

7. Standards on Substance Abuse, Supreme Judicial Court, Approved April 28, 1998, Standard V

# Supreme Judicial Court

## Standards on Substance Abuse

---

[Table of Contents](#) | [Policy Statement](#) | [Introduction](#)

[Standard I](#) | [Standard II](#) | [Standard III](#) | [Standard IV](#) | [Standard V](#) | [Standard VI](#) | [Standard VII](#)  
[Standard VIII](#) | [Standard IX](#) | [Standard X](#) | [Standard XI](#) | [Standard XII](#) | [Standard XIII](#) | [Standard XIV](#)  
[Standard XV](#) | [Standard XVI](#) | [Standard XVII](#) | [Standard XVIII](#) | [Standard XIX](#) | [Standard XX](#)

---

**STANDARD V. *Ordering Treatment.*** Judges should be familiar with the options available at each stage of every case to provide access and make referrals to treatment for substance abuse, as defined in the Introduction, and to order treatment for substance abuse. Every court in every Trial Court department should make use of existing options for providing access and making referrals to treatment, if appropriate, and ordering treatment in appropriate circumstances. A list of options is provided in the Commentary.

**COMMENTARY:** The court should use its authority to direct a reluctant party into treatment for substance abuse in appropriate situations. Substance abuse can be treated effectively, and involuntary participants in treatment do recover. (See [Introduction](#).) Court involvement creates a crisis in a person's life, and courts are uniquely situated to take advantage of the crisis by directing the person toward treatment. A timely response to the individual's crisis is most likely to lead to success in treatment. The court's authority should be used to order treatment or impose treatment conditions only when substance abuse is a factor in behavior related to the case, and the treatment ordered should be proportional to the underlying behavior. Judges are encouraged to consider information provided by the victim when fashioning treatment orders in criminal cases.

There are many occasions under the law when a treatment order is appropriate:

### Adult Criminal Cases

Criminal proceedings afford several opportunities to use the court's authority to coerce a criminal defendant into substance abuse treatment and to motivate the defendant to comply with any treatment orders.

#### 1. Pre-Trial

- At the pre-trial stage, the court may, with the defendant's consent, place the defendant on probation and make alcohol or drug treatment and testing a condition of that probation. G.L. c.276, §87.
- G.L. c.111E, §10 lays out procedures at the time of arraignment for offering a defendant charged with a drug offense the opportunity to be evaluated for "drug dependency." If the court determines that the defendant is a "drug dependent or drug addicted" person, the court can assign the defendant to a drug treatment facility with the treatment provider's consent, and eventually dismiss the charges.
- District courts may establish a pre-trial diversion program, which may have as a component alcohol or drug treatment. G.L. c.276A, §§1- 9. If a defendant completes the diversion program, the case is usually dismissed.
- In cases involving certain crimes, the Commonwealth may move on the grounds of the defendant's dangerousness for pre-trial detention or release on conditions under G.L. c. 276, §58A. In these cases, a judge may, depending on findings, decide to hold a defendant without bail pending trial, release the defendant on personal recognizance, or release the defendant under certain conditions, which may include refraining from the use of alcohol or drugs and undergoing drug treatment for drug or alcohol dependency. G.L. c.276, §58A.
- In cases involving actual or potential physical harm to a family or household member, the judge may set any terms in lieu of or in addition to personal recognizance that will insure the safety of the person suffering or threatened with abuse and will prevent its recurrence. G.L. c. 276, §42A. Substance abuse treatment can be one of those conditions.
- If it is appropriate to hold a defendant in custody in lieu of bail, the judge is encouraged to ask probation to provide information to the jail or house of correction regarding any defendant's apparent substance abuse. See also [Standard X](#).

## 2. Pre-Sentencing

- After a finding of guilty and prior to sentencing a defendant, a judge may order a substance abuse assessment of the defendant to aid in sentencing. This can be especially helpful where the relationship between mental health and drug addiction issues needs to be clarified. G.L. c.123, §15 (e).
- The judge may always postpone sentencing to enable the probation department to prepare a pre-sentence report which details the defendant's substance abuse history, including treatment needs and prior or current efforts to seek treatment. Mass. Rules of Criminal Procedure, Rule 28(d)(2).
- After an admission to sufficient facts and a court-imposed continuance without a finding, probation can be conditioned upon compliance with specific terms and conditions, such as substance abuse treatment. G.L. c. 278, §18.

## 3. Sentencing

At sentencing, the judge may suspend any part of a sentence to a House of Correction under any conditions it might set, including treatment. G.L. c.279, §§1, 1A. The sentencing of defendants charged with first and second offenses involving operating motor vehicles under the influence of alcohol or drugs creates opportunities for court ordered treatment which are explicitly prescribed by statute. G.L. c.90, §24 et seq. In sentencing defendants involved in family or household abuse situations, the court has explicit authority to order substance abuse treatment, including residential treatment. G.L. c.276, §42A.

Any defendant who is found guilty of any type of offense may inform the court that he or she is a "drug dependent person who is in need of treatment." If this is confirmed, the court may order that the defendant be afforded substance abuse treatment at any facility in which he or she may be incarcerated. G.L. c.111E, §11. (See [Standard X](#).) The court has broad discretion in setting conditions of probation for any defendant. G.L. c. 276, §§87, 87A. This may include attendance at a drug treatment program. The court may also order a drug dependent defendant to a treatment facility as a condition of probation. G.L. c.111E, §12.

When structuring a sentence for a defendant who is a substance abuser, the judge should keep in mind that substance abuse is a disease of relapse, and try to fashion a sentence which leaves room for the application of escalating sanctions for non-compliance with specific conditions of probation. Straight probation with strict conditions provides the greatest flexibility to respond to relapse. When the defendant is convicted of more than one charge, the judge can also lay a foundation for the application of escalating sanctions for non-compliance, by imposing a combination of different sanctions for the different charges - e.g., a committed sentence to the House of Correction followed by probation, probation concurrent with or on and after a committed sentence, a combination of straight probation with probation conditions, or different lengths of suspended sentences on and after one another.

## 4. Probation Violation Hearings

Probation violation and modification hearings present valuable opportunities for mandating substance abuse treatment. When a probationer is before the court for a probation violation, the court may order a new assessment, initial treatment, or intensified treatment as an alternative to incarceration. A court may modify conditions of probation as a matter of common law. *Buckley v. Quincy Division of the District Court*, 395 Mass. 815 (1985). However, a court may not impose only part of a formerly suspended sentence as a means of coercion. G.L. c. 279, §3; *Comm. v. Holmgren*, 421 Mass. 224 (1995). The use of straight probation and the imposition of suspended sentences of different lengths, as recommended under paragraph 3 above, however, give the judge the flexibility at the time of a violation hearing to apply gradually escalating sanctions for non-compliance. Sometimes, it is necessary for the judge to revoke probation in order to protect public safety.

### Civil Commitments

The District, Juvenile, or Boston Municipal Court may hear requests for the civil commitment of alcoholics and substance abusers upon the written application of certain petitioners (police officer, physician, spouse, blood relative, guardian or court official). G.L. c.123, §35. The judge may order a person committed for up to 30 days upon a finding, based on competent medical testimony, that the person is an alcoholic or a substance abuser and that there is a likelihood of serious harm as a result of his or her alcoholism or substance abuse. These civil commitments may occur at any time during the pendency of a criminal case, including at arraignment, and should also be considered in other situations. Citizens who come to court looking for help with a family member with a substance abuse problem should be informed about community treatment resources or, if there appears to be a likelihood of serious harm, should be informed about a petition for a §35 commitment.

The Juvenile Courts and juvenile sessions of the District Courts also have options to order treatment for juveniles and parents in various types of cases.

### **1. Delinquency**

In delinquency and youthful offender cases, the judge may order substance abuse assessment and treatment as a condition of probation for a juvenile adjudicated delinquent or a youthful offender. G.L. c.119, §58. With the defendant's consent, probation or diversion may be ordered even before adjudication. G.L. c.276, §87; G.L. c.276A. If a juvenile is ordered committed as a delinquent to the custody of the Department of Youth Services (DYS), then DHS is responsible for finding suitable treatment services. In such a case, the court should make specific recommendations to DHS regarding substance abuse treatment.

### **2. Children in Need of Services**

"Children in need of service" (CHINS), which includes runaways, truants, and stubborn children, may be placed in the custody of the Department of Social Services (DSS) with a request by the judge that treatment be provided. G.L. c.119, §39H. After adjudication as a CHINS, a juvenile may be committed to the custody of DSS with the same request by the judge for substance abuse treatment. Another disposition is to allow the child to remain in the custody of his or her parents, on the condition that he or she comply with the substance abuse treatment ordered by the court. Any such order must be made as a condition of custody only. The judge may not directly order the child to engage in substance abuse treatment. See *Matter of Vincent*, 408 Mass. 527 (1990).

### **3. Care and Protection Cases**

Care and protection cases present a strategic opportunity for court intervention with substance abusing parents, keeping in mind the best interests of the children. G.L. c.119, §51A et seq. If the judge believes substance abuse may be a factor, the judge should advise the respondent parent(s)/guardian that failure to comply with substance abuse treatment will be considered as a factor in making the ultimate determination of parental unfitness or of termination of parental rights. However, the fact that the judge did not advise the parent(s)/guardian of the ramifications of failure to comply with substance abuse treatment does not prevent the judge from considering substance abuse in making an ultimate determination of parental unfitness or termination of parental rights.

### **Domestic Relations Cases**

Probate and Family Court cases routinely involve substance abuse issues. These cases may involve divorce or paternity-related custody or visitation disputes under G.L. c.208 and c.209C, petitions to dispense with parents' rights to consent to adoption under G.L. c.210, guardianships of minors under G.L. c.201, or applications for orders of protection under G.L. c.209A. The judge should identify substance abuse early in any case involving children, provide for an assessment of the parent's treatment needs, refer the parent to an appropriate substance abuse treatment provider in order to address the problem, monitor the parent's progress in treatment through interim hearings, and manage the case by bringing it back periodically to determine progress and adjust visitations accordingly. Faced with the loss of custody of a child, a substance abusing parent is likely to be receptive to treatment.

In domestic relations cases, either a party or a probation officer (family service officer in the Probate and Family Court) can best inform the judge of substance abuse issues. The judge may also direct a family service officer to investigate a family situation and submit a report to the judge. As part of that report, the family service officer can assess the validity and severity of any substance abuse allegations and make recommendations to the court regarding custody, visitation, and treatment for the substance abuser.

### **Abuse Petitions**

The court should take special precautions when dealing with orders of protection under G.L. c.209A. When dealing with a batterer who is also a substance abuser, treatment for substance abuse should precede or be in conjunction with batterer's treatment or the batterer's treatment will be ineffective. Therefore, in cases involving batterers who are also substance abusers, the judge should order substance abuse treatment as well as a certified batterers' program. The Standards on Judicial Practice, Abuse Prevention Guidelines, Guideline 6:01 state in part: "In addition to including in the order terms necessary to ensure the safety of the plaintiff, the judge or court personnel may recommend and refer the parties to appropriate agencies for victims of violence and certified batterers' programs. Among these may be counseling for substance abuse."