

Health General 8-507



For Judges and Lawyers
Lipman, November 2006

What is it good for?



- ⌘ Not worth the effort for outpatient treatment.
- ⌘ May be good for residential treatment.
- ⌘ May be the only/best way to get co-occurring treatment for primarily addicted but also very mentally disordered defendants.
- ⌘ If no drug court is available with residential treatment capabilities.
- ⌘ If residential treatment is not available though “regular” probation
- ⌘ If you (judge or defense attorney) want to keep the case rather than refer it to an available drug court

Significant limits that define the relationship between Court, Defendant and DHMH/ADAA

- ⌘ Court may only commit a defendant for treatment through 8-507 if the defendant consents to treatment in writing and likewise releases the necessary confidential information.
- ⌘ The Court may only commit under 8-507 for residential treatment upon the 8-505 evaluation of ADAA or its designee AND only to the treatment facility that ADAA or its designee selects.
- ⌘ The statute requires that DHMH-ADAA provide the necessary services and “shall” facilitate the defendant’s prompt placement. ADAA shall name the facility AND give the expected date of placement.
- ⌘ No outstanding legal impediments to placement may be in effect *when the defendant is actually delivered for treatment* under 8-507: no warrants, detainers, consecutive or concurrent sentences. However the 8-505 evaluation may be ordered and the 8-507 commitment may be signed as these impediments are resolved.

Biggest Judge's Misconceptions.



- ⌘ You don't need to "entertain" a request for an 8-505 evaluation for defendants who you won't commit under 8-507 in any event. Save the time, effort and expense for viable candidates.
- ⌘ **AN 8-507 COMMITMENT IS NOT A SENTENCE!**
- ⌘ **An 8-507 commitment runs parallel to a criminal defendant's custodial or supervision status**
- ⌘ **An 8-507 commitment always must accompany an existing criminal detention or supervision status (e.g. pretrial/pre sentence detention OR probation supervision).**

Thus: three typical tracks.


- ⌘ **Track 1:** Pre-sentence and committed to both ADAA (8-507) and the Local Detention Center as a pre-sentence detainee.
- ⌘ **Track 2:** Post suspended sentence & under probation supervision (not confined) & committed under 8-507 (awaiting for some short or long time actual placement in a residential treatment bed).
- ⌘ **Track 3:** Defendant sentenced to incarceration, motion for modification of sentence filed; defendant to be committed under 8-507 and to be placed on probation supervision through a modified/ suspended sentence when placement occurs

TRACK 2: Commit under 8-507 and just put on probation= problematic




- ⌘ Sounds easy: all at sentencing: impose a sentence, suspend it , place the defendant on probation and do the 8-507 commitment all at once - and you're done!
- ⌘ Yes, but, there will always be some delay in the availability of the residential slot.
- ⌘ How wise is it to keep this defendant, who is so addicted that residential treatment is required, on the street waiting for the residential treatment slot to open up?

Track 3: modification to get to probation




- ⌘ 8-507 allow a court to consider a motion for reconsideration of sentence to effectuate a commitment whether or not that motion is filed within 90 days.
- ⌘ Actual placement for treatment under the 8-507 commitment occurs “simultaneously” with the modification of sentence to effectuate the needed probation supervision.
- ⌘ Tricky part is timing the initiation of probation supervision with the actual placement of the defendant.
- ⌘ (aspects of this track are also applicable for reinstatement of probation with 8-507 commitment after pre VOP hearing confinement)

Re: timing the defendant's actual arrival at the treatment provider with the modification of sentence and the beginning of probation supervision




- ⌘ See suggested language in form order 13 [c](motion for modification granted prior to admission to treatment program- probation to commence upon admission.)
- ⌘ If the judge is uncomfortable with this “nunc pro tunc” type approach, DOC has agreed to literally transport the defendant to court and then to the treatment facility on the same day. But this is not without some burden upon DOC's transportation units.
- ⌘ Obvious need to coordinate with P & P.

Popularity of track 3- modification of sentence




- ⌘ Circuit Court's favorite track.
- ⌘ The defendant's completion of some time served may be a motivating factor.
- ⌘ Utilization of probation supervision may be a good thing.
- ⌘ If beds are truly available relatively promptly, all that "nunc pro tunc" stuff for timing probation supervision and bed placement isn't that hard once judge, defense counsel, ADAA-local evaluators and probation agents get their act together.

Parole & Probation & the modification track



- ⌘ P&P recognizes critical need to assume probation supervision as defendant leaves DOC institution and goes to treatment slot.
- ⌘ Obvious need for good communication between clerk and P&P.
- ⌘ Coordinated effort for P & P supervision at larger treatment facilities such as Second Genesis and Gaudenzia.
- ⌘ P & P agreed to prepare PSI like reports for help in looking at the defendant's amenability for treatment.

Track 1. Pre -sentence commitment to detention and 8-507 commitment to DHMH/ADAA for treatment



- ⌘ Detained in the local detention center *and* committed to DHMH/ADAA .
- ⌘ May be committed pre trial, but probably makes more sense to accept a guilty plea and hold sentencing sub curia pending the successful completion of the 8-507 commitment.
- ⌘ Thus, the defendant is committed while still in the custody of the local detention center, in a pre sentence detention status.
- ⌘ ADAA and local detention center have monitoring obligation here; not P&P.
- ⌘ May make sense to commit for residential treatment, then sentence using the aftercare treatment plan as the conditions of probation with P&P supervision only after the sentencing.
- ⌘ Nice transition to sentencing as compared to the difficulty of modification and treatment timing associated with the sentence modification track.
- ⌘ Set a review date and maybe even the sentencing date

5 keys to good 8-505 evaluations




- ⌘ 1 .Foreseeable that detainers and other impediments will go away at time of actual placement!
- ⌘ 2. Release of Information from the defendant is crucial as well as consent to treatment!
- ⌘ 3. Court Clerk (or others) getting information in and out and date setting is beyond crucial here!
- ⌘ 4. A PSI (or its equivalent) and maybe a psychiatric evaluation may be helpful here -P&P has agreed to supply as needed.
- ⌘ 5. Demanding quick evaluations may facilitate prompt placement- note the 7 day rule & good cause extension.

Detainers and other impediments.



- ⌘ Defense Counsel should exercise due diligence to identify and possibly remove detainers and other impediments. (form motion # 9)
- ⌘ Department's statutory obligation "immediately on receiving an order for treatment under this section, The Department shall order a report of all pending cases, warrants and detainers and forward a copy of the report... 8-507 © (form 3).
- ⌘ Court may not deliver for treatment until impediments are removed.

Last Session's legislation clarified that 8-505 evaluation may begin and 8-507 commitment may be signed with an impediment.



⌘ HB 756/SB 804 deleted this language at the beginning of 8-507:

[This Section applies only to a defendant for whom (1) no sentence of incarceration is currently in effect; and (2) no detainer is currently lodged.]

And substituted at the end of 8-507:

"The court may not order that the defendant be delivered for treatment until:
(1) the Department gives the court notice that an appropriate treatment program is able to begin treatment of the defendant; (2) any detainer based on an untried indictment , information, warrant or complaint for the defendant has been removed; and (3) any sentence of incarceration for the defendant is no longer in effect.