West 2022)).

300. *See id.* at 16 (citing IDAHO CODE ANN. § 39-310(1) (West 2022); KAN. STAT. ANN. § 65-4059 (West 2022); MONT. CODE ANN. § 53-24-106(1) (West 2021); NEB. REV. STAT. ANN. § 53-1,119(1) (West 2022); N.M. STAT. ANN. § 43-2-4(A) (West 2022); 23 R.I. GEN. LAWS ANN. § 23-1.10-16(a) (West 2022); TENN. CODE ANN. § 33-10-203(b) (West 2022)).

301. 745 ILL. COMP. STAT. 35/2 (2022).

302. VA. CODE ANN. § 8.01-581.13(A) (2022).

303. NEV. REV. STAT. § 458.260(1) (2021).

transgressions" and that "alcoholics and alcohol abusers shall no longer be subjected to criminal prosecution solely because of their consumption of alcoholic beverages."[304]

There are benefits to using alcohol-related terms in protecting language. For example, persons who attempt to help individuals with AUD may be protected for their good-faith efforts, and individuals with AUD may be protected from criminal prosecution for their disease. However, the use of stigmatizing terms in protecting statutory language also can defeat the purpose of the statute. Consider the Vermont law, which provides that "alcoholism and alcohol abuse are correctly perceived as health and social problems rather than criminal transgressions."[305] As explained in Part I, the word "alcoholism" is associated with evil, lack of willpower, defects of character, and moral deterioration[306] whereas the word "abuse" is associated with evil, sin, and intentionality of behavior.[307] A statute stating that a particular condition should be considered a health problem and not a criminal transgression and then using words that suggest the opposite is illogical.

H. Preventing

Additional alcohol-related language may be characterized as "preventing" language. Language in this category is designed to prevent individuals from developing AUD and other substance use disorders. Alabama, for example, encourages the prevention of "alcohol and drug abuse" among children in public schools.[308] Alaska has designated the month of March as Sobriety Awareness Month, during which schools may engage in activities designed to help prevent "alcoholism [and] drug abuse."[309] Illinois gives recipients of public aid the opportunity to receive services designed to prevent "alcoholism and substance abuse."[310] Oklahoma has an "Alcohol and Drug Abuse Prevention and Life Skills Education Act," the purpose

304. VT. STAT. ANN. tit. 18, § 4801 (2021).
305. *Id.* § 4801(b)(1).
306. *See supra* notes 151-57 and accompanying text.
307. *See supra* notes 177-87 and accompanying text.
308. ALA. CODE § 16-40A-1(b)(2) (2022).
309. ALASKA STAT. § 44.12.165 (2022).
310. 305 ILL. COMP. STAT. 5/9-1(f) (2022).

of which is to encourage school districts to develop and implement a "drug and alcohol abuse" prevention curriculum.[311] Vermont requires an "alcohol and drug abuse" prevention curriculum to be developed for elementary and secondary schools.[312] In the District of Columbia, the Mayor is responsible for developing and maintaining programs for the prevention of "alcoholism" among District employees.[313]

There are significant risks associated with using certain alcohol-related terms in preventing statutory language, including language that informs the basis of primary and secondary school curricula and other educational materials. One risk is that an outdated, medically incorrect, and/or stigmatizing term (together with the myths and misconceptions associated with the term) will become learned by (or engrained in) a community. By definition, educational materials relating to a condition should be as accurate as possible, should reflect current medical terminology, and should be designed to provide information regarding conditions rather than stigmatize individuals who develop such conditions.[314] Most of the examples of preventing language in the preceding paragraph can be improved by simply substituting the phrases "substance use disorders" (generally) or "alcohol use disorder" (in particular) for existing terminology such as "alcoholism" and "drug abuse."

I. Treating

Additional alcohol-related language may be classified as "treating" language. Treating language permits, encourages, directs, or otherwise makes available the treatment of individuals or groups. For example, Alabama makes certain health and social services available to children, including "[a]lcohol ... abuse treatment" services.[315] Arizona permits "[a]n alcoholic" to apply for evaluation and treatment at certain approved facilities.[316] Indiana has a minimum

311. OKLA. STAT. tit. 70, §§ 1210.229-1 to -2 (2022).
312. VT. STAT. ANN. tit. 16, § 909(a) (2021).
313. D.C. CODE § 24-610(a) (2022).
314. *See Develop & Test Materials*, CTRS. FOR DISEASE CONTROL & PREVENTION (Jan. 12, 2021), https://www.cdc.gov/healthliteracy/developmaterials/index.html [https://perma.cc/B6XP-WCJC].
315. ALA. CODE § 12-15-701(h)(6) (2022).
316. ARIZ. REV. STAT. ANN. § 36-2024(A) (2022).

security release program pursuant to which eligible individuals can be temporarily released from custody to obtain, among other things, treatment for "drug addiction or alcoholism."[317] South Carolina encourages state employees who have an "alcoholism problem" or a "drinking problem" to seek diagnosis and treatment.[318] South Carolina also created a Division on Alcohol and Drug Addiction within the State Department of Mental Health that is responsible for treating "alcohol and drug addicts."[319] Utah gives its cities the authority to provide treatment to "alcoholics, narcotic addicts, and other individuals who are addicted to the use of drugs or intoxicants."[320] Vermont requires its Department of Corrections to provide "alcohol and substance abuse" treatment to certain persons who violate the state's motor vehicle laws.[321] Virginia has detoxification programs for "public inebriates" as an alternative to arrest and jail.[322] Wisconsin charges its Department of Health Services with executing laws relating to the treatment of "inebriates and drug addicts"[323] and requires certain-sized counties to have a mental health complex devoted to the care of "drug addicts" and "alcoholics."[324]

There are significant benefits to using alcohol-related terms in treating language. Laws that specifically encourage individuals with alcohol-related conditions to seek treatment are laudable from a public health perspective.[325] By recognizing and including individuals with alcohol-related health conditions in treating language, lawmakers also are ensuring that such individuals are legally entitled to available benefits and services.[326]

There are, however, risks associated with using certain alcohol-related terms in treating language. Using stigmatizing terms in

317. IND. CODE § 11-10-8-2(a)(4) (2022).
318. S.C. CODE ANN. § 8-11-110(b), (c) (2022).
319. *Id.* §§ 44-9-10, -50.
320. UTAH CODE ANN. § 10-8-47(2)(b) (LexisNexis 2022).
321. VT. STAT. ANN. tit. 23, § 1210(e)(2) (2021).
322. VA. CODE ANN. §§ 9.1-176(A), 18.2-388 (2022).
323. WIS. STAT. § 46.03(5)(a) (2022).
324. *Id.* § 51.08.
325. *See HHS's New Mental Health and Substance Use Disorder Benefit Resources Will Help People Seeking Care to Better Understand Their Rights*, U.S. DEP'T HEALTH & HUM. SERVS. (Apr. 27, 2022), https://www.hhs.gov/about/news/2022/04/27/hhs-new-mental-health-and-substance-use-disorder-benefit-resources-will-help-people-seeking-care-to-better-understand-their-rights.html [https://perma.cc/S2LH-XBSN].
326. *See id.*

statutory language designed to encourage individuals to seek treatment, especially when such language may filter down to individuals through program and outreach materials, may do the opposite; that is, it may actually *discourage* such individuals from seeking treatment. As Dr. John Kelly of the Center for Addiction Medicine at Massachusetts General Hospital explains, stigmatizing language may increase the shame and anxiety of individuals with substance use disorders, diminishing their likelihood of seeking treatment.[327] Notwithstanding, stigmatizing treating language can easily be improved by using neutral phrases such as "individuals with alcohol use disorder."

J. Equalizing

Further alcohol-related language may be characterized as "equalizing" language. Language in this category requires an individual with AUD to be treated equally when compared to an individual without AUD. Equalizing language is typically found in employment statutes as well as insurance statutes. For example, Illinois and Indiana allow employers to hold employees who are "alcoholic[s]" to the same standards of job performance applicable to other employees.[328] Kansas requires certain health insurers that offer insurance benefits for individuals with physical health conditions to offer minimum insurance benefits for individuals with "alcoholism, drug abuse and substance use disorders."[329] Louisiana requires group health plans that cover "alcoholism" and "drug abuse" in hospitals to also cover treatments provided in "nonhospital chemical dependency units."[330] Minnesota requires certain group accident and health insurers to cover treatments for "alcoholism, chemical dependency, or drug addiction."[331] Missouri requires all individual and family health plans that provide hospital coverage to cover treatments for

327. *See* Kelly & Westerhoff, *supra* note 6, at 205 ("[M]any individuals with substance-related problems may internalize these stigmatizing beliefs, thereby increasing their sense of shame and anxiety, creating a barrier to honest self-disclosure, and diminishing the likelihood of seeking treatment.").

328. 775 ILL. COMP. STAT. 5/2-104(C)(3)(d) (2022); IND. CODE § 22-9-5-24(a)(4) (2022).

329. KAN. STAT. ANN. § 40-2,105(a) (West 2022).

330. LA. STAT. ANN. § 22:1025(A) (2022).

331. MINN. STAT. § 62A.149(1) (2022).

"alcoholism," regardless of whether the treatments are provided in a hospital, residential facility, or certain nonresidential facility.[332]

There are benefits to using alcohol-related terms in equalizing language. For example, individuals with AUD may receive health insurance coverage of necessary treatments in the same way that individuals who are pregnant receive coverage of maternity services. However, the use of stigmatizing terms in certain equalizing language is counterintuitive. For example, equalizing insurance coverage of AUD and a physical condition such as pregnancy but using stigmatizing language to refer to individuals with AUD yet neutral language to refer to individuals who are pregnant is counterintuitive.[333] Equalizing language can be improved by substituting "alcohol use disorder" for terms such as "alcoholism" and "individual with alcohol use disorder" for terms such as "alcoholic."

K. Funding

Additional alcohol-related language may be classified as "funding" language. Funding language requires the collection, deposit, disbursement, and/or expenditure of funds for certain alcohol-related programs, activities, and services. For example, California requires fifty dollars of certain criminal fines to be deposited in a special account for use by county "alcoholism" programs.[334] Kansas has a beverage tax that shall be expended on "alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers."[335] Kansas also has a fund for the purchase, maintenance, and expansion of services for "alcoholism and drug abuse" and for the treatment of persons who are "alcoholics or drug abusers or

332. MO. REV. STAT. § 376.779(1) (2022).

333. *Compare* Katy Steinmetz, *It's Time to Rethink the Demeaning Ways We Describe Pregnancy*, TIME (May 11, 2019, 8:00 AM), https://time.com/5587321/knocked-up-pregnant-synonyms/ [https://perma.cc/EW82-7YQS] (identifying demeaning language used to describe pregnancy, including "knocked up," "bun in the oven," "in a family way," and "delicate condition"), *with* BLUECROSS BLUESHIELD OF OKLA., YOUR HEALTH CARE BENEFITS PROGRAM 25 (2016) (illustrating health plan covering "[m]aternity [s]ervices," not "knocked up," "bun in the oven," "in the family way," or "delicate condition" services).

334. CAL. PENAL CODE § 1463.16(a) (West 2022).

335. KAN. STAT. ANN. § 79-41a04(d) (2021).

are in danger of becoming alcoholics or drug abusers."[336] Massachusetts has established a "Substance Abuse Prevention and Treatment Fund."[337] Minnesota provides grants to certain recovery programs, defined as those programs that offer a course of instruction to students recovering from "substance abuse or dependency."[338] Montana requires a percentage of taxes imposed on alcoholic beverage sales to be spent on "alcoholism" programs.[339] Montana also has a separate wholesale beer tax, a portion of the funds of which must be allocated to "alcoholism" treatment and prevention services.[340] North Carolina requires a percentage of taxes collected from liquor sales to be spent on the treatment of "alcoholism or substance abuse, or for research or education on alcohol or substance abuse."[341] South Carolina earmarks a percentage of tax revenues for the prevention and control of "alcohol and drug abuse."[342] Utah requires a percentage of beer tax revenues to be deposited into an "Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account," which may be used for the treatment of individuals convicted of offenses in which "alcohol or substance abuse" is a contributing factor.[343]

There are significant benefits to using alcohol-related terms in funding language. Laws that require the collection, disbursement, and expenditure of state funds for alcohol-related programs, activities, and services are laudable from a public health perspective.[344] By recognizing individuals with alcohol-related health conditions as worthy of legislative attention and financial support, lawmakers are also acknowledging the seriousness of their disease in the same way that lawmakers acknowledge the seriousness of

336. *Id.* § 65-4060(c).
337. MASS. GEN. LAWS ch. 29, § 2BBBB (2022).
338. MINN. STAT. § 124D.695(1) (2022).
339. MONT. CODE ANN. § 53-24-108(1)(a) (2021).
340. *Id.* § 16-1-406(3)(a).
341. N.C. GEN. STAT. § 18B-805(b)(3), (h) (2022).
342. S.C. CODE ANN. § 61-12-20(b) (2022).
343. UTAH CODE ANN. § 32B-2-403(1)-(2) (West 2022).
344. *See Substance Abuse Prevention and Treatment Block Grant*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (Dec. 22, 2022), https://www.samhsa.gov/grants/block-grants/sabg [https://perma.cc/XHU8-8HCY].

traumatic brain injury,[345] HIV/AIDS,[346] and other health conditions through statutory funding language.

There are, however, risks associated with using certain alcohol-related terms in funding language. These risks include those already mentioned, such as the endorsement of stigma associated with these terms; the use—and repeated re-use—of stigmatizing statutory language in front-end funding applications as well as back-end, proof-of-expenditure documentation; and the contradictory nature of legislation that funds treatments and services for alcohol-related health conditions, yet uses stigmatizing language to refer to such conditions.[347] Funding language can be improved by substituting "alcohol use disorder" for terms such as "alcoholism" and "alcohol abuse" and by substituting "individual with alcohol use disorder" for terms such as "alcoholic" and "alcohol abuser."

L. Mitigating

A final illustrative category of alcohol-related statutory language is "mitigating" language. Mitigating language is that which alleviates, or lessens, an otherwise negative legal consequence. For example, Arkansas allows the "chemical dependency including alcoholism or drug abuse" of a licensed attorney to be considered as a mitigating factor in the determination of sanctions for the attorney's professional responsibility violations.[348] By further example, Georgia allows certain individuals who produce evidence of having been "successfully treated and cured of alcoholism, drug addiction, or mental illness" to obtain a private detective license.[349] This allowance is notwithstanding the general rule in Georgia making private detectives who are unable to safely practice their profession due to

345. *See, e.g.*, *Traumatic Brain Injury Program*, CAL. GRANTS PORTAL (Sept. 7, 2021, 3:38 PM), https://www.grants.ca.gov/grants/traumatic-brain-injury-program/ [https://perma.cc/49MU-VD2T] (showing that the California Department of Rehabilitation provides funding for traumatic brain injury treatment and services as required by state law).

346. *See, e.g.*, *Ryan White HIV/AIDS Program Legislation*, HEALTH RES. & SERVS. ADMIN. (Feb. 2022), https://ryanwhite.hrsa.gov/about/legislation [https://perma.cc/M95U-8F8U] (showing that the federal government funds HIV/AIDS services and treatments as required by the federal Ryan White Comprehensive AIDS Resources Emergency Act of 1990).

347. *See supra* Parts II.B, II.K.

348. ARK. CODE ANN. § 19(C)(9) (2022).

349. GA. CODE ANN. § 43-38-11(a)(6) (2022).

alcohol ineligible for a license.[350] By final example, Nevada identifies the "chemical dependency including alcoholism or drug abuse" of an attorney as a mitigating circumstance in the context of attorney discipline.[351]

There are benefits to using alcohol-related terms in mitigating language. Laws that alleviate negative legal consequences for individuals with diseases are separating the person from the disease and recognizing the role of disease in undesirable behavior.[352] As with funding language, the use of certain alcohol-related terms in mitigating language such as "alcoholism" and "abuse" risks: (1) the endorsement of the stigma associated with these terms; (2) the use—and repeated re-use—of stigmatizing statutory language in professional responsibility and other license revocation contexts; and (3) confusion due to legislation that mitigates negative legal consequences, yet uses stigmatizing language to refer to the conditions eligible for mitigation.[353] Notwithstanding, mitigating language can be improved by substituting the phrase "alcohol use disorder" for terms such as "alcoholism" and "alcohol abuse."

M. Summary

Part II has presented an innovative taxonomy of alcohol-related statutory language that classifies terms by their primary legislative function, such as "defining," "titling," "establishing," "excluding," "removing," "penalizing," "protecting," "preventing," "treating," "equalizing," "funding," and "mitigating." Within each legislative function, Part II considered the risks and benefits of using particular alcohol-related terms and offered statutory amendments designed to minimize risks and maximize benefits. More broadly, this taxonomy shows how alcohol-related statutory language can be: (1) helpful to individuals with AUD yet accompanied by outdated, stigma-inducing language; (2) harmful to individuals with AUD and accompanied by outdated, stigma-inducing language; (3) if amended, helpful to individuals with AUD and accomplished by neutral, medically

350. *Id.*
351. NEV. SUP. CT. R. 102.5(2)(i) (2022).
352. *See* Ranieris, *supra* note 261 and accompanying text.
353. *See supra* Part II.K.

recognized language; and (4) if amended, harmful to individuals with AUD but accomplished by neutral, medically recognized language.

III. JUSTIFICATION AND CONTEXT

A. Justification

As explained in prior legal scholarship, there is a growing scientific literature that explores the relationship between language and stigma in the context of substance use disorders.[354] That said, legal scholarship has yet to consider the self-initiated writings of individuals with AUD, which also can be very helpful in terms of understanding the relationship between language and stigma. These self-expressed writings can take many forms, including posts by individuals with AUD in online fora. One such forum is SoberRecovery (SR), which allows individuals with AUD to seek support and/or provide support to other individuals with AUD through public posts or private messages.[355] The public posts on SR provide substantial evidence of label avoidance and public stigma in the context of AUD.[356]

Label avoidance may be defined as an individual's hesitancy or refusal to seek or obtain evidence-based mental health services in order to avoid stigmatizing labels.[357] In Part II, this Article repeatedly argued that lawmakers should remove stigmatizing labels such as "abuser," "addict," "alcoholic," "drunkard," "inebriate," and "intemperate" from legislative language that may filter down to individuals with AUD through health and social service program materials, educational curricula, and other forms of communication. That is, this Article repeatedly argued that lawmakers should not use stigmatizing labels that may foster label avoidance. The public posts on SR provide strong justification for this argument.

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354. *See* Tovino, *supra* note 3, at 9-14.

355. *See* SOBERRECOVERY, https://www.soberrecovery.com/ [https://perma.cc/XX7E-95R2].

356. *See infra* notes 358-60 and accompanying text.

357. *See* Corrigan, *supra* note 214, at 1347 (defining label avoidance in terms of an individual's refusal to seek or obtain evidence-based mental health services in order to avoid stigmatizing labels).

For example, one SR registrant states simply: "I hate labels. I don't want this to define who I am."[358] A second registrant believes that "[p]eople who're concerned about their drinking should be able to admit that they have a problem with drinking without the requirement to label themselves an alcoholic. Why is this? Because it acts as a barrier for people to admit they have a problem."[359] A third illustrative registrant explains:

> I do think that [a] [l]ot of people do not use the word or label themselves alcoholic anymore. It's stigmati[z]ed and outdated, I agree with that. I prefer now to see myself as a normal person that suffered from alcohol use disorder, because I need to remove myself from the whole 'alcoholic' identi[t]y that consumed me whilst I was in AA for 3 years.[360]

In summary, public posts on SR provide strong justification for the argument that stigmatizing labels may foster label avoidance by individuals with AUD.

Label avoidance is driven in part by public stigma, which may be defined as the negative attitudes and beliefs others hold about a person or group that lead to fear, rejection, or avoidance of the person or group as well as discrimination against the person or group.[361]

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358. JustTony, *Recovered vs. Recovery*, Post to *Alcoholism Forum*, SOBERRECOVERY (Dec. 16, 2020, 11:14 PM), https://www.soberrecovery.com/forums/newcomers-recovery/451174-recovered-vs-recovery.html [https://perma.cc/3RGZ-AZMD].

359. Vulcan30, *There Shouldn't Be This Requirement to Label Yourself an 'Alcoholic,'* Post to *Alcoholism Forum*, SOBERRECOVERY (Sept. 10, 2018, 2:02 AM), https://www.soberrecovery.com/forums/alcoholism/432169-there-shouldnt-requirement-label-yourself-alcoholic.html [https://perma.cc/VT78-8SBD].

360. Snitch, *Class of December 2021 Part 3*, Post to *Alcoholism Forum*, SOBERRECOVERY (Dec. 31, 2021, 5:37 AM), https://www.soberrecovery.com/forums/newcomers-daily-support-threads/456868-class-december-2021-part-3-a-8.html [https://perma.cc/W7JC-TV9B].

361. *See* Carolin Kilian, Jakob Manthey, Sinclair Carr, Franz Hanschmidt, Jürgen Rehm, Sven Speerforck & Georg Schomerus, *Stigmatization of People with Alcohol Use Disorders: An Updated Systematic Review of Population Studies*, 45 ALCOHOLISM CLINICAL & EXPERIMENTAL RSCH. 899, 899 (2021) (reporting that persons with AUD are "perceived as being more dangerous and responsible for their condition" and that "public desire for social distance was consistently higher for ... AUD" compared to substance-unrelated mental disorders; concluding that "[t]he stigmatization of persons with AUD remains comparatively high and is distinct from that of other substance-unrelated disorders"); Angela M. Parcesepe & Leopoldo J. Cabassa, *Public Stigma of Mental Illness in the United States: A Systematic Literature Review*, 40 ADMIN. & POL'Y MENTAL HEALTH & MENTAL HEALTH SERVS. RSCH. 384, 384 (2012) (defining public stigma as "a set of negative attitudes and beliefs that motivate

One reason researchers suggest the use of neutral, medically accurate language is to help diminish the public stigma associated with AUD, which may help to lessen label avoidance.[362] The perception of public stigma by individuals with AUD is strongly supported by posts on SR. For example, one SR registrant explains: "This disease does have a stigma attached to it. I have to remember that 'normal' people just do not understand."[363] A second SR registrant states simply, "Society puts a stigma on alcohol."[364] A third SR registrant expressed fear of seeking rehabilitation based on the public stigma associated with such treatment: "I was afraid about the stigma rehab[ilitation] brings."[365] A fourth SR registrant says, "I wish the stigma didn't exist and people felt comfortable telling the truth (saying addiction) like they would if a family member died of, say, cancer. It would help the stigma finally be shoved out into the light so that it could be tackled and [fewer] people would die."[366] A fifth SR registrant reports, "I work in the medical field and being that I was afraid of the stigma of admitting my alcoholism I decided to [attempt recovery] on my own."[367] A sixth SR registrant remembers, "I didn't want the stigma of going to AA."[368] More broadly, a final illustrative SR registrant explains, "Alcohol, drugs, depression, anxiety, etc. would put a negative stigma by your name."[369] In

individuals to fear, reject, avoid, and discriminate against people").

362. *See* Parcesepe & Cabassa, *supra* note 361, at 384.

363. Surlyredhead, *What We Say When We Talk About Death*, Post to *Alcoholism Forum*, SOBERRECOVERY (Jan. 24, 2020, 4:58 PM), https://www.soberrecovery.com/forums/alcoholism/445267-what-we-say-when-we-talk-about-death.html [https://perma.cc/AH5R-8RGG].

364. Bubbapug1985, *Best Book?*, Post to *Alcoholism Forum*, SOBERRECOVERY (June 5, 2021, 7:31 AM), https://www.soberrecovery.com/forums/alcoholism/454124-best-book.html [https://perma.cc/AA9H-T4TU].

365. Vino88, *I Can't Do This on My Own*, Post to *Alcoholism Forum*, SOBERRECOVERY (Feb. 6, 2020, 9:27 AM), https://www.soberrecovery.com/forums/alcoholism/445560-i-cant-do-my-own.html [https://perma.cc/NN9S-PZ9S].

366. Sohard, *What We Say When We Talk About Death*, Post to *Alcoholism Forum*, SOBERRECOVERY (Jan. 24, 2020, 4:28 PM), https://www.soberrecovery.com/forums/alcoholism/445267-what-we-say-when-we-talk-about-death.html [https://perma.cc/AH5R-8RGG].

367. FoodDude, *4 Years*, Post to *Alcoholism Forum*, SOBERRECOVERY (Mar. 27, 2019, 9:47 PM), https://www.soberrecovery.com/forums/alcoholism/437357-4-years.html [https://perma.cc/8GVS-H9FZ].

368. DriGuy, *My Name Is Jimbo and I'm Sort of an Alcoholic*, Post to *Alcoholism Forum*, SOBERRECOVERY (Mar. 15, 2019, 4:19 AM), https://www.soberrecovery.com/forums/alcoholism/437032-my-name-jimbo-im-sort-alcoholic-2.html [https://perma.cc/QEJ5-H5TE].

369. VinnyMcM, *Is Admitting You Have a Problem More Acceptable Now More Than Ever?*, Post to *Alcoholism Forum*, SOBERRECOVERY (Jan. 4, 2020, 8:09 AM), https://www.soberre

summary, SR registrants' posts provide strong justification for the argument that individuals with AUD not only perceive but also fear public stigma and that such stigma affects their willingness to accept their disease and to seek treatment for their disease.

B. Context

This Article has identified a number of statutory amendments designed to minimize the harms and maximize the benefits associated with alcohol-related legislation. That said, how can these language-related proposals be situated within legal scholarship more generally? What guidance can be drawn from scholars who have made similar proposals involving other types of language in other areas of the law? What are the criticisms of those other proposals, and are those criticisms relevant here? Are there any distinctions between the alcohol-related language discussed in this Article and other types of statutory language—distinctions that would dampen or strengthen such criticisms?

To start, this Article is but one of several pieces of scholarship that explores the expressive function of the law; that is, the role of law in making statements that create or validate social norms even if the underlying law is not regularly visited or enforced.[370] For example, a jurisdiction may enact a nondiscrimination law for expressive reasons; that is, to make a statement about the importance of nondiscrimination even though the law may not help out many individuals against whom there is discrimination.[371] By further example, a jurisdiction may have a law prohibiting prostitution that expresses the jurisdiction's disapproval of prostitution even if

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covery.com/forums/alcoholism/444732-admitting-you-have-problem-more-acceptable-now-more-than-ever.html#post7350884 [https://perma.cc/RK99-Q3Y9].

370. *See* Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2024 (1996) [hereinafter Sunstein, *On the Expressive Function of Law*] (exploring the expressive function of law; that is, "the function of law in 'making statements' as opposed to controlling behavior directly"); Cass R. Sunstein, *Law's Expressive Function*, 9 GOOD SOC'Y 55, 57 (1999) [hereinafter Sunstein, *Law's Expressive Function*] ("Without understanding the expressive function of law, we will have a hard time in getting an adequate handle on public views with respect to, for example, civil rights, prostitution, the environment, endangered species, capital punishment, and abortion.").

371. Sunstein, *On the Expressive Function of Law*, *supra* note 370, at 2027-28.

prosecutors do not frequently enforce the law.[372] This Article draws on this literature to convey grave concern regarding statutes that use stigma-inducing language to refer to individuals with AUD. Outdated, medically inaccurate, and non-person-first terms are expressing—loudly and powerfully—that individuals with AUD are of low value and worth, that they are sinful and evil, and that they suffer from moral weakness and deficit of will. To the contrary, this Article contends that all individuals have value and worth and that individuals with AUD have the potential to change their alcohol-related activities and behaviors.

This Article also is but one of many pieces of scholarship that attempts to address the impact of law-based language on public discourse, public understanding, and public judgment of certain individuals and groups. In criminal law, for example, some scholars and criminal justice reform activists have noted that approximately two million people are currently located within the jail and prison system in the United States and that others often refer to individuals with criminal justice histories as "convicts," "criminals," "delinquents," "felons," "inmates," "offenders," and "prisoners," just to name a few.[373] Even after these individuals leave jail or prison, these individuals still may be referred to as "ex-convicts," "ex-felons," "ex-inmates," "ex-prisoners," and "ex-offenders."[374] Some scholars and

372. *See, e.g.*, Rachel Treisman, *A 'Relic' and 'Burden': Manhattan District Attorney to Stop Prosecuting Prostitution*, NPR (Apr. 21, 2021, 4:40 PM), https://www.npr.org/2021/04/21/989588072/a-relic-and-burden-manhattan-district-attorney-to-stop-prosecuting-prostitution [https://perma.cc/D2PZ-U4KB].

373. *Words Matter: Using Humanizing Language*, FORTUNE SOC'Y, https://fortunesociety.org/wordsmatter/ [https://perma.cc/R8HE-JK4G] (discussing the importance of language in referring to individuals with justice system involvement); Lawrence Bartley, *I Am Not Your "Inmate,"* MARSHALL PROJECT (Apr. 12, 2021), https://www.themarshallproject.org/2021/04/12/i-am-not-your-inmate [https://perma.cc/5K9H-F6NB] ("Words like 'inmate,' 'prisoner,' 'convict,' 'felon' and 'offender' are like brands. They reduce human beings to their crimes and cages."); Erica Bryant, *Words Matter: Don't Call People Felons, Convicts, or Inmates*, VERA INST. (Mar. 31, 2021), https://www.vera.org/news/words-matter-don't-call-people-felons-convicts-or-inmates [https://perma.cc/6NS5-3HS5] (arguing that certain words and phrases used in criminal law, including "convict," "criminal," "felon," "inmate," and "prisoner," are not only outdated but harmful).

374. *See, e.g.*, Eddie Ellis, *An Open Letter to Our Friends on the Question of Language*, *in* PAROLE INFO. PROJECT, FORDHAM L. ARCHIVE SCHOLARSHIP & HIST. 1, 1 (Jan. 2020), https://ir.lawnet.fordham.edu/pp/5/ [https://perma.cc/9T5D-FSS6] ("The worst part of repeatedly hearing your negative definition of me, is that I begin to believe it myself '*for as a man thinketh in his heart, so is he*.' It follows then, that calling me inmate, convict, prisoner, felon,

activists have argued that these labels are dehumanizing and that they serve only to stereotype and marginalize people rather than support them as they rebuild their lives.[375] Some scholars and activists have also argued that individuals with past or present justice system involvement should not be defined by that involvement and that the language used to refer to such individuals should reflect their full identities—acknowledging their capacity to change and grow—and should reflect the complexities of behavior the criminal justice system regulates.[376] Illustrative, not exhaustive, examples of person-first language these criminal law scholars and activists recommend include "person with justice system involvement," "person affected by the justice system," "person with justice history," "person on parole," "person on probation," and "person with a history of substance use."[377]

In immigration law, by further example, many scholars have investigated the impact of language on public understanding, perception, and judgment, as well as social and legal outcomes. Scholars who write in this area have argued, for example, that words such as "citizen," "immigrant," "alien," and "illegal" are powerful tools for guiding listener perceptions,[378] for representing hierarchical and status-based views of membership with "citizens" at the top and

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or offender indicates a lack of understanding of who I am, but more importantly *what I can be*. I can be and am much more than an 'ex-con,' or an 'ex-offender,' or an 'ex-felon.'").

375. *See* Lisette Bamenga, *Good Intentions Don't Blunt the Impact of Dehumanizing Words*, MARSHALL PROJECT (Apr. 12, 2021), https://www.themarshallproject.org/2021/04/12/good-intentions-don-t-blunt-the-impact-of-dehumanizing-words [https://perma.cc/3JPD-CN6S] ("As a formerly incarcerated woman, I cringe every time I hear or read terms such as 'inmate,' 'ex-offender,' 'prisoner' and 'ex-convict.' These words are dehumanizing because, as previously incarcerated activist Eddie Ellis writes, 'they identify us as "things" rather than people.'").

376. *See* Rahsaan Thomas, *How I Convinced My Incarcerated Peers to Make Language a Priority*, MARSHALL PROJECT (Apr. 13, 2021), https://www.themarshallproject.org/2021/04/13/how-i-convinced-my-incarcerated-peers-to-make-language-a-priority [https://perma.cc/LEQ7-NM2Q] ("I don't argue that other journalists should refer to me as a 'person in prison' because I'm an angel who deserves steak dinners delivered to my cell. I do it because labels invite people telling our stories to obscure the complexity of crime. Sometimes human beings do horrible things, particularly in response to violence, trauma, shame, poverty, racism and other forms of oppression.").

377. *See Words Matter: Using Humanizing Language*, *supra* note 373.

378. *See* Andrew Tae-Hyun Kim, *Penalizing Presence*, 88 GEO. WASH. L. REV. 76, 87, 146 (2020) (addressing the stigma associated with immigration status and examining judgments associated with particular words such as "illegals," "rapists," "criminals," "aliens," and "animals"); Emily C. Torstveit Ngara, *Aliens, Aggravated Felons, and Worse: When Words Breed Fear and Fear Breeds Injustice*, 12 STAN. J. C.R. & C.L. 389, 390-91 (2016) (same).

"aliens" and "illegals" at the bottom,[379] for creating dominant cultural perceptions of immigrants and the social and legal treatments they deserve,[380] and for contributing to stratified notions of membership that facilitate the denial of rights and benefits to certain individuals.[381] In response to these and other arguments, federal and state lawmakers have introduced bills that would replace certain statutory words and phrases, such as "alien" and "illegal alien," with other words and phrases, such as "foreign national," "undocumented immigrant," and "undocumented foreign national."[382]

Parallel arguments and recommendations also have been made in the context of disability law. That is, some disability law scholars, disability rights advocates, and government agencies have recommended the use of person-first language such as "an individual with a disability," "a person who has cerebral palsy," or "a person with a seizure disorder," instead of "disabled," "handicapped," "deaf," or "blind."[383]

This Article certainly runs parallel to the immigration, criminal, and disability law scholarship described above. That is, the

379. D. Carolina Núñez, *War of the Words: Aliens, Immigrants, Citizens, and the Language of Exclusion*, 2013 BYU L. REV. 1517, 1549-50.

380. *See* Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545, 1564-66 (2011) (explaining the use of the word "alien" in Supreme Court jurisprudence).

381. *See* Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons*, 28 U. MIA. INTER-AM. L. REV. 263, 268 (1997) ("Similar to the social construction of race, which legitimizes racial subordination, the construction of the alien has justified the fact that our legal system offers noncitizens limited rights. Alien terminology helps rationalize the harsh treatment of persons from other countries." (citing ROY L. BROOKS, GILBERT PAUL CARRASCO & GORDON A. MARTIN, CIVIL RIGHTS LITIGATION: CASES AND PERSPECTIVES 976 (1995))).

382. *See, e.g.*, Correcting Hurtful and Alienating Names in Government Expression (CHANGE) Act, H.R. 3776, 116th Cong. (2019); H.B. 20-1294, 72d Gen. Assemb., 2d Reg. Sess. (Colo. 2020) (proposing replacement of the term illegal alien with unauthorized worker as it relates to public contracts for services); S.B. 432, 2015 S., 2015-2016 Reg. Sess. (Cal. 2015) (proposing to remove stigmatizing language in sections 1725 and 2015 of the labor code relating to public works).

383. *See* Bridget Walsh & Ann Bingham, *People-First Language: A Strengths Based Strategy for Addressing Diversity*, NEV. TODAY (June 5, 2018), https://www.unr.edu/nevada-today/blogs/2018/people-first-language [https://perma.cc/9FYV-FBPF]; PACER CTR., PERSON-FIRST LANGUAGE FOR INDIVIDUALS WITH DISABILITIES (2020), https://www.pacer.org/parent/php/PHP-c31.pdf [https://perma.cc/9T9J-4UAH]; *Communicating with and About People with Disabilities*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 1, 2022), https://www.cdc.gov/ncbddd/disabilityandhealth/materials/factsheets/fs-communicating-with-people.html [https://perma.cc/2ANT-W5DD].

arguments made in this Article about alcohol-related language are supported by analogy to some arguments made about criminal justice, immigration, and disability-related language. However, there are criticisms of the criminal justice, immigration, and disability-related language scholarship that should be reviewed here. One critique of person-first language recommendations is that they are empty gestures when not coupled with substantive changes designed to ensure the fair and just treatment of the individuals such language describes.[384] That is, language recommendations are a superficial, or perhaps politically correct, "gloss" over more difficult questions relating to legal rights, benefits, and privileges. This criticism is well taken because the Author of this Article has spent more than a decade arguing for increased and/or improved health insurance, income insurance, disability nondiscrimination, and other legal protections and benefits for individuals with a wide variety of physical and mental health conditions, including postpartum depression, disorders of consciousness, other chronic conditions, substance use disorders, and nonsubstance addictive disorders.[385] The

384. *See* Alexandra Cox, *The Language of Incarceration*, 1 INCARCERATION 1, 7 (2020) (referencing this criticism).

385. *See, e.g.*, Stacey A. Tovino, *COVID-19, Telehealth, and Substance Use Disorders*, 2 ARIZ. ST. L.J. ONLINE 147 (2020); Yann Joly, Charles Dupras, Miriam Pinkesz, Stacey A. Tovino & Mark A. Rothstein, *Looking Beyond GINA: Policy Approaches to Address Genetic Discrimination*, 21 ANN. REV. GENOMICS & HUM. GENETICS 491 (2020); Stacey A. Tovino, *State Benchmark Plan Coverage of Opioid Use Disorder Treatments and Services: Trends and Limitations*, 70 S.C. L. REV. 763 (2019); Stacey A. Tovino, *Substance Use Disorder Insurance Benefits: A Survey of State Benchmark Plans*, 52 CREIGHTON L. REV. 401 (2019); Stacey A. Tovino, *A Right to Care*, 70 ALA. L. REV. 183 (2018); Stacey A. Tovino, *Disparities in Private Health Insurance Coverage of Skilled Care*, 6 LAWS 21 (2017); Stacey A. Tovino, *Gambling Disorder, Vulnerability, and the Law: Mapping the Field*, 16 HOUS. J. HEALTH L. & POL'Y 163 (2016); Stacey A. Tovino, *The DSM-5: Implications for Health Law*, 2015 UTAH L. REV. 767 (2015); Stacey A. Tovino, *Will Neuroscience Redefine Mental Injury? Disability Benefit Law, Mental Health Parity Law, and Disability Discrimination Law*, 12 IND. HEALTH L. REV. 695 (2015); Stacey A. Tovino, *Lost in the Shuffle: How Health and Disability Laws Hurt Disordered Gamblers*, 89 TUL. L. REV. 191 (2014); Stacey A. Tovino, *Rights of Patients with Mental Health Conditions*, *in* 2 MENTAL HEALTH CARE ISSUES IN AMERICA: AN ENCYCLOPEDIA, 690-97 (Michael Shally-Jensen ed., 2013); Stacey A. Tovino, *Insurance and Parity Laws*, *in* 1 MENTAL HEALTH CARE ISSUES IN AMERICA: AN ENCYCLOPEDIA, 350-57 (Michael Shally-Jensen ed., 2013); Stacey A. Tovino, *All Illnesses Are (Not) Created Equal: Reforming Federal Mental Health Insurance Law*, 49 HARV. J. ON LEGIS. 1 (2012); Stacey A. Tovino, *A Proposal for Comprehensive and Specific Essential Mental Health and Substance Use Disorder Benefits*, 38 AM. J.L. & MED. 471 (2012); Stacey A. Tovino, *Further Support for Mental Health Parity Law and Mandatory Mental Health and Substance Use Disorder Benefits*, 21 ANNALS HEALTH L. 147 (2012); Stacey A. Tovino, *Reforming State Mental Health Parity Law*, 11 HOUS.

Author also has spent significant time proposing substantive measures that would directly and immediately improve the physical and mental health, safety, and welfare of immigration detainees.[386] Although this particular Article focuses on statutory language, this Article should not be read in isolation from the Author's prior scholarship proposing significant substantive changes to a variety of health, insurance, disability, genetics, and immigration laws. Indeed, the research that supported the Author's prior scholarship—research that required the line-by-line reading of Medicare coverage manuals, state benchmark health plans, private health insurance policies, private disability insurance policies, immigration detention standards, and other documents and texts—helped the Author to see how outdated and medically incorrect (at best) and/or explicitly stigmatizing (at worst) the language of the law can be.[387]

A second criticism of person-first language, commonly voiced by disability rights scholars and advocates, is that person-first language interferes with efforts to claim the positive aspects of health-related or disability-driven identities.[388] For example, disability-first language, also called identity-first language, such as "disabled person" and "deaf person," can be used to claim and celebrate identities and normalize (rather than pathologize) particular qualities, traits, characteristics, and/or differences.[389] Indeed, a hashtag campaign (#SaytheWord) promotes the use of disability-first and other identity-first language in public discourse.[390]

J. HEALTH L. & POL'Y 455 (2011); Stacey A. Tovino, *Scientific Understandings of Postpartum Illness: Improving Health Law and Policy?*, 33 HARV. J.L. & GENDER 99 (2010); Stacey A. Tovino, *Neuroscience and Health Law: An Integrative Approach?*, 42 AKRON L. REV. 469 (2009); Stacey A. Tovino, *Neuroimaging Research into Disorders of Consciousness: Moral Imperative or Ethical and Legal Failure?*, 13 VA. J.L. & TECH. 2 (2008).

386. *See, e.g.*, Stacey A. Tovino, Of Mice and Men*: On the Seclusion of Immigration Detainees and Hospital Patients*, 100 MINN. L. REV. 2381 (2016); Stacey A. Tovino, The Grapes of Wrath*: On the Health of Immigration Detainees*, 57 B.C. L. REV. 167 (2016).

387. *See supra* notes 385-86 and accompanying text.

388. *See generally* SHIR GRUNEBAUM, PERSON VS. IDENTITY FIRST LANGUAGE 1-2 (2020), https://piet.apps01.yorku.ca/wp-content/uploads/2020/08/DR-Person-vs.-Identity-First-Language.pdf [https://perma.cc/B6JU-Y9QL] (discussing the development of person-first and identity-first language and identifying criticisms of person-first language).

389. *See* Dana S. Dunn & Erin E. Andrews, *Person-First* and *Identity-First Language: Developing Psychologists' Cultural Competence Using Disability Language*, 70 AM. PSYCH. 255, 261 (2015); Dana S. Dunn & Shane Burcaw, *Disability Identity: Exploring Narrative Accounts of Disability*, 58 REHAB. PSYCH. 148, 150 (2013).

390. *See #SayTheWord—The Power of Language for Disability Identity*, DISABLED

This Article wholeheartedly supports disability-first or identity-first language when spoken by particular individuals who have claimed particular disabilities and identities. This Article also supports disability-first or identity-first language when spoken by particular individuals, such as lawyers, judges, advocates, family members, or friends, about persons who have claimed such disabilities and identities. In a situation in which a particular client self-identifies as an "alcoholic," for example, the Author respects and dignifies the client's identity by stating during a hearing that the individual "identifies as an alcoholic and wishes to plead guilty and defer adjudication or enter treatment court." In a situation in which a particular student self-identifies as an "addict," by further example, the Author respects and dignifies the student's identity by explaining to her faculty colleagues that the student "identifies as an addict and wishes to take a leave of absence from school to obtain treatment and services."

That said, the Author continues to prefer medically current, person-first language in the context of state statutes that reference alcohol-related activities, states, and conditions that are *not* tied to particular individuals who have claimed particular identities. This preference shows the Author's orientation as a health law scholar who focuses on removing barriers to access to health care. In twenty-four years of law practice and law teaching, the Author has never seen an individual who proudly identifies as an "alcoholic" be unwilling or unable to access treatments and services under a statute that uses person-first language such as "individual with alcohol use disorder." On the other hand, the Author has seen far too many individuals who experience significant shame and guilt associated with their drinking be unwilling or afraid to seek diagnosis and treatment for fear of having to publicly admit to being an "alcoholic."

As an illustration, the Author recently had the opportunity to work with several individuals who had the option of participating in treatment court. One particular individual, a gentle man of few words whose body language of rounded shoulders, dropped head, and lowered gaze evoked shame, said only the following as he walked into the courtroom: "Whatever you do in there, please don't call me

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SPECTATOR (Apr. 24, 2019), https://disabledspectator.com/saytheword-power-language-disability/ [https://perma.cc/9TYC-BQBW].

an alcoholic." To the extent statutory language must err one way or another, the Author argues that it should err on the side of minimizing shame, guilt, and embarrassment. To the extent statutory language must err one way or another, the language should encourage individuals who need treatment to seek and remain in treatment.[391]

CONCLUSION

More than forty years ago, psychologist James Milam called for significant changes in research, medicine, education, prevention, social programming, law, and policy to help individuals with AUD.[392] As Milam explained, "The very workings of our society in all these areas must shift and change focus if alcoholics are ever to receive the kind of help they deserve."[393] In the context of law and policy, Milam specifically argued that "[t]he alcoholic is a sick person, not a bad person. He needs compassion and understanding, not anger and indifference. Moral judgment and condescending attitudes only make the alcoholic defensive and hostile and push him even further away from treatment."[394]

This Article has attempted to shift the language of the law away from moral judgments and condescending attitudes and towards the compassion and understanding called for by Milam.

This change has already occurred to some extent in the common law. In 1988, in *In re Kunz*, the Supreme Court of Illinois explained that disordered drinking is "better characterized as a treatable disease than as a moral failing."[395] Thirty years later, in 2018, in *In re Rohde*, the District of Columbia Court of Appeals stated that an attorney in disciplinary proceedings "was suffering from a disease" and cited both medical and legal resources disagreeing that problematic alcohol use is "some sort of moral failing."[396] In 2014, the United States District Court for the Northern District of Iowa began its opinion with a quotation from Nora Volkow, the Director of the

391. *See* Dunn & Burcaw, *supra* note 389, at 150.
392. *See* MILAM & KETCHAM, *supra* note 32, at 11-12.
393. *Id.* at 12.
394. *Id.* at 109.
395. 524 N.E.2d 544, 546 (Ill. 1988).
396. 191 A.3d 1124, 1136 (D.C. Ct. App. 2018).

National Institute on Drug Abuse.[397] There, Volkow explained that addiction should be treated as a health condition, not a moral failing:

> When science began to study addictive behavior in the 1930s, people addicted to drugs were thought to be morally flawed and lacking in willpower. Those views shaped society's responses to drug abuse, treating it as a moral failing rather than a health problem, which led to an emphasis on punitive rather than preventative and therapeutic actions. Today, thanks to science, our views and our responses to drug abuse have changed dramatically.[398]

As a final illustrative example from 2021, in *Williams v. Alabama*, the United States District Court for the Northern District of Alabama chastised trial counsel for not presenting evidence of the defendant's family history of problematic alcohol use.[399] The court did not want the jury left with the wrong impression that the defendant's alcohol use was a result of "moral failure."[400]

Although the common law is moving away from moral judgments and condescending attitudes and towards the compassion and understanding needed by individuals with AUD, the civil law lags behind. To correct this lag, lawmakers must use neutral, medically accurate language in the context of statutes that refer to individuals with AUD. Such amendments may help to reduce structural, or law-based, stigma associated with AUD.

397. *See* United States v. Hendrickson, 25 F. Supp. 3d 1166, 1168 (N.D. Iowa 2014).

398. *Id.* (citing Nora D. Volkow, *Preface* to NATIONAL INSTITUTE ON DRUG ABUSE, DRUGS, BRAINS, AND BEHAVIOR: THE SCIENCE OF ADDICTION 1 (2010)).

399. *See* No. 1:07-cv-1276, 2021 WL 4325693, at *47 (N.D. Ala. Sept. 23, 2021).

400. *Id.*