

ADAA TREATMENT AND EVALUATION PROCEDURE

I. INTRODUCTION

Health General Article 8-505 et. seq. allows a judge to order or commit a defendant to the Department of Health and Mental Hygiene (DHMH) for evaluation and treatment. Responsibility for the DHMH compliance with this law has been delegated to the Justice Services Section (JSS) of the Alcohol and Drug Abuse Administration (ADAA).

II. PURPOSE

These protocols are established to insure that the responsibilities of the partner agencies are clearly defined and to enhance the effectiveness of the collaborative initiative. In addition, the procedures are designed to improve outcomes for the defendants and to increase the confidence of the Court-involved state agencies and treatment providers in the Court commitment program. While there may be some jurisdictional differences, uniformity is encouraged to the greatest extent possible.

III. STATUTORY PREREQUISITES

- 1) Evaluation pursuant to HG 8-505: The evaluation must be conducted in accordance with ADAA regulations and is usually performed by an employee of ADAA or a designee.
- 2) Consent to treatment and to have information reported back to Court: Alcohol and substance abuse treatment are voluntary, and the defendant must sign a consent form. In addition, a release of confidential information form will allow for the sharing of information on the defendant's progress.
- 3) Judge considers report of evaluation and finds the recommended treatment to be appropriate and necessary.
- 4) No outstanding warrants, detainers, consecutive and concurrent sentences: No legal impediment to placement may be in effect. However, the HG 8-505 evaluation may be ordered while steps are being taken to resolve the obstacles to admission.

IV. OPTIONAL ORDERS FOR PRESENTENCE INVESTIGATION, PRESENTENCE PSYCHIATRIC EVALUATION, DETAINER REPORT

The evaluation conducted by ADAA or its designee consists solely of self-reported information from the defendant, which, in some instances, lacks reliability. Therefore, some judges have suggested that additional information would be useful in deciding whether or not to undertake the commitment for treatment or would like the assessor to have more information available to obtain an accurate clinical picture for consideration in making a recommendation.

If no presentence investigation (PSI) or presentence psychiatric evaluation was ordered prior to sentencing, consider ordering one or both. The PSI will provide thorough and current information regarding legal obstacles and amenability to treatment. The presentence psychiatric evaluation would be particularly appropriate if the defendant is suffering from a mental illness or has cognitive limitations.

If a PSI has been ordered within the past two years, it will only have to be updated. An abbreviated PSI containing the following information should be adequate:

- a) Records check.
- b) Past/present supervision history.
- c) Amenability to treatment.
- d) Treatment history.
- e) Any other information relevant to the HG 8-505 evaluation.

The defendant and counsel are encouraged to make available to the assessor any other information in their possession, such as prior treatment records or evaluations that may assist the assessor.

Effective October 1, 2006, the Court may order ADAA to submit a report on outstanding warrants, detainers, or concurrent or consecutive sentences.

- Presentence investigation (See Form 1).
- Presentence psychiatric evaluation (See Form 2).
- Detainer report (See Form 3).

V. DISTRIBUTION OF REPORTS

Federal and state confidentiality laws protect medical, psychiatric, and alcohol/substance abuse records. Insure that the defendant has signed any necessary release of information forms to obtain and share the confidential material.

Upon receipt of any investigative or evaluation report(s), the Court should release a copy to the presentence investigator and/or to the psychiatrist performing the presentence psychiatric evaluation; ADAA and/or its designee; the State, defense or the defendant, if the defendant is unrepresented; and any monitoring agency involved in the case, such as Parole and Probation or Pretrial Services.

All agencies and individuals who will be receiving copies of reports shall provide their name, address, and fax number to the Court for dissemination of evaluative materials and Orders.

VI. PROCEDURE FOR SCHEDULING THE HG 8-505 EVALUATION

The HG 8-505 evaluation for treatment may be ordered before, during or after the criminal trial. In addition, there are a variety of sentencing options which incorporate the HG 8-505 evaluation and the HG 8-507 commitment for treatment. The procedures may differ somewhat depending upon the stage of the trial process at which the Orders are entered.

IN GENERAL

1. The judge may order the evaluation on his/her own initiative, upon motion of defense or request of the defendant.
2. The defendant must consent to the evaluation and placement.
3. Defendant and counsel should inform the Court at the time of the request for an evaluation if there are any known outstanding warrants, detainers, or sentences being served. Since the State has greater access to records than the defense, it would be helpful if the State would inform the Court of any potential legal impediments known to the State. Review of the jail papers that accompany the incarcerated defendant should reveal detainers that have been lodged.
4. The Order for evaluation should include both dates when time is of the essence (the appointment date and the date the report is due and the defendant is to return to Court), the full names of the State's Attorney and defense attorney, their addresses, and the conditions of confinement (See Form 4A).

CONTENTS OF ORDER

- Evaluation date.
- Date report is due.
- Conditions of confinement.
- Full name of attorneys.

SUPPLEMENTAL DOCUMENTS

- Consent to Treatment (See Form 5).
- Consent to Release of Confidential Information (See Form 6).
- Any other evaluative material

5. Unless the defendant is placed on probation prior to completion of the HG 8-505 evaluation, whether time is of the essence or not, a hearing date for the defendant to return to Court should be set to insure that the matter is moving along.
6. Defense counsel and the Court clerk must track the report(s) and insure proper scheduling of the case. Form 10 was developed for this purpose. However, some jurisdictions may find hearing sheets or docket sheets adequate (See Forms 9 and 10).
7. ADAA or its designees are responsible for coordinating transportation provided by the local detention center to and from the evaluation site when transportation is necessary. Any questions about the when and where of transport can be directed to the Court assessor

EVALUATION REPORT DUE WITHIN SEVEN (7) DAYS

8. The evaluation report with the specific placement recommended and the estimated time of admission must be submitted within seven (7) days, unless extended by the Court for good cause.
9. When time is of the essence and the judge wants the placement process to proceed quickly in order to insure that the report is submitted within 7 days, the Court clerk should call the ADAA assessor if the defendant is in the local detention center and the ADAA Justice Services Section (410-402-8595) if the defendant is in a correctional facility to obtain an appointment date and to set a due date for submission of the report.
10. Submitting a signed HG 8-507 Order [for placement] may facilitate prompt placement. This blank Order will allow ADAA to begin placement efforts immediately.
11. If the defendant is serving a sentence or the judge determines that it is not necessary for the report to be submitted within 7 days, ADAA or its designee may arrange for the evaluation and determine the time frame for submission of the report. Instead of specific dates in the Order, the Order may read....shall be seen on a date to be determined by ADAA, and....the report shall be submitted upon completion of the evaluation. It will be assumed that the report will be submitted prior to the hearing date. Typically, in cases of defendants incarcerated in a correctional facility, ADAA requests an extension of time beyond the 7 days to complete the evaluation and prepare the report (See Form 4B).

PRACTICAL CONSIDERATIONS AND CONFINEMENT CONDITIONS

12. While the statute allows the judge to order the evaluation pretrial, unless the State plans to later enter a nol pros or offer a stet with the condition of treatment pursuant to Criminal Procedure 6-229, this is a time-consuming process to undertake without a guilty plea.
13. Similarly the procedure can be accomplished out-patient. However, there are easier ways to conduct an out-patient assessment than this one (See Form 8).
14. Unless the evaluation is out-patient, the judge determines the conditions of confinement, e.g., medical wing, general population, or other secure unit. The medical wing includes the hospital section or other area in close proximity to medical staff.
15. If the defendant is so vulnerable that he/she would be at risk if confined in jail, and evaluation in a community hospital setting is sought, utilize the provisions of HG 8-506 (See Forms 7A and 7B)..
16. The process is most often used when residential treatment would provide an alternative to incarceration acceptable to the judge. If the evaluation is ordered presentence, it is advisable that the defendant be held without bail to insure that the evaluation is completed and placement takes place.

VII. PROCEDURE FOR HG 8-507 COMMITMENT FOR PLACEMENT/TREATMENT

REMEMBER:

- That a commitment for treatment pursuant to HG 8-507 is not a sentence
- Due to the logistical complexity of the process, this statute is used primarily when the judge is exploring residential treatment in lieu of incarceration.
- ADAA will not initiate placement efforts until a signed HG 8-507 commitment is received. Therefore, this procedure will differ depending upon the judge's time-line in effecting placement.
- There are three basic ways in which an HG 8-507 commitment can be ordered:
 - i. Presentence commitment to both ADAA and the local detention center,
 - ii. The defendant is sentenced, placed on probation and committed for placement ,

- iii. The defendant is sentenced to incarceration and a motion for reconsideration is filed.

A. PRESENTENCE AND COMMITTED TO BOTH ADAA AND THE LOCAL DETENTION CENTER

1. Since the judge has already agreed to give the defendant an opportunity in treatment and has explained the process to the defendant, no hearing is necessary to implement placement.
2. After receipt of the placement information, the judge signs the completed HG 8-507 Order which directs the local detention center to transport the defendant to the program for admission on a specific date and time. Contact information, such as the name and phone number of the program director or admissions staff, is helpful to the detention center transportation officers (See Form 11A).
3. ADAA or its designee is responsible for monitoring placement and for coordinating transportation with the local detention center staff.
4. If the defendant is maintained on medication, a supply sufficient to last until a new prescription can be filled (usually a 30-day supply) must be provided by the jail and transported with the defendant. Most providers will refuse admission unless the medication is with the defendant. ADAA or its designee will work with the detention facility to insure that an adequate supply of medication is provided.
5. The Order will include the date and time for the defendant to be returned to Court for review or sentencing.
6. ADAA or its designee must insure that a progress report is provided to the Court and counsel at least two (2) days prior to sentencing.
7. ADAA or its designee must continue to monitor, and the local detention center must continue to monitor, until a sentence is imposed.
8. Sentencing may be held sub curia and review hearings held for whatever time period the judge finds appropriate.
9. If the defendant complies with program rules, the judge will, at some point, impose a sentence, apply credit for time served, suspend the balance of the sentence, and order a term of probation with conditions.
10. If the defendant absconds from treatment or is terminated due to noncompliance, a "no bail" warrant ~~is~~ may be issued, and the State may institute escape procedures. Some local detention facilities will issue a retake warrant.

B. DEFENDANT COMMITTED FOR PLACEMENT AND PLACED ON PROBATION BEFORE PLACEMENT IS OBTAINED

While this sentencing method involves the least judicial involvement, as a result there are many potential problems. Use of HG 8-505-507 should be reserved for those defendants requiring residential drug treatment and judicial oversight to insure appropriate placement and treatment compliance. If the defendant remains in the community until placement is available, it is easier to evaluate for and obtain treatment through traditional probation.

- 1) A sentence is imposed, suspended in favor of a term of probation and completion of the treatment program, and any aftercare recommended as a condition of probation.

SENTENCE IMPOSED IMMEDIATELY AFTER TRIAL

- a) Defendant is ordered to complete evaluation and immediately enter the program upon admission, complete the program, and complete any aftercare program recommended (See Form 13A).

SENTENCING HELD SUB CURIA UNTIL COMPLETION OF EVALUATION

- b) Evaluation is completed, placement is recommended, and an estimated admission date is provided (See Form 13B).
- 2) Although the defendant remains committed to ADAA pursuant to HG 8-507 once a sentence is imposed, the probation agent has the supervisory/monitoring responsibility. **However, neither DPP nor the Court has direct authority over the treatment providers.** The treatment providers are required to provide services pursuant to their contract with ADAA.

C. DEFENDANT SENTENCED TO INCARCERATION AND MOTION FOR MODIFICATION FILED

This sentencing option may be useful in cases in which the judge wants a portion of the sentence to be served before the judge is willing to consider any modification for residential drug treatment. The revisions to HG 8-507, allow a court to consider a motion for reconsideration of sentence to effectuate commitment whether or not that motion is filed within 90 days.

- 1) The Motion for Modification of Sentence requesting drug treatment in lieu of further incarceration should indicate that there are no outstanding unserved warrants, detainers, pending charges, violations of probation, or concurrent or consecutive sentences. Every effort should be made to insure that there are no

impediments to placement before ordering the 8-505 evaluation (See Forms 14A and 15A).

- 2) In the alternative, the Motion should state that although there is a matter preventing placement, the defense attorney is going to resolve the problem (See Forms 14B and 15B).
- 3) A signed Consent Form and Release of Information Form should be submitted with the Motion. Any available evaluative material or relevant reports should be attached.
- 4) Follow Section [IV] VI Procedure for Scheduling the HG 8-505 Evaluation.
- 5) Include with the 8-505 Order any available reports, evaluations or material relevant to treatment needs and amenability to treatment, e.g., PSI, presentence psychiatric evaluation.
- 6) If a request for extension is granted, insure that a specific date is set by which the report is to be submitted in order to insure that the evaluation is conducted promptly and the report is submitted without delay.
- 7) For those judges scheduling reviews, a specific evaluation date may not be necessary. Instead, the Order will authorize ADAA to determine the date (See Form 5).
- 8) A hearing on the Motion for Modification of Sentence should be scheduled at least every 90 days until a definite admission date is provided and then about 30-45 days prior to the admission date. This will provide a mechanism to insure that consistent placement efforts are made.

ADAA IS OBLIGATED TO FACILITATE PROMPT PLACEMENT.

- 9) It takes approximately two weeks for DPSCS to process the inmate's release and complete the medical clearance. It is suggested that the Order provide that admission take place "on or before _____," inserting a date a few days after the admission date provided. This will provide some leeway in the event of unforeseen delays (See Form 11B). The probation Order should provide that probation commences upon admission to _____ residential program. It is also suggested that the 8-507 Order state that the ADAA shall notify the court and counsel when admission to the program occurs (See Form 11A).
- 10) If the defendant is incarcerated in a local detention center, processing the release can be accomplished more easily and quickly than if the defendant is incarcerated in a correctional facility.

- 11) The Order should direct the correctional facility or local detention facility to transport the defendant to the specified program. The programs are private, and the Court has no authority to order the program to transport.
- 12) A copy of the signed release of information, the 8-507 Order, and assessment report, and any other relevant material should be attached to the Probation Order to permit the probation agent to obtain information about the defendant's progress and to understand the defendant's treatment needs.
- 14) The Division of Parole and Probation should contact the program immediately in order to insure that the program provides information regarding treatment progress and/or failures (See Form 13C).

VIII. REVIEW DURING PLACEMENT

Some judges may choose to conduct a periodic review in order to follow the progress of the defendant. Judicial oversight and encouragement are an important part of the commitment process and are recommended.

The treatment providers will submit progress reports to the monitoring/supervising agency and to the Court at intervals to be determined by the Court (See Form 12).

The reports should be submitted to the Court and to counsel at least two (2) days prior to any hearing.

Transportation to review hearings depends upon the provider and the status of the defendant, e.g., on probation, dually committed, or "on and off grounds privileges.

IX. TRANSPORTATION

Transportation may be provided by law enforcement officials, detention center staff, DPSCS staff, or sheriff's department staff within the local jurisdiction. The Court is authorized to utilize these agencies for transportation only when using this statute.

- 1) If the defendant is committed to both the local detention center and ADAA, local detention center staff provides the transportation.
- 2) If the defendant is sentenced to the Division of Correction, DPSCS staff transports to and from the evaluation site, to Court for any hearings scheduled prior to Modification of the Sentence, and to the residential program on the admission date. The Order granting the Motion for Modification and the Probation Order should indicate that the granting of the Motion and commencement of probation occur upon admission to the program.

- 3) The dually committed defendant will be transported from the program to the Court for any review hearings scheduled by the local detention center staff. If the judge chooses to allow the program to transport, this must be addressed in the Order, bearing in mind that the judge has no authority to order the program to transport.

X. ESCAPE OR TERMINATION FROM TREATMENT

1. When a defendant absconds from treatment or is terminated due to noncompliance with program rules, ADAA or its designee shall notify the committing Court as soon as it is reasonably possible.
2. A fax, which will include the date the defendant left treatment, will be sent to the judge who signed the Court Order. In the event that the provider is terminating treatment due to noncompliance, a brief statement of violations will be included.
3. The statute does not require ADAA or its designee to notify any other agencies. Therefore, upon receipt of the fax, a copy should be provided immediately to the State, defense, local detention center, or Parole and Probation, if applicable.
4. It is advisable that the clerk prepare a “no bail” bench warrant and attach a copy of the fax outlining the violations. If the judge who ordered the commitment is unavailable, the warrant will be presented to the “chambers” or “duty” judge for signature.
5. Absconding from treatment constitutes escape pursuant to Md. Code Ann., CL Sec. 9-401 et. seq. In order to determine whether charges are warranted, the State’s Attorney’s Office requires prompt notification of the escape and any available information about the defendant’s location. In addition, a copy of the commitment for placement and information from the provider about the termination of treatment should be given to the State’s Attorney.

INFORMATION FOR STATE’S ATTORNEY

- Notification of escape.
 - Defendant’s location.
 - Copy of HG 8-507 Order.
6. If the defendant is dually committed to ADAA and the local detention center, the detention center may choose to issue a retake warrant.

XI. TERMINATION/EXTENSION OF COMMITMENT

- Commitment lasts up to one year (See Form 16).
- Commitment may be extended at six (6)-month intervals by the Court on its own volition, or at the request of State, defense, or ADAA (See Form 17).

ADAA's duty is limited to notifying the Court of termination. The Court should insure that the parties, any monitoring agencies, or other custodial agency are informed.