

Supreme Judicial Court

Standards on Substance Use Disorders & Mental Health Conditions



SUPREME JUDICIAL COURT
STANDARDS ON SUBSTANCE USE DISORDERS AND MENTAL HEALTH CONDITIONS

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IN MEMORIAM: SUPREME JUDICIAL COURT CHIEF JUSTICE RALPH D. GANTS, 1954-2020



In a 2017 speech, Chief Justice Gants described our Commonwealth as “a team, comprised of our 6.8 million residents.” “If we lose any of our teammates – to drug addiction, to disabling mental health, to despair,” he said, “we deprive ourselves of their talents, of the work they otherwise could perform, of their potential for growth and maturity, and we therefore are poorer as a Commonwealth.”

He was passionately committed to the principle that every person who appears in the Commonwealth’s courts must be treated with dignity and respect, in recognition of our common humanity and the fact that “we are all interconnected, we are all part of the same team, and the successes or failures of one affect us all.”

These Standards on Substance Use Disorders and Mental Health Conditions are evidence that Chief Justice Gants’s legacy lives on and will continue to guide our ongoing commitment to Justice with Dignity and Speed. Chief Justice Gants established the SJC Working Group on Substance Use and Mental Health in furtherance of that principle. He recognized that judges and court staff must understand and apply the latest scientific knowledge concerning substance use disorders and mental health challenges to respond with intelligence and compassion to those afflicted with behavioral health challenges. He charged the Working Group with developing a new set of standards that incorporate best practices for reaching decisions involving litigants with substance use or mental health issues. Chief Justice Gants stressed the importance of systems collaboration and partnerships between the justice system and community-based treatment providers in the substance use, mental health and co-occurring disorders area. Chief Justice Gants and his vision inspired the work of this committee to produce standards that will guide the courts as we continue our work to deliver justice to every individual we serve.

POLICY STATEMENT

On October 10, 2023, acting on the advice of the Working Group on Substance Use and Mental Health, the Supreme Judicial Court adopted these Standards on Substance Use Disorders and Mental Health Conditions in recognition of recent advances in behavioral health, including substance use disorder diagnosis and treatment, mental health care, and increased recognition of the role of trauma, including childhood trauma, and the complex interplay of co-occurring mental health and substance use disorders. These advances required the justice system to re-examine its policies and practices to administer a system of justice that acknowledges the impact of such issues on the lives of justice-involved individuals.

The Standards replace and supersede the Massachusetts Standards on Substance Abuse approved by the Supreme Judicial Court in 1998. The 1998 Standards were adopted to enhance the Judiciary's response to the impact of substance use disorders, mental health conditions, and co-occurring disorders on justice-involved individuals in the Commonwealth, and they reflected efforts by the Supreme Judicial Court Standing Committee on Substance Abuse led by chair Frederic E. Greenman, Esq. and honorary chair SJC Associate Justice Francis P. O'Connor to assist courts in identifying and appropriately responding to individuals with substance use disorders, mental health conditions, and co-occurring disorders utilizing the tools available at that time. The revised Standards build on the work of the Standing Committee by acknowledging advances in treatments for and services available to individuals with substance use disorders, mental health conditions, and co-occurring disorders. The revised Standards also demonstrate the continuing commitment of the Supreme Judicial Court and the Trial Court to enhance the courts' response to the many justice-involved individuals affected by substance use disorders, mental health conditions, and co-occurring disorders.

INTRODUCTION

The goals of these Standards are to promote public safety, support access to treatment and recovery services, ensure due process, reduce recidivism, and encourage individual accountability. The Standards identify recommended steps, consistent with public safety, for courts to take at the earliest possible point of individuals' court involvement to respond effectively to substance use disorders, mental health conditions, and co-occurring disorders. The Standards recognize that encouraging individuals who are experiencing these disorders to engage with treatment and support that meet their needs also enhances public safety and reduces the chance of further negative court involvement. The Standards do not create any new authority or power in the courts, but are intended to provide judges, clerks, and court personnel with guidance consistent with the law of evidence and other statutory, procedural, and constitutional requirements.

Substance use disorders and mental health conditions are commonly contributing factors in criminal cases and, if not addressed, can lead to further court involvement. In civil cases as well, substance use disorders and mental health conditions are often significant factors in requests for orders of protection, Child Requiring Assistance (CRA) petitions, eviction matters, divorce proceedings, custody, and parenting time and support cases. Substance use disorders or mental health conditions are also the focus in civil commitment cases. Even in cases where judges lack authority to order treatment, they can still provide information about voluntary resources. By embracing the Standards, the courts will be leaders in the Commonwealth's efforts to reduce the negative effects of substance use disorders, mental health conditions, and co-occurring disorders on individuals and families who come before them.

PRINCIPLES

Courts should be aware of and be guided by the following principles in responding to behavioral health needs:

1. Substance use disorders and mental health conditions are complex and chronic conditions that affect brain function and behavior.
2. Substance use disorders and mental health conditions often co-occur.
3. Substance use disorders and mental health conditions are treatable. No single treatment is appropriate for everyone. Medications are an important element of treatment for many individuals.
4. Trauma is highly prevalent among court-involved people, and the impact of trauma is a contributing factor to both substance use disorders and mental health conditions.
5. Intervention at the earliest point possible improves outcomes for people with substance use disorders and mental health conditions.
6. Recovery from substance use disorders and mental health conditions is a process unique to each individual. Multiple pathways are necessary to meet individual needs.
7. Recurrence of use and/or symptoms is common. Recurrence presents an opportunity to reset treatment and recovery planning and goals.
8. Stigma is a significant reason why individuals do not seek treatment and support. Court responses must prioritize eliminating stigma.
9. Inequities and disparities exist in both the legal and behavioral health systems. Race, gender, sexual orientation, cultural and language needs, as well as economic status may be barriers to accessing effective care. Judges should be aware of individual and structural biases and should make efforts to eliminate them.
10. Addressing equity issues requires an understanding of the root causes of outcome disparities within our society. All persons interacting with the court should be treated fairly, equitably, and impartially.
11. While courts and community partners have distinct roles, collaboration is vital in serving the court-involved population with substance use disorders and mental health conditions.

DEFINITIONS

Addiction: The persistent use of substances despite substantial harm and adverse consequences. The term “addiction” is used interchangeably with the term **Substance Use Disorder** in these Standards.

Behavioral Health: An umbrella term that includes, but is not limited to, substance use disorders, mental health conditions, and co-occurring disorders.

Co-Occurring Disorder: The co-existence of at least one mental health condition and at least one substance use disorder. Also known as “comorbidity” or “dual diagnosis.”

Evidence-Based Practice: The objective, balanced, and responsible use of current research and the best available data to guide policy and practice decisions to improve outcomes for participants. Empirical research practices, rather than anecdotal or professional experience alone, have been demonstrated to be effective.¹

Harm Reduction: Evidence-based strategies that aim to reduce the negative effects of the use of alcohol or other drugs.²

Medications for Substance Use Disorder: In the treatment of addiction, medications are used to reduce the intensity of withdrawal symptoms, reduce alcohol and other drug cravings, and reduce the likelihood of use or relapse for specific drugs by blocking their effect. Such medications may also be referred to as **Medications for Opioid Use Disorder (MOUD)**. Because medications are an effective treatment strategy, when used alone or in combination with behavioral therapies, the term **Medication Assisted Treatment (MAT)** is no longer the preferred term.³ While behavioral therapies are helpful to provide an individualized approach, they are not essential under evidence-based practice.

Mental Health Condition: A health condition involving changes in emotion, thinking, or behavior (or a combination of these) that is associated with distress or problems functioning in social, work or family activities.⁴ These Standards use the term **Mental Health Condition** interchangeably with the term **Mental Illness**.⁵ A **Serious Mental Illness (SMI)** is a mental, behavioral, or emotional disorder resulting in serious functional impairment that substantially interferes with or limits one or more major life activities.

¹ Crime and Justice Institute at Community Resources for Justice, *Evidence-based practices (EBP)*, U.S. Department of Justice National Institute of Corrections (2009), [nicic.gov/projects/evidence-based-practices-ebp](https://www.nicic.gov/projects/evidence-based-practices-ebp).

² U.S. Department of Health & Human Services, *Harm reduction* (2023), [hhs.gov/overdose-prevention/harm-reduction](https://www.hhs.gov/overdose-prevention/harm-reduction).

³ Medication Assisted Treatment (MAT) is the use of medication in combination with behavioral health services to provide an individualized approach to the treatment of substance use disorder, including opioid use disorder. 42 C.F.R. § 8.2.

⁴ American Psychiatric Association, *What is mental illness?* (2022), [psychiatry.org/patients-families/what-is-mental-illness](https://www.psychiatry.org/patients-families/what-is-mental-illness).

⁵ National Alliance on Mental Illness, *Mental health conditions*, <https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions>.

Stigma: Perceptions and attitudes evidenced by derogatory, biased words or behaviors, which, in the context of these Standards, may be directed towards people with a mental health condition, substance use disorder or trauma history. Stigma may take the form of labeling someone as inferior, assigning blame or responsibility to the person for the condition, or portraying the person as a danger or threat to others. Stigma prevents people from seeking treatment and staying in recovery and frequently causes feelings of shame, rejection, and isolation.

Substance Use Disorder (SUD): The persistent use of substances despite substantial harm and adverse consequences. Drug classes that are involved in SUD include: alcohol; opioids; sedatives, hypnotics, or anxiolytics; stimulants; phencyclidine and other hallucinogens; inhalants; cannabis; tobacco; and other unknown substances. The term “substance use disorder” is used interchangeably with the term **Addiction** in these Standards.

Trauma: Lasting adverse effects on an individual’s functioning and mental, physical, social, or emotional well-being as a result of an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening.

Adverse Childhood Experiences (ACEs): Potentially traumatic events that occur in childhood, including but not limited to being subjected to or living in a home with violence, abuse, or a family member with mental health conditions or substance use disorders. Toxic stress from ACEs can change brain development and affect how the body responds to stress. ACEs are linked to chronic health problems, mental illness, and substance misuse in adulthood.⁶

Trauma-Informed: A program, organization, or system that recognizes the signs and symptoms of trauma in clients, families, staff, and others, responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks actively to resist re-traumatization.⁷

⁶ Centers for Disease Control and Prevention, *Adverse childhood experiences (ACEs)* (2021), www.cdc.gov/vitalsigns/aces.

⁷ SAMHSA’s Trauma and Justice Strategic Initiative, *SAMHSA’s concept of trauma and guidance for a trauma-informed approach*, Substance Abuse and Mental Health Services Administration, 9 (2014), https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf.

STANDARDS *(in brief)*

STANDARD I. Judicial Leadership in Court Responses to Substance Use Disorders, Mental Health Conditions, and Co-Occurring Disorders

Every judge should become well-informed about substance use disorders, mental health conditions, and the impact trauma has on these conditions, and should use this information to guide efforts to address these issues.

STANDARD II. Courthouses as Information and Navigation Centers

Courthouses should serve as information and navigation centers, since substance use disorders, mental health conditions, and co-occurring disorders are factors in cases in many court departments.

STANDARD III. Continuing Education and Training for Judges and All Court Personnel

The Trial Court should provide all judges and court personnel with or access to regular continuing education and training about substance use disorders, mental health conditions, and the impact of trauma on these conditions.

STANDARD IV. Role of the Massachusetts Probation Service

The Massachusetts Probation Service (Probation or MPS) has a key role in helping to identify indications of substance use disorders, mental health conditions, and co-occurring disorders; facilitating connections to comprehensive assessments; ensuring that judges are informed about assessment results; arranging treatment placements; and monitoring compliance with case plans, recommended treatment interventions, and court-imposed conditions. Probation should strive to establish and maintain relationships with local treatment providers. If specific services are not available in a particular community, Probation should determine where such services are available and strive to develop and maintain relationships with those service providers.

STANDARD V. Indications of Substance Use Disorders, Mental Health Conditions or Co-Occurring Disorders

Judges and court personnel should look for indications of substance use disorders, mental health conditions, and co-occurring disorders that may be a factor related to a case before the court.

STANDARD VI. Assessment and Treatment Matching

When a judge, clerk, or probation officer believes that a substance use disorder, mental health condition, or co-occurring disorder is a contributing factor in a case, and the judge has issued or is considering a court order for treatment where the law authorizes such an order, the judge should consider referring the party to a qualified clinician for a diagnostic assessment to assist in determining which form of evidence-based treatment will be most appropriate and effective.

STANDARD VII. Court-Ordered Treatment

Judges should familiarize themselves with available treatment options for substance use disorders, mental health conditions, and co-occurring disorders, and when such a condition is a factor in a case, should consider ordering treatment, if appropriate and if authorized by law. Court-ordered treatment should match a party's treatment needs and should be selected based on clinical input identifying the type of evidence-based treatment that will work best for the party, with full consideration of public safety.

STANDARD VIII. Monitoring Compliance and Responses to Recurrence of Use or Symptoms

Probation should monitor compliance with court-imposed conditions related to substance use disorders and mental health conditions using evidence-based supervision tools. Judges and court personnel should understand that recurrence of use or symptoms is common with chronic substance use disorders, mental health conditions, and co-occurring disorders, and should implement strategies to prevent and address recurrence episodes.

STANDARD IX. Information for Custodial Authorities

Courts should provide information to custodial authorities, including on the mittimus if appropriate and being mindful of privacy concerns, when there is a safety issue or a serious risk of harm to the individual being transported, or to others.

STANDARD X. Community Resources

Judges and court personnel should be aware of resources available in the community for the treatment of substance use disorders, mental health conditions, and co-occurring disorders. Probation should strive to establish and maintain relationships with local treatment providers. If specific services are not available in a particular community, Probation should determine where such services are available and strive to develop and maintain relationships with those service providers.

STANDARD XI. Substance Use Disorders, Mental Health Conditions, and Co-Occurring Disorders in the Courts

The court system should respond to substance use disorders, mental health conditions, and co-occurring disorders among judges, clerks, and court personnel. The response should include opportunities to receive referrals for treatment through the Employee Assistance Program (EAP) and recognition by appropriate authorities that required participation in treatment can be an appropriate condition of employment.

STANDARD XII. Substance Use Disorders, Mental Health Conditions, and Co-Occurring Disorders Among Lawyers and Judges

A judge who reasonably believes that the performance of a lawyer or another judge is impaired by a substance use disorder, mental health condition, or co-occurring disorder must take appropriate action, which may include speaking directly to that person, notifying an individual with supervisory responsibility over that person, or making a confidential referral to an

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assistance program. Further, if the lawyer's performance involves a violation of the Rules of Professional Conduct, or the other judge's performance involves a violation of the Code of Judicial Conduct, then the judge may be required to report the violation or take other appropriate action, depending on the gravity of the violation. If the issue of professional performance arises in connection with an imminent or pending proceeding, the judge may consider postponing the proceeding, or deferring action, depending on the circumstances. Clerks should also follow these principles and procedures, as consistent with their professional obligations and applicable codes of conduct, if they reasonably believe that the performance of a lawyer or judge is impaired by a substance use disorder, mental health condition, or co-occurring disorder.

STANDARD I

Judicial Leadership in Court Responses to Substance Use Disorders, Mental Health Conditions, and Co-Occurring Disorders

Every judge should become well-informed about substance use disorders, mental health conditions, and the impact trauma has on these conditions, and should use this information to guide efforts to address these issues.

COMMENTARY: Judges should have general knowledge about the science of substance use disorders, mental health conditions, co-occurring disorders, and the impact trauma has on these conditions, as well as evidence-based treatment and recovery support strategies.

Judges should recognize that substance use disorders, mental health conditions, and co-occurring disorders are chronic and treatable conditions like diabetes or heart disease. Judges should also understand that trauma is highly prevalent among court-involved people and is a contributing factor to both substance use disorders and mental health conditions. Judges should keep in mind that those who suffer from behavioral health conditions often experience great shame and stigma related to their condition, and that stigma is a barrier to seeking assistance. Judges establish the tone and expectations for the courts, and as such it is important for judges to model the use of non-stigmatizing language related to substance use, mental health, and co-occurring disorders.

Judges should be aware of all options for ordering treatment and should address substance use, mental health conditions, and co-occurring disorders as appropriate. See Standard VII. Judges in court sessions in which Probation provides services should engage in continuing dialogue with Probation to maintain up-to-date information about evidence-based treatment options available to parties who come before the court, keeping in mind limitations on ex parte communications if discussing individual cases. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.9 (2016).

Courts strive to utilize trauma-informed practices in all aspects of their work. Ongoing training must emphasize the importance of a trauma-informed approach for individuals who have suffered trauma and ensuring a safe environment for those individuals.

STANDARD II

Courthouses as Information and Navigations Centers

Courthouses should serve as information and navigation centers, since substance use disorders, mental health conditions, and co-occurring disorders are factors in cases in many court departments.

COMMENTARY: Courts should make available information about substance use disorders, mental health conditions, co-occurring disorders, and the impact of trauma on these conditions, as well as the availability of treatment and recovery support. The Trial Court should make information about substance use disorders, mental health conditions, and co-occurring disorders, including information from the Department of Public Health, available on its website and through printed materials in certain locations, including court service centers and law libraries.

STANDARD III

Continuing Education and Training for Judges and All Court Personnel

The Trial Court should provide all judges and court personnel with or access to regular continuing education and training about substance use disorders, mental health conditions, and the impact of trauma on these conditions.

COMMENTARY: All judges and court personnel should understand and recognize: (a) the pervasiveness of substance use disorder, mental health conditions, and co-occurring disorders; (b) the implications of stigma; (c) the impact of adverse childhood experiences, trauma, and secondary trauma; (d) the signs of substance use, mental health, and co-occurring disorders, (e) the potential for overdose and suicide; and (f) the need to manage high stress in the courtroom. Staff members in relevant roles should have opportunities for continuing education on (a) the need for quality screenings and assessments for substance use disorders, mental health conditions, and trauma; (b) the basics of treatment and recovery support for substance use disorders, mental health conditions, and co-occurring disorders, and the importance of using only evidence-based strategies to address these issues; (c) the effect of substance use disorders, mental health conditions, and co-occurring disorders on the entire family unit; and (d) emerging trends. The Trial Court should also provide education on the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA) and the requirements of the federal regulation, 42 C.F.R. § 2.1 *et seq.* (Part 2, Confidentiality of Substance Use Disorder Patient Records).⁸

In providing education, the Trial Court should draw on resources and recommendations from state and national organizations dedicated to behavioral health issues, including the Bureau of Substance Addiction Services of the Department of Public Health (DPH), and the Department of Mental Health (DMH).

Appropriate training, resources, and curricula should be made available to those judges, clerks, and court personnel whose roles make such training relevant. Training and education should be regular and ongoing and should be aligned with emerging science on evidence-based best practices.

⁸ Code of Federal Regulations, Part 2 - *Confidentiality of Substance Use Disorder Patient Records* (2023), <https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-2>.

STANDARD IV

Role of the Massachusetts Probation Service

The Massachusetts Probation Service (MPS or Probation) has a key role in helping to identify indications of substance use disorders, mental health conditions, and co-occurring disorders; facilitating connections to comprehensive assessments; ensuring that judges are informed about assessment results; arranging treatment placements; and monitoring compliance with case plans, recommended treatment interventions, and court-imposed conditions. MPS should strive to establish and maintain relationships with local treatment providers. If specific services are not available in a particular community, MPS should determine where such services are available and strive to develop and maintain relationships with those providers.

COMMENTARY: It is critical that every probation officer have training and competence in substance use disorders, mental health conditions, and co-occurring disorders if courts are to respond effectively to these issues. MPS has a role in identifying situations where substance use disorders, mental health conditions, and co-occurring disorders may be contributing to behaviors of concern before the court. Probation officers may also be able to provide information on specific persons before the court derived from familiarity with the person, from the available case-related records, from court-related interactions with the person, from assessments and screening tools, from contact with family members or community partners, or from formal evaluations. Probation officers are available to assist judges in facilitating timely connections to comprehensive evaluation and appropriate treatment; and monitoring compliance with the case plan, recommended treatment interventions, and court-ordered conditions in criminal cases. MPS should provide relevant information to the court in a manner consistent with limitations on ex parte communications.

The Commissioner of Probation sets standards for ensuring that probation officers receive necessary training in the field of substance use disorders, mental health conditions, co-occurring disorders, which includes training on trauma, stigma, recovery science, and behavior change. The court may rely on trained probation officers to assist the court with substance use disorders, mental health conditions, or co-occurring disorders at all stages of a criminal case, including pretrial proceedings, even before probation is imposed. A probation officer's role is limited when a person is not on court-ordered probation, but a probation officer's role in supporting individuals voluntarily is not limited.

Probation may be heard as required by the court at the time of sentencing in criminal or delinquency proceedings, or when an order is issued in a Probate and Family Court proceeding, regarding knowledge of the defendant, history of the case, past assessments and evaluations, and criminal history. Probation may also provide recommendations regarding condition-setting to mitigate risk and address needs identified in materials available to Probation.

STANDARD V

Indications of Substance Use Disorders, Mental Health Conditions or Co-Occurring Disorders

Judges and court personnel should look for indications of substance use disorders, mental health conditions, and co-occurring disorders that may be a factor related to a case before the court.

COMMENTARY: Use of an illegal substance, or even inappropriate use of a legal substance, is not necessarily indicative of a substance use disorder. Examples of sources of information that may suggest a substance use disorder, mental health condition, or co-occurring disorder could be a factor in a case before the court include:

1. A party's **self-identification** as having a substance use disorder, mental health condition, or co-occurring disorder.
2. The **allegations before the court**. In a criminal case, a statement that a criminal offense was committed while the defendant was suffering from a substance use disorder, mental health condition, or co-occurring disorder may appear in the information provided to the court, such as a police report or statement of facts, if available; information in the clerk's file; or allegations presented at a hearing on an application for a criminal complaint. In some civil cases, the complaint or subsequent pleadings filed with the court may allege a substance use disorder, a mental health condition, or a co-occurring disorder.
3. The **offense charged**. Any criminal offense can involve substance use disorders, mental health conditions, or co-occurring disorders. However, substance use disorders and mental health conditions may appear with more frequency in connection with certain types of criminal charges, including but not limited to drug or alcohol related offenses, disorderly conduct, disturbing the peace, assault and battery, malicious destruction of property, arson, animal cruelty, leaving the scene of an accident, breaking and entering, larceny, prostitution, shoplifting, and trespassing.
4. The **person's record of criminal history**. In general, a party's Criminal Offender Record Information (CORI) or Court Activity Record Information (CARI) may reveal a history of charges or convictions that involve a substance use disorder, a mental health condition, or a co-occurring disorder, which may be apparent by the nature of the charge itself or the pattern of charges.
5. **Abuse prevention and harassment prevention orders**. An affidavit in support of an application for an abuse prevention order or a harassment prevention order may allege or reveal facts suggesting a substance use disorder, mental health condition, or co-occurring disorder.
6. The **behavior, demeanor, or physical appearance of a party before the court**.

Substance use disorders may be indicated if the party appears agitated, glassy-eyed, unkempt, or unsteady, or if the party smells of alcohol. Judges and other court personnel should be aware, however, that slurring of speech or tremors can also be symptoms of neurological or medical conditions. Mental health conditions may be indicated by a party's behavior in the courtroom or courthouse, including but not limited to outbursts of anger, inability to follow instructions, anxiety, withdrawal, or the inability to interact appropriately with court personnel or participate in court proceedings.

7. **Third party testimony.** A victim of a crime, a police officer, a family member, or others may provide information about a party's substance use disorder, mental health condition, or co-occurring health disorder.
8. **Medical evidence.** Medical evidence provided to the court may include a diagnosis that an alleged incapacitated party suffers from a substance use disorder, mental health condition, or co-occurring disorder, particularly in guardianship and conservatorship cases involving requests for authorization to treat with antipsychotic medication.
9. **Welfare of children.** Substance use disorders or mental health conditions may be present where parties have demonstrated issues with safely parenting their children, leading to supervised parenting time and therapeutic intervention, including involvement by the Department of Children and Families (DCF).

In cases where judges have authority to order treatment, they should consider using that authority consistent with **Standard VI: Assessment and Treatment Matching** and **Standard VII: Court-Ordered Treatment**.

STANDARD VI

Assessment and Treatment Matching

When a judge, clerk, or probation officer believes that a substance use disorder, mental health condition, or co-occurring disorder is a contributing factor in a case, and the judge has issued or is considering a court order for treatment where the law authorizes such an order, the judge should consider referring the party to a qualified clinician for a diagnostic assessment to assist in determining which form of evidence-based treatment will be most appropriate and effective.

COMMENTARY:

Assessment. Court-ordered treatment, where authorized by law, should be based on comprehensive information regarding a party's substance use, mental health, or co-occurring disorder needs. A diagnostic assessment should be conducted by a qualified clinician. Where appropriate, assessments should also be ordered to be performed periodically to assess if individual needs have changed. Only qualified health professionals can make determinations about the appropriateness or type of treatment needed. The diagnosis of a substance use, mental health, or co-occurring disorder is a clinical determination, not a legal determination.

A diagnostic assessment is an in-depth clinical process to determine a person's specific treatment needs and takes significantly longer than a screening. Qualified clinicians can conduct diagnostic assessments. In cases involving mental health conditions in addition to substance use disorders, the court should use the court clinic or a DMH-licensed vendor with mental health expertise to conduct the assessment. People with co-occurring disorders respond best to treatment of both disorders in an integrated manner.

Treatment Matching. The objective of matching treatment to a party's treatment needs is to coordinate the intensity of the intervention to the severity of the underlying issue. Treatment matching involves consideration not only of the individual qualities addressed by the assessment, including the severity of the disorder and the support structures available to the person through family, work, school, and peers, but also of the latest available evidence-based information about the effectiveness of treatment programs. Appropriate matching greatly enhances the effectiveness of treatment, is essential in addressing relapse and reducing recidivism, and promotes the efficient use of resources.

Court-ordered and referred treatment should be based on the court-ordered clinical assessment, and the treatment recommendations resulting from the assessment. Where feasible, the treatment recommendations should address the party's related needs, if any, such as psychological or psychiatric services, housing assistance, vocational services or educational assistance, including parenting education. If an assessment is conducted before the issuance of the treatment order, the MPS, with the judge's approval and consistent with existing law, should make all relevant information and recommendations available to the court, the parties, and their attorneys, within a reasonable time prior to the issuance of a treatment order.

Treatment Navigation and Access. Courts should order substance use and mental health treatment through providers licensed by the DPH to treat a substance use disorder, licensed by the DMH to treat mental health conditions, or jointly licensed by DPH and DMH to treat co-occurring disorders. Subject to established rules of confidentiality, MPS should require providers to communicate regularly and candidly with the court regarding a party's compliance with court-ordered conditions. It is important to obtain signed releases from the party and any treatment provider(s) at all intersection points to comply with HIPAA and other confidentiality regulations, as these releases are necessary for treatment providers to share information with the courts

In each court location, the effectiveness of responses to substance use disorder, mental health conditions, and co-occurring disorders will be largely dependent on knowledge of treatment and recovery support resources in the local community and the cultivation of relationships with various providers. Probation should identify the specific resources available in the community for the evaluation and treatment of substance use disorders, mental health conditions, and co-occurring disorders, and should establish and maintain relationships with local treatment providers. If community services are lacking, Probation should look beyond the local community to develop relationships with the providers of those services.

Medications for Substance Use Disorders. As noted above, only qualified health professionals can make determinations about the appropriateness or type of medication needed. The diagnosis of a substance use, mental health, or co-occurring disorder is a clinical determination, not a legal determination. In accordance with the Americans with Disabilities Act, MOUD participants shall not be excluded from participation in or denied the benefits of court services, programs, or activities because of their use of properly prescribed MOUD.

STANDARD VII

Court-Ordered Treatment

Judges should familiarize themselves with available treatment options for substance use disorders, mental health conditions, and co-occurring disorders, and when such a condition is a factor in a case, should consider ordering treatment, if appropriate and if authorized by law. Court-ordered treatment should match a party's treatment needs and should be selected based on clinical input identifying the type of evidence-based treatment that will work best for the party, with full consideration of public safety.

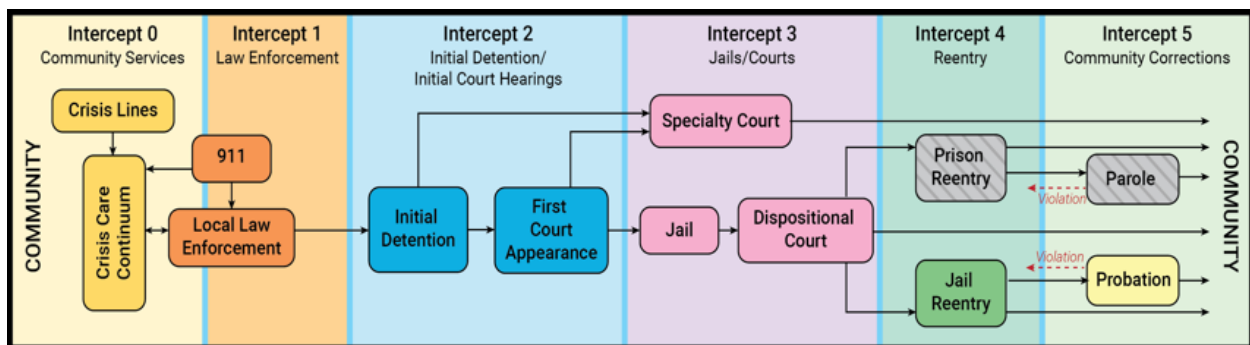
COMMENTARY: In cases where the court has authority to order treatment, and only when a substance use disorder, mental health condition, or co-occurring disorder is a factor in the case, the court should use that authority to order treatment or impose treatment conditions.

Treatment orders may be made in certain types of cases as provided by law, but in many types of cases, judges do not have authority to enter orders for assessment or treatment. Detailed information on case types in which orders for assessment or treatment may be entered appears below.

I. CRIMINAL CASES

One way to think of the criminal justice system is as a series of points of potential “interception” where an intervention can occur to prevent certain individuals from entering or becoming more court-involved. A conceptual framework for communities to organize targeted strategies for justice-involved individuals with substance use disorders, mental health conditions, or co-occurring disorders is the Sequential Intercept Model (SIM).

The Sequential Intercept Model



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While Standard VII focuses on the responses available to courts that are modeled at Intercepts 2 and 3, other actors in the community justice system also have a role to play at other intercept points, and judges should be aware of this model, as it can help them identify local resources and gaps in services; decide on priorities for change; and develop strategies to increase connections to treatment and recovery support services.

A. Pre-Trial and Diversion (Intercept 2)

- G. L. c.111E, §10, authorizes a judge to dismiss certain drug offenses if the defendant consents to assignment to a drug treatment facility and successfully completes the treatment program.
- District and Boston Municipal Courts have the authority to divert criminal defendants to pretrial diversion programs, which may have alcohol, drug, or mental health treatment as a component. G. L. c. 276A, §§ 1-9. If a defendant successfully completes the diversion program, the case may be dismissed.
- At the pretrial stage, the court may, with the defendant's consent, place the defendant on pretrial probation with alcohol, drug, or mental health treatment and testing as a condition of probation. G. L. c. 276, § 87.
- In cases involving actual or potential physical harm to a family or household member, the judge may set any conditions in lieu of or in addition to bail or personal recognizance that will ensure the safety of the person suffering or threatened with abuse and will prevent its recurrence. G. L. c. 276, §§ 42A, 58. Substance use disorder treatment or mental health treatment can be ordered as a condition.
- In cases involving certain crimes, the Commonwealth may move for pretrial 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 bail or personal recognizance, or release the defendant under certain conditions, which may include ordering the defendant to refrain from the use of alcohol or drugs, or undergo a drug, alcohol, or mental health assessment and treatment. G. L. c.276, § 58A.
- Bail revocation hearings for violations of pretrial conditions of release may provide the court with an opportunity to assess the conditions of release based upon substance use disorders, mental health conditions, or co-occurring disorders of a defendant, and order treatment, if appropriate.
- If it is appropriate to hold a defendant in custody in lieu of bail, a judge should provide information to custodial authorities, including on the mittimus if appropriate and being mindful of privacy concerns, when there is a safety issue or a serious risk of harm to the individual being transported, or to others.

B. Pre-Sentencing (Intercept 3)

- After a finding of guilty and prior to sentencing a defendant, a judge may order an

assessment of the defendant to aid in sentencing. G. L. c.123, § 15 (e). This can be particularly helpful where the relationship between mental health and substance use disorder issues needs to be clarified.

- A judge may postpone sentencing to enable the MPS to prepare a pre-sentence report that details the defendant's substance use disorder and/or mental health history, including treatment needs and prior or current efforts to seek treatment. Mass. R. Crim. P. 28(d)(2).

C. Sentencing (Intercept 3)

When structuring a sentence for a defendant who has a substance use disorder, mental health condition, or co-occurring disorder the judge should keep in mind that recurrence of use or symptoms is common and may fashion a sentence that leaves room for the application of more intensive treatment. Court departments with criminal jurisdiction have each developed sentencing best practices that are rich with information, and judges should consult the best practices principles applicable to their department.

The court has broad discretion in setting conditions of probation for any defendant that are reasonably related to the underlying offense, which may include substance use disorder treatment up to and including a residential treatment program. G. L. c. 276, §§ 87, 87A. 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.*

When a defendant is convicted of more than one charge, the judge can set a foundation for the application of escalating responses to non-compliance by imposing a combination of different sanctions for the different charges - e.g., a split sentence to the House of Correction, probation concurrent with or on and after a committed sentence, a combination of straight probation with probation conditions, or different lengths of suspended sentences imposed on and after one another, when authorized by the statutes governing sentencing for each offense.

D. Specialty Courts (Intercept 3)

Specialty courts seek to address the unique and often overwhelming needs and challenges faced by court-involved individuals who suffer from behavioral health issues. The purpose of specialty courts is to remove barriers that impede recovery, to encourage access and engagement in behavioral health treatment, and to provide court support that enables individuals to remain in the community and avoid hospitalizations and custodial detention. Specialty courts are often referred to as "problem solving courts." They offer a non-adversarial approach and alternative model to traditional court proceedings and protocols. Participation in a specialty court is always voluntary; after consultation with counsel, a defendant may accept participation as a term of pre-trial probation or as a condition of post-disposition probation. The Trial Court has specialty courts to address substance use disorders and mental health conditions, as well as specialty courts focused on particular populations such as veterans, homeless individuals, and defendants

in criminal cases who themselves are victims of sexual exploitation or human trafficking.

Judges and court personnel in specialty court sessions are mindful of the constitutional due process rights of each participant and the importance of procedural justice to ensure trust and confidence in the court system. With the assistance of probation officers and behavioral health clinicians, the court closely monitors and reviews the availability and effectiveness of evidence-based treatment and encourages compliance with regular court reviews. Information regarding a participant's treatment and compliance efforts is openly shared with the judge, defense, prosecution, probation, and specialty court staff.

E. Probation Violation Hearings (Intercept 3)

Probation violation and modification hearings present opportunities for mandating treatment for substance use disorders, mental health conditions, and co-occurring disorders. When a probationer is before the court after a finding of or admission to a probation violation, the court may order a new assessment, initial treatment, or intensified treatment as an alternative to revocation. A court has authority to modify conditions of probation in the absence of a violation. Modified or additional conditions must be reasonably related to the goals of sentencing and, if increasing the scope of the original probationary sentence, may not be so punitive as to significantly increase its severity. *Commonwealth v. Santana*, 489 Mass. 211, 223-224 (2022). The use of probationary sentences and the imposition of suspended sentences of different lengths, as recommended above, can provide judges with flexibility at the time of a violation hearing to apply gradually escalating responses for non-compliance. While sometimes it is necessary for the judge to revoke probation and sentence a defendant to incarceration to protect public safety, a court may not impose only part of a formerly suspended sentence as a means of coercion. G. L. c. 279, § 3; *Commonwealth v. Holmgren*, 421 Mass. 224 (1995).

I. CIVIL COMMITMENTS (G. L. c. 123)

A. Section 35

Upon the written application of certain petitioners (police officer, physician, spouse, blood relative, guardian or court official), the District, Juvenile, or Boston Municipal Court may hear a request for civil commitment of a person suffering from an alcohol use disorder⁹ or substance use disorder.¹⁰ G. L. c. 123, § 35. The judge may order a person committed for up to 90 days if the judge finds, by clear and convincing evidence, based on expert testimony and other evidence, that the respondent is an individual with an alcohol and/or substance use disorder and that there is a

⁹ An "alcohol use disorder" is defined in G. L. c. 123, § 35, as "the chronic or habitual consumption of alcoholic beverages by a person to the extent that (1) such use substantially injures the person's health or substantially interferes with the person's social or economic functioning, or (2) the person has lost the power of self-control over the use of such beverages."

¹⁰ A "substance use disorder" is defined in G. L. c. 123, § 35 as "the chronic or habitual consumption or ingestion of controlled substances or intentional inhalation of toxic vapors by a person to the extent that: (i) such use substantially injures the person's health or substantially interferes with the person's social or economic functioning; or (ii) the person has lost the power of self-control over the use of such controlled substances or toxic vapors."

likelihood of serious harm because of the person's alcohol and/or substance use disorder. *Matter of G.P.*, 473 Mass. 112, 124-129 (2015); Uniform Trial Court Rules for Civil Commitment Proceedings for Alcohol and Substance Use Disorders G. L. c. 123, § 35 (2016). Civil commitments may occur independent of, or at any time during, the pendency of a criminal case.

A judge must consider less restrictive alternatives to commitment and the availability of treatment within the facility, and make findings, orally or in writing, in all civil commitment hearings. *Matter of a Minor*, 484 Mass. 295, 308-310 (2020); see *Foster v. Commissioner of Correction* (No. 1), 484 Mass. 698, 726-728 (2020). The law is intended as an emergency measure for providing care and treatment “to promote the health and safety of the individual committed and others, as demonstrated by the statutory requirement that a committed individual pose a danger to him- or herself, or a member of the community.” *Id.* at 727; see *Matter of G.P.*, 473 Mass. at 113, 121 n.15 (discussing emergency nature of § 35 proceedings). Commitment is not a long-term solution to alcohol and/or substance use disorders.

DPH and the Department of Correction determine suitable facilities for commitment purposes pursuant to G. L. c. 123, § 35. “The department of public health shall maintain a roster of public and private facilities available, together with the number of beds currently available and the level of security at each facility, for the case and treatment of an alcohol use disorder and substance use disorder and shall make the roster available to the trial court.” G. L. c. 123, § 35.

When a respondent presents with co-occurring symptoms of an alcohol and/or substance use disorder and a mental health condition, the court, with input from the court clinic, will decide the appropriate way to proceed that best meets the needs of the respondent (see § 12 commitments below). The court should provide persons who come to court looking for help with a family member with a substance use problem with information about community treatment resources and about filing a petition for a § 35 commitment, including the Frequently Asked Questions pamphlet. As § 35 does not permit self-petitions, a probation officer may petition on behalf of the person seeking commitment provided the person is known to Probation. If the person is not known to MPS, an otherwise eligible petitioner will need to file.

B. Section 12

The admission of an individual to a general or psychiatric hospital for psychiatric evaluation is governed by G. L. c. 123, § 12. Section 12(a) allows for an individual to be brought to a hospital for evaluation involuntarily for up to three days. The transport to the facility, initial psychiatric evaluation, and the admission for up to three days are commonly referred to as being “Section 12’d” or “pink papered” because the form may be printed on pink paper.

Pursuant to Section 12(a), certain persons (a physician, qualified advanced practice registered nurse, qualified psychologist, licensed independent clinical social worker, or, if those persons are not available, a police officer) may apply to admit anyone to a facility if they believe that the failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness.

Admissions to a psychiatric facility can also be court-ordered pursuant to Section 12(e). That section allows anyone to apply to a District, Boston Municipal, or Juvenile Court for a three-day commitment of a person thought to be mentally ill whom the failure to confine would cause a

likelihood of serious harm. The court must immediately appoint counsel for the person. After hearing, the court may issue a warrant for apprehension and appearance authorizing the police to apprehend the alleged mentally ill person if, in the court's judgment, such action is necessary. Upon apprehension, the person will be brought to the court to be examined by a designated physician, a qualified psychologist, or a qualified advanced practice registered nurse designated to have the authority to admit to a facility. The statute allows for commitment for up to three days based solely on the court clinician's finding that the failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness. Due process requires a hearing and sufficient finding to order a three-day commitment for the purpose of further evaluation and treatment. G. L. c. 123, § 12(e).

III. JUVENILE COURT

A. Delinquency and Youthful Offender Matters

In delinquency and youthful offender cases, a judge may order substance use assessment, monitoring, and treatment as a condition of probation for a juvenile adjudicated delinquent or a youthful offender. G. L. c. 119, § 58. Conditions requiring substance use assessment, monitoring, and treatment may be ordered even before adjudication as part of the juvenile's pretrial conditions of release (with the juvenile's consent) or where the juvenile is placed on pretrial probation as a disposition (with the juvenile and the Commonwealth's consent). G. L. c. 276, § 87; G. L. c. 276A; *Commonwealth v. Preston P.*, 483 Mass. 759, 762 (2020). In the Juvenile Court, diagnostic studies or assessments are often referred to as evaluations. This language is used interchangeably below.

Treatment conditions can also be imposed prior to adjudication, even pre-arraignment, through diversion pursuant to G. L. c. 119, § 54A, and G. L. c. 276A. District Attorney's Offices also provide diversion programs which often include an assessment of a youth's mental health or substance use and related treatment.

If a judge commits a juvenile who has been adjudicated delinquent or as a youthful offender to the custody of the Department of Youth Services (DYS), DHS is responsible for assessing and determining whether the youth would benefit from substance use treatment. In such cases, the court should make specific information available to DHS regarding any substance use concerns.

DYS does not provide individual substance use treatment to youth committed to its care pre-adjudication or pre-disposition of a probation violation. If a youth before the court at this stage needs acute substance use treatment, the court may consider use of the § 35 process or otherwise access services through the Bureau of Substance Addiction Services (BSAS). Likewise, if a youth presents in court under the influence or is currently detoxing, the court should arrange for immediate medical attention. If a youth presents in court under the influence or is currently detoxing and is ordered detained, the court, not DHS, is responsible for transporting the youth to the hospital. DHS assumes supervision of a detained youth who is being treated at the hospital as soon as is reasonably possible. DHS remains responsible for supervision until such time that a youth can be safely discharged to the care or custody of DHS. The sheriff's department is responsible for the transportation of detained youths.

Diagnostic assessments are also available pursuant to G. L. c. 119, § 68A, and can be conducted by

DYS, the court clinic, or DMH. These assessments can be ordered both pre- and post-adjudication and are often used in the context of probation violation proceedings. Judges can order aid in sentencing evaluations pursuant to G. L. c. 123, § 15(e). Finally, prior to disposition of a youthful offender case, the court is required to order a pre-sentence investigation report from MPS. G. L. c. 119, § 58.

Unique to Massachusetts, each Juvenile Court is served by a Juvenile Court Clinic administered by DMH Forensic Services and funded as a partnership between DMH and the Administrative Office of the Juvenile Court (AOJC). The Juvenile Court Clinics consist of specially trained and certified licensed mental health professionals who primarily conduct court-ordered evaluations. In delinquency and youthful offender cases, there may be critical forensic questions regarding competence to stand trial, criminal responsibility for the charges, and assistance to the court in the development of appropriate dispositions.

Many youths in the juvenile justice system have behavioral health disorders and lack the resources to address them. Clinical input may be desired to help the court determine what alternative treatment or management options are most appropriate.

B. Child Requiring Assistance

In Child Requiring Assistance (CRA) cases, which include runaways, truants, habitual school offenders, and stubborn children, the court's ability to order substance use treatment for a child is dependent upon the child's custody status. For example, when a child is placed in the custody of the Department of Children and Families (DCF), the Juvenile Court may only request or recommend that substance use treatment be provided for the child. If the child remains in the parents' custody, the Juvenile Court may order substance use treatment for the child as a condition of custody or as part of a dispositional order issued pursuant to G. L. c. 119, § 39H, allowing the child to remain in the parents' custody.

Pursuant to G. L. c. 119, § 39G, court clinic evaluations are available pre- and post- fact finding. These evaluations are invaluable diagnostic assessments and contain extensive history with recommendations for both family and child.

C. Care and Protection

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

If available, court clinic evaluations should be utilized early in care and protection cases, to provide the Court with individualized assessments that can assist with custody and case tracking

decisions. Early assessment and identification of appropriate treatment will promote the Juvenile Court goals of achieving permanency for children and families.

IV. PROBATE AND FAMILY COURT

The Probate and Family Court often hears cases where a party has a substance use disorder, mental health condition or both. These cases may involve divorce or paternity-related custody or parenting time 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 and adults under G. L. c. 190B, and applications for orders of protection under G. L. c. 209A.

The resources available to judges in the Probate and Family Court when presented with these issues are many. In a pending case, either a party, a probation officer or other interested person can best inform the judge of substance use or mental health issues. The judge may appoint a guardian *ad litem* to investigate and submit a report to the Court. As part of that report, a qualified guardian *ad litem* can assess the validity and severity of allegations involving a substance use disorder, mental health condition or both and make recommendations to the Court. The judge may also order a party to submit to a mental health examination. "In order to determine the mental condition of any party or witness before any court of the commonwealth, the presiding judge may, in [the judge's] discretion, request the department [of mental health] to assign a qualified physician or psychologist, who, if assigned shall make such examinations as the judge may deem necessary." G. L. c. 123, § 19; see also Mass. R. Dom. Rel. 35 (a).

Absent specific statutory or common law authority, Probate and Family Court judges have *inherent* authority to make orders related to the treatment of substance use disorders, mental health conditions, and co-occurring disorders, when it is in the best interests of a person under the Court's jurisdiction. "[A] probate court possesses broad and flexible inherent powers essential to the court's duty to act in the best interests of persons under its jurisdiction." *Bower v. Bournay-Bower*, 469 Mass. 690, 698 (2014); see also *Matter of Moe*, 385 Mass. 555, 561 (1982) (stating that the Court's inherent authority "extend[s] to actions necessary to afford any relief in the best interests of a person under its jurisdiction"). The Court also has "certain inherent powers whose exercise is 'essential to the function of the judicial department, to the maintenance of its authority, or to its capacity to decide cases.'" *Bower*, 469 Mass. at 698 (quoting *Sheriff of Middlesex County v. Commissioner of Correction*, 383 Mass. 631, 636 (1981)). It is important to note, however, that judges may not delegate decision-making authority to a treatment provider. See, e.g., *Bower*, 469 Mass. at 707, citing *Silverman*, 438 Mass. at 736-737.

A. Cases Involving Children

Many children are living in households with at least one parent who has a substance use disorder or a mental health condition, placing those children at increased risk for maltreatment. It is important for judges to recognize that children may experience trauma due to parental neglect, the results of their own prenatal substance exposure, chaotic environments, or removal from a parent's home. Judges should also be aware of the stigma these children may be experiencing.

Judges should consider the direct service needs of children, which may include treatment with a trauma-informed professional and family therapy, with special consideration given to

multigenerational trauma. Programs for parents that address parenting issues as part of recovery help reduce the negative effects on children. It is also critically important for children and their caregivers to understand that substance use disorder and mental health conditions are treatable.

In cases involving children, the judge should (1) identify substance use disorders, mental health conditions, and co-occurring disorders early in the case; (2) refer the parent to a trained clinician for a diagnostic assessment and to design an appropriate level of treatment, including medication-based treatment and recovery coaching; (3) monitor the parent's progress in treatment through interim hearings; and (4) manage the case by bringing it back periodically to determine progress and adjusting parenting time accordingly. A parent is likely to be receptive to treatment where that can result in reunification with a child.

B. Ordering Treatment in Custody and Parenting Time Disputes

Probate and Family Court judges have authority to attach conditions to parenting time sufficient to ensure the safety of a child. See, e.g., *Schechter v. Schechter*, 88 Mass. App. Ct. 239, 247-248 (2015). Sufficient evidence of substance use disorders, mental health conditions, or co-occurring disorders may influence custody and parenting time decisions. Permissible conditions likely include requiring a parent to pass a drug test, be evaluated for a substance use disorder, or attend treatment for substance use or mental health conditions. See *Silverman v. Spiro*, 438 Mass. 725, 729 n.2, 736-737 (upholding order requiring mother's participation in therapy as condition of visitation with her children, subject to judge's further reexamination in light of mother's progress).

Evidence of substance use disorders or mental health conditions, in the absence of any evidence of harm to the child, does not constitute parental unfitness. See *Adoption of Katharine*, 42 Mass. App. Ct. 25, (1997); see also *Care and Protection of Bruce*, 44 Mass. App. Ct. 758 (1998). Consequently, it is necessary to determine the connection between the disorder and the impact on parenting and the child's functioning.

In chapter 209A proceedings, when granting parenting time to an abusive parent, Probate and Family Court judges may order the abusive parent "to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation" and may "impos[e] any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent." See G. L. c. 209A, § 3.

V. HOUSING COURT

The Housing Court generally hears summary process (eviction) cases, housing-related small claims cases and civil actions (e.g., breach of contract claims, housing discrimination, property damage, etc.), code enforcement actions, and appeals of local zoning board decisions that affect residential housing. The Housing Court has jurisdiction over civil and criminal matters that affect the health, safety, and welfare of occupants and owners of residential housing.

Summary process is the Housing Court's largest volume of cases. Summary process was created to expedite the ability to recover possession of land. See, e.g., *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011), quoting Rule 1 of the Uniform Summary Process Rules (recognizing that the

legislative purpose of eviction proceedings is to provide “‘just, speedy and inexpensive’ resolution of summary process cases”).

The recognized legislative purpose of summary process is consistent with the general mission of the Trial Court – to deliver justice with dignity and speed – but poses an additional challenge to administering justice in cases involving litigants with substance use disorders, mental health conditions, and co-occurring disorders. In most cases, balancing due process with the needs of litigants with substance use disorders, mental health conditions, and co-occurring disorders often requires slowing down the court process, especially because most litigants in the Housing Court are self-represented. As such, there is an inherent dichotomy in the Housing Court. While it is important to allow litigants with substance use disorders, mental health conditions, and co-occurring disorders time to access resources and develop accommodation plans due to the complex and chronic nature of those conditions (see Principles page 5), it is also critical to adhere to the legislative purpose of summary process by ensuring that cases move expeditiously.

Courts should recognize that self-represented litigants with substance use disorders, mental health conditions, and co-occurring disorders may face certain challenges, such as understanding the relevant law, seeking appropriate treatment, and raising disability-related protections or accommodations that may be available to them under the law. Further, it is imperative that courts recognize that individuals with substance use disorders, mental health conditions, and co-occurring disorders face greater barriers to recovery and access to treatment when they lack stable housing. As a result, courts should make efforts to maintain housing stability for individuals with substance use disorders, mental health conditions, and co-occurring disorders whenever possible, consistent with law.

Pursuant to the Supreme Judicial Court Code of Judicial Conduct, judges may, for example, exercise discretion and make referrals as appropriate to any resources available to assist the litigants, while being careful not to give any litigant an unfair advantage or create an appearance of judicial partiality. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6, and Comment 1A. In Housing Court, those resources currently include the Tenancy Preservation Program (“TPP”) which is available to those who meet eligibility requirements. TPP is a homelessness prevention program with the goals of identifying whether a tenant suffers from a disability, determining whether the disability can be reasonably accommodated and, if it can be, whether the tenancy can be preserved. In order to access TPP, tenants must be referred to the program by a judge and both parties must be willing to participate. Additionally, the volunteer “Lawyer for a Day” program may be available to those who are unrepresented and meet eligibility requirements, and the court should make all parties aware of the program and how to access it.

Finally, in appropriate circumstances, courts also should consider whether the appointment of a guardian ad litem would help the court to learn the limitations of the self-represented litigant. When necessary, the court may require an evaluation by a court clinician to determine whether such appointment, or other intervention, is needed or recommended. See G. L. c. 123, § 19.

STANDARD VIII

Monitoring Compliance and Responses to Recurrence of Use or Symptoms

Probation should monitor compliance with court-imposed conditions related to substance use disorders and mental health conditions using evidence-based supervision tools. Judges and court personnel should understand that recurrence of use or symptoms is common with chronic substance use disorders, mental health conditions, and co-occurring disorders, and should implement strategies to prevent and address recurrence episodes

COMMENTARY:

Monitoring Compliance. The Massachusetts Probation Service should monitor compliance with court-ordered treatment conditions for substance use, mental health, and co-occurring disorders as per court order and probation standards. The court should inform all parties who are subject to court-ordered treatment conditions that non-compliance with the conditions will have consequences, and the court should directly and expeditiously address any non-compliance.

Available compliance tools per MPS policies, standards, and training are drug and alcohol testing; verification of attendance at and participation in counseling sessions and recovery support meetings; communication with and frequent progress reports from treatment providers; and, whenever possible, day and nighttime visits at the defendant's home, school, place of work, or treatment provider. Drug and alcohol testing is available in every courthouse, and testing results are made available to the court as quickly as possible. To facilitate treatment monitoring, MPS requests the defendant's signed consent, both to provide the treatment provider with relevant information in the defendant's probation case file, and to obtain progress reports back from the treatment provider.

MPS supports compliance by offering voluntary, stabilizing services to ensure that the party has access to adequate food, housing, healthcare, and other supports, where those services align with conditions of probation. Such supports enable the defendant to engage better with treatment and other court-ordered conditions. Additionally, positive reinforcement is a valuable aid to progress where a party is complying with treatment conditions. MPS also provides evidence-based behavior change work, as well as establishing assistance that will continue recovery and support post-sentence.

Responding to Recurrence of Use or Symptoms. Relapse, which is the recurrence of use or symptoms, is common with substance use disorders and mental health conditions and can be one step toward recovery and often an integral part of what can be a lengthy process. Substance use disorders, mental health conditions, or co-occurring disorders cannot be "cured" any more than other chronic disease. Treatment of chronic conditions involves changing deeply rooted behaviors, and recurrence of use or symptoms does not indicate that treatment has failed. Chronic and persistent mental health disorders may reappear in regular or unpredictable patterns. When a person has a recurrence of use or symptoms, it indicates a need for clinical reassessment and

reevaluation of the treatment and recovery support plan.¹¹ People can be educated and supported to manage their substance use, mental health, or co-occurring disorders by engaging with evidence-based treatment and by following recovery principles. Relapse prevention education and strategies can provide people with an understanding of their own relapse warning signs, so they will know when their recovery is challenged, and will signal to them that they need to address any issues immediately.

It is vital that courts understand relapse, anticipate relapse, have access to an individual's relapse plan, be prepared to deal with relapse, and respond to it promptly. The appropriate response to a relapse should be tailored to each person's individual needs, history of substance use disorders, mental health conditions, and previously utilized treatment modalities. Graduated responses are generally appropriate, including increasing the frequency of drug testing, increasing treatment level of care, and/or increasing supervision. In some cases, the individual's behavior will present such a clear or immediate threat to public safety that the court should consider probation revocation and incarceration.

¹¹ National Institute on Drug Abuse, *Drugs, brains, and behavior: The science of addiction* (2020), <https://www.drug-abuse.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery>.

STANDARD IX

Information for Custodial Authorities

Courts should provide information to custodial authorities, including on the mittimus if appropriate and being mindful of privacy concerns, when there is a safety issue or a serious risk of harm to the individual being transported, or to others.

COMMENTARY: When an individual comes before the court and presents as a serious risk to either the individual or others, it is imperative that the court communicate with custodial authorities to ensure that the individual is provided with appropriate resources and supports to ensure public safety and the safety of the individual. It is not uncommon for an individual who suffers from a substance use disorder, mental health condition, or co-occurring disorder to present an apparent safety issue or serious risk of harm. Providing this information in the discretion of the court can serve to facilitate the placement of a defendant in an appropriate treatment program operated in custodial facilities. See G. L. c. 123, § 36A. Public safety is served, and recidivism is less likely, if treatment can be provided while an individual is in custody.

STANDARD X

Community Resources

Judges and court personnel should be aware of resources available in the community for the treatment of substance use disorders, mental health conditions, and co-occurring disorders. Probation should strive to establish and maintain relationships with local treatment providers. If specific services are not available in a particular community, Probation should determine where such services are available and strive to develop and maintain relationships with those service providers.

COMMENTARY: In each court, the effectiveness of the behavioral health strategy will depend on knowledge of treatment resources in the local community and the cultivation of relationships with various providers. Probation officers in individual courts are responsible for having an up-to-date understanding and connection with treatment providers in their community and should be a resource to the court and litigants in connecting to the right resources. The probation officer should be aware of both availability and how to access various resources.

MPS has and continues to develop a formal relationship with MassHealth to build on various pathways to enrollment and access to MassHealth funded services across the spectrum of behavioral health needs. The Community Justice Support Centers are also a resource for anyone with a criminal justice system connection or history. These services and supports extend beyond referral to treatment services and include employment and education access, credentialing, and other life support resources.

STANDARD XI

Substance Use Disorders, Mental Health Conditions or Co-Occurring Disorders in the Courts

The court system should respond to substance use disorders, mental health conditions, and co-occurring disorders among judges, clerks, and court personnel. The response should include opportunities to receive referrals for treatment through the Employee Assistance Program (EAP) and recognition by appropriate authorities that required participation in treatment can be an appropriate condition of employment.

COMMENTARY: Individuals who work in the court system can be vulnerable to substance use, mental health, and co-occurring disorders. Providing information to court personnel on ways to access treatment will strengthen the system overall. Personnel policies in the court system should include provisions for addressing issues related to substance use, mental health, and co-occurring disorders. The Trial Court Personnel Policies and Procedures Manual, the appellate courts' personnel policies, the Commission on Judicial Conduct, the Committee on Professional Responsibility for Clerks of the Courts, and the Board of Bar Overseers should take these issues into account in employment policies and corrective action plans. The Lawyers Concerned for Lawyers organization and the Supreme Judicial Court Standing Committee on Lawyer Well-Being is also a valuable resource. Trial Court judges and personnel may also utilize the Employee Assistance Program (EAP), offered by the Group Insurance Commission.

STANDARD XII

Substance Use Disorders, Mental Health Conditions or Co-Occurring Disorders Among Lawyers and Judges

A judge who reasonably believes that the performance of a lawyer or another judge is impaired by a substance use disorder, mental health condition, or co-occurring disorder must take appropriate action, which may include speaking directly to that person, notifying an individual with supervisory responsibility over that person, or making a confidential referral to an assistance program. Further, if the lawyer’s performance involves a violation of the Rules of Professional Conduct, or the other judge’s performance involves a violation of the Code of Judicial Conduct, then the judge may be required to report the violation or take other appropriate action, depending on the gravity of the violation. If the issue of professional performance arises in connection with an imminent or pending proceeding, the judge may consider postponing the proceeding, or deferring action, depending on the circumstances. Clerks should also follow these principles and procedures, as consistent with their professional obligations and applicable codes of conduct, if they reasonably believe that the performance of a lawyer or judge is impaired by a substance use disorder, mental health condition, or co-occurring disorder.

COMMENTARY: “A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.” S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.14 (2016). “Appropriate action means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system.” *Id.*, Rule 2.14, Comment 2. The action that is appropriate in a given set of circumstances depends in part on whether the lawyer’s or the other judge’s performance involves a violation of the applicable rules of conduct and the gravity of the violation.

If a judge has actual knowledge that a lawyer’s conduct involves a violation of the Rules of Professional Conduct, and the violation raises a substantial question regarding the lawyer’s honesty, integrity, trustworthiness, or fitness, then the judge must inform the Office of Bar Counsel. *Id.*, Rule 2.15 (B); see also *id.*, Terminology (defining “knowledge” as “actual knowledge of the fact in question,” which “may be inferred from circumstances”). Similarly, if a judge has actual knowledge that another judge’s conduct has violated the Code of Judicial Conduct, and the violation raises a substantial question regarding the judge’s honesty, integrity, trustworthiness, or fitness, then the judge must inform the Chief Justice of the Supreme Judicial Court, the Chief Justice of the court on which the other judge sits, and the Chief Justice of the Trial Court in the case of a Trial Court judge. *Id.*, Rule 2.15 (A); see Committee on Judicial Ethics Opinion No. 2021-01 (“The application of Rule 2.15(A) turns on three inquiries: (1) whether you have actual knowledge of the conduct in question or such knowledge may be inferred from circumstances; (2) whether the conduct in question constitutes a violation of the Code; and (3) whether such violation raises a substantial question regarding the judge’s honesty, integrity, trustworthiness, or fitness as a judge”).

If a judge has actual knowledge of, or has received credible information indicating a substantial

likelihood that a lawyer has violated the Rules of Professional Conduct, or that another judge has violated the Code of Judicial Conduct, in a way that does not raise a substantial question regarding the lawyer's or the judge's honesty, integrity, trustworthiness, or fitness, then other, less grave, action may be appropriate. *Id.*, Rule 2.15 (C), (D), and Comment 2. In the case of a lawyer, appropriate action may include communicating directly with the lawyer, reporting to the lawyer's supervisor or employer, or reporting to the Office of Bar Counsel. *Id.*, Rule 2.15, Comment 2. If the issue arises in connection with an imminent proceeding, the judge should make inquiries and, if necessary, postpone the proceeding. "If the lawyer is appearing before the judge, a judge may defer taking action until the matter has been concluded, but action should be taken as soon as practicable thereafter. Reporting a violation is especially important where the victim is unlikely to discover the offense, and an immediate report is compelled when a person will likely be injured by a delay in reporting." *Id.* In the case of another judge, appropriate action may include communicating directly with the other judge, reporting to the first justice or regional administrative justice of the court where the violation occurred or where the judge often sits, reporting to the Chief Justice of that judge's court, and/or calling the judicial hotline maintained by Lawyers Concerned for Lawyers. These lists of actions are illustrative and are not meant to be limiting. *Id.*

More generally, whenever a judge has a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, the judge must take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program, communicating directly with the lawyer or the other judge, or notifying a person with supervisory responsibility over the lawyer or the other judge. *Id.*, Rule 2.14, and Comment 2.

A list of relevant resources to support lawyer well-being can be found [here](#) on the website of the SJC Standing Committee on Lawyer Well-Being. The most extensive assistance program is Lawyers Concerned for Lawyers | Massachusetts (LCL), which provides free and confidential services, including mental health resources and addiction recovery support, to lawyers, judges, law students, and other legal professionals in accord with Rule 1.6 (d) of the Massachusetts Rules of Professional Conduct (S.J.C. Rule 3:07). A judge who reasonably believes that the performance of a lawyer or another judge is impaired by a substance use disorder, mental health condition, or co-occurring disorder may confidentially recommend LCL's services to the lawyer or the other judge, and the lawyer or the other judge can contact LCL directly. The concerned judge may also contact LCL to consult about the nature of the impairment or a strategy for approaching the lawyer or the other judge. More information about LCL can be found at lclma.org or by calling 617-482-9600.

These principles and procedures also provide useful guidelines for clerks to follow, as consistent with their professional obligations and applicable codes of conduct, if they reasonably believe that the performance of a judge or lawyer is impaired by a substance use disorder, mental health condition, or co-occurring disorder. Note that clerks who are lawyers, and other staff counsel within the courts, are also subject to Rule 8.3 of the Massachusetts Rules of Professional Conduct (S.J.C. Rule 3:07), which sets out reporting obligations concerning professional misconduct by other lawyers or judges that are similar to those in Rule 2.15 of the Code of Judicial Conduct.

APPENDIX

Working Group Members

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SUPREME JUDICIAL COURT
STANDARDS ON SUBSTANCE USE DISORDERS AND MENTAL HEALTH CONDITIONS

Former Members

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Alexandra Arnold, Law Clerk, Supreme Judicial Court

Hon. Beth Crawford, First Justice, Probate and Family Court (*ret.*)

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Working Group Guests

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Carrie Burke, Committee for Public Counsel Services

Deirdre Calvert, Department of Public Health: Bureau of Substance Addiction Services

Sheriff Nick Cocchi, Hampden County

Dr. Nancy Connolly, Department of Mental Health

Kristin Dame, Committee for Public Counsel Services

Sheriff Chris Donelan, Franklin County

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Dr. Judith Edersheim, Center for Law, Brain, and Behavior

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Jack Gettens, University of Massachusetts Medical School

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Dan Higgins, Cape and Islands District Attorney's Office

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Dr. Ruth Potee, Behavioral Health Network and Franklin County Sheriff's Office

Cristina Rodriguez, Committee for Public Counsel Services

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SUPREME JUDICIAL COURT
STANDARDS ON SUBSTANCE USE DISORDERS AND MENTAL HEALTH CONDITIONS

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