

## Judicial Aid for Medical Treatments

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Judicial aid for medical treatments is essentially applied under the terms of articles 43 and 44 of the Criminal Code, and, in general, on the basis of the conclusions reached by medical-psychiatric experts. The above articles are formulated in the following manner:

### *“Article 43*

1. In the event that the mental condition of a perpetrator who, as a result of that condition, has committed an act subject to punishment by detention or imprisonment by law requires medical treatment or special care, then the judge can order the perpetrator to be placed in a sanatorium or a therapeutic centre if it is assumed that this shall eliminate or lessen the risk of the perpetrator committing other acts subject to punishment. The judge can also order outpatient treatment provided that the perpetrator poses no threat to others.

If, as a result of his or her mental condition, the perpetrator poses a serious threat to public safety, making it necessary for steps to be taken in order to avoid placing others in danger, then the judge can commit the individual to an appropriate institution, in order to prevent danger to others. Institutionalization shall be carried out in an appropriate sanatorium.

The judge shall issue his or her opinion based on expert evaluation of the physical and mental condition of the perpetrator and on the basis of the need for institutionalization, treatment or care.

2. In instances where the perpetrator is institutionalized or placed in a sanatorium or therapeutic centre, the judge shall suspend imprisonment.

In cases involving outpatient care, the judge can suspend imprisonment in order to make allowance for the type of treatment. In such

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cases, the judge can give orders according to Article 41 paragraph 2 and if necessary order supervision.

3. Should the treatment in the institution be terminated without positive results, then the judge is to decide if, and to what degree, the suspended imprisonment is to be enacted.

Should outpatient treatment appear to be ineffective or endanger others, but the mental condition of the perpetrator nevertheless call for treatment or special care, then the judge shall order the individual to be placed in a sanatorium or therapeutic centre. Should treatment in such an institution be unnecessary, then the judge shall decide if, and to what degree, the suspended imprisonment is to be enacted.

As an alternative to imprisonment, the judge can order that another type of measure be taken, assuming that the preconditions for such action are met.

4. The responsible authority shall terminate the measure once its underlying cause no longer exists.

If the cause of a measure has not completely disappeared, then the responsible authority can order release on probation from the institution or the treatment. The released individual can be placed under supervision. The responsible authority shall cancel the release on probation and rehabilitation measures once they are no longer necessary. The responsible authority shall notify the judge of its decision before release.

5. After having heard the opinion of the physician, the judge shall decide if, and to what degree, the suspended imprisonment is to be enacted at the moment of the release from the institution or at the end of the treatment. In particular, the judge can dispense with imprisonment altogether if there is reason to fear that the effect of the measure would be seriously compromised.

The period of time during which an individual is deprived of his or her freedom as a result of institutionalization shall be deducted from the suspended imprisonment.

When the responsible authority communicates its decision, it shall state whether or not in its opinion imprisonment would prove detrimental to the individual who has been released.

*Article 44*

1. If the perpetrator in question is an alcoholic, and if the offence committed is related to this condition, then the judge can have the individual committed to an institution for the cure of alcoholics in order to prevent new offences or crimes. The judge can also order outpatient treatment. Article 43 paragraph 2 applies by analogy.  
When necessary, the judge shall order an expert examination of the physical and mental condition of the perpetrator, as well as an evaluation of the advisability of treatment.
2. Institutions for the cure of alcoholics shall be run separately to other institutions mentioned in this law.
3. If the institutionalized individual proves to be incurable, or if the preconditions for release on parole are not met after two years of treatment, then the judge shall decide, after having received the opinion of the administrators of the institution, if, and to what extent, the suspended imprisonment is to be enacted.  
Instead of carrying out the imprisonment, the judge can order a different type of measure to be enacted, assuming that the preconditions for such a decision are met.
4. Should the responsible authority hold that the institutionalized individual has been cured, then it shall release that individual.  
It can release the individual on parole for one to three years and place this individual under supervision for this period of time.  
The authority shall communicate its decision to the judge before release.
5. The judge shall decide if, and to what extent, the suspended imprisonment is to be enacted following release from the institution or at the end of the treatment. The responsible authority shall express its opinion in communicating its decision. The period of time during which an individual is deprived of his or her freedom as a result of institutionalization is to be deducted from the remaining term of the suspended sentence.
6. The present article is applicable by analogy to drug addicts.  
Should a drug addict after being sentenced to prison require treatment and is treatable and willing, request commitment to an institution for drug addicts then the judge shall order this and suspend the remaining sentence.”

As is readily apparent, obligatory medical treatments can permit those subject to criminal convictions to benefit from a suspension of the punishment, which is substituted by commitment or placement in a hospital or an appropriate establishment, or in a program of outpatient care.

## II.

The therapeutic techniques applied to drug addicts within the framework of these treatments do not differ from those normally applied by physicians at their offices or in hospitals. Based on the benefits of the specific treatments, the physician chooses the approach based suited to the patient involved, selecting according to that patient's interests. No method is forbidden or advised against on principle, on the condition that the therapeutic intentions and goals are pursued in a rigorous manner, and that the patients are clearly informed of the therapeutic projects undertaken, as well as the means utilized to implement them.

The indication of the treatment must take into account eventual accompanying psychiatric conditions, which can often prove grave, as well as the possibility for the psychological and social rehabilitation of the individuals involved.

## III.

As a rule, such situations are dealt with through a medical-social network, both because of the factors tying the patient and his or her physician to the public services, meaning the punishments and other measures issued by the Department of Justice and the police departments involved, to which periodic reports must be made, and in light of the advantages procured by collaborating with the other partners involved in such custody measures, be they the rehabilitation agencies on the canton level, the supervisory offices, the services for the protection of youths related to drug addicts, the Federal Health Insurance agency and social services, or whatever medical services may prove necessary, as in the case of grave physical repercussions.

## IV.

The fundamental elements making up the medical approaches within the framework of the “obligatory” treatments do not differ from those employed in “voluntary” treatment. The elements, once again, consist of:

- a clear indication of the therapeutic objectives and the means to be used in obtaining them;
- the therapeutic report, a key element in terms of subsequent contacts, which must be adapted to meet the on-going developments in the clinical situation and the need of transparency concerning the different roles, realms of authority and areas of responsibility of each party involved;
- the overall supervision of the case, by means of a network and in terms of meaningful entities;
- accompanying psychological and educational initiatives designed to achieve the best possible social rehabilitation or to maintain, to as great an extent as possible, residual forms of independence;
- control of and abstinence from all forms of drugs, including cannabis, and from all psychotropic medications not covered by prescriptions;
- prevention of relapses and the management, within the context of the on-going nature of the necessary care, of eventual relapses;
- efforts focused on “stimulating the individual to change his or her life style”, an area which calls for constant support.

## V.

The termination of these forms of treatment can be:

- determined by the duration of the suspension applied to the legal measure;
- set by the physician on the basis of the on-going developments in the clinical situation;
- stipulated by the administrative authorities or by the courts, especially in light of the degree to which the parties involved have collaborated in the performance of the proposed therapeutic measures, and of the results recorded.

## VI.

The effectiveness of “obligatory” treatments does not differ from that of “voluntary” ones.

When correctly applied, and assuming that the role of each party is respected, obligatory treatments can, on occasion, provide even greater cause for satisfaction. The results are all the more beneficial:

- when both the primary and the secondary aspects of the forms of behaviour of the drug addicts are clarified;
- when the underlying motives of the interested parties, in terms of the choice they have made within the legal proceeding, remain strong;
- when the forms of treatment are able to offer, within the framework of a firmly established therapeutic relationship, the protection needed against the compulsive and impulsive tendencies displayed by individuals who experience drug addiction, with the end goal being to avoid relapses.

Naturally, the results obtained also depend on the type of clientele involved and on the skills of the therapeutic teams.

## VII.

Any drug addict can benefit from such treatments, assuming that his or her personal and legal situation makes this possible.

Application of article 43 of the Criminal Code is of particular benefit in the case of minors and young adults, as well as individuals who require psychological and social support for the purpose of emotional and socioprofessional rehabilitation. Such an approach is equally useful in dealing with drug addicts who carry with them the scars caused by the duration and the chronic nature of their psychological and social suffering.

As regards the results obtained through placement in specialized institutions, the statistics of the Fondation du Levant de Lausanne show a 15 percent increase in the success rate for drug addicts placed under the terms of article 44 of the Criminal Code.

**VIII.**

It is an accepted principle that preference must be given to these therapeutic measures in all situations where they can be applied in a realistic manner to replace purely repressive approaches.