

# **RIGHTS REGARDING INVOLUNTARY CIVIL COMMITMENT FOR ALCOHOL AND SUBSTANCE ABUSE IN MASSACHUSETTS**

**Prepared by the Mental Health Legal Advisors Committee  
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## **What is Massachusetts General Law Chapter 123, Section 35?**

Section 35 is a Massachusetts law that allows a person to request a court order requiring someone to be civilly committed and treated involuntarily for alcohol or substance abuse.<sup>1</sup>

A court may commit a person under Section 35 if the court concludes that:

- the person is abusing alcohol or any drugs to the extent that the person's health is substantially injured,
- the person's work, socializing, or other functioning is substantially impacted, **or**
- the person cannot restrain themselves from using alcohol or drugs.<sup>2</sup>

## **Who can petition the court for a Section 35 commitment?**

The following people can petition the court to request a Section 35 civil commitment for someone:

- Police officer;
- Physician, or doctor;
- Spouse;
- Blood relative;
- Guardian;
- Court official.<sup>3</sup>

## **How does the commitment process work?**

A petition for civil commitment under Section 35 can be filed at any district court or juvenile court. Once the court receives a petition for commitment, the person subject to the petition will receive a summons, an order to appear in court before a judge. The person has the right to be represented by an attorney. If the court finds that the person is too poor to afford a lawyer, the court will immediately appoint an attorney for the person.<sup>4</sup>

At the summons hearing, the court will determine whether or not to involuntarily commit the person based upon testimony on the person's medical diagnosis and other relevant factors. The court shall order an evaluation of the person's physical and mental health by a qualified physician, psychologist or social worker.<sup>5</sup> The person's attorney may present independent expert testimony or other testimony from family, friends, employers and others concerned.

For the person to be committed, there also must be a likelihood of serious physical harm directly related to the person's current use of a substance.<sup>6</sup> A judge may order a commitment under Section 35 only when less restrictive alternatives to such a commitment are unavailable.<sup>7</sup>

If the person does not appear at court as indicated in the summons and if any delay would put the person's physical health at risk, the court can issue a warrant for the person to be arrested and presented before the court.<sup>8</sup>

### **What happens if the court orders the person to be civilly committed under Section 35?**

An order may require that the person submit to treatment for up to 90 days. The court may only commit the person to a licensed inpatient substance abuse treatment facility: the Women's Addiction Treatment Center (WATC) facility in New Bedford; the Men's Addiction Treatment Center (MATC) in Brockton; or another community treatment center.<sup>9</sup>

If these facilities are full and cannot accept more patients, the court may commit the person to Bridgewater State Hospital if male, or Framingham Correctional Institution if female, keeping the person separate from convicted criminals as mandated by Section 35.<sup>10</sup>

Treatment consists of an assessment of the person's need for detoxification and rehabilitation. If necessary, the person is provided detoxification treatment. In rehabilitation, the person learns more about addiction, how to stay sober, and how to prevent relapse. Counselors encourage the person to engage in aftercare treatment services and supports.<sup>11</sup>

All inpatient services for the care and treatment of alcoholism or substance abuse must be approved by the Department of Public Health.<sup>12</sup>

### **What other rights does a person have under Section 35?**

A person's need for commitment must be reviewed by the facility's superintendent on days 30, 45, 60, and 75 as long as the commitment continues.

A person can be released prior to the expiration of the commitment period if the superintendent states in writing that releasing the person will not likely result in serious harm to that person. Upon release, the person will have access to further treatment, including the option to remain at the facility voluntarily.<sup>13</sup>

Every person committed under Section 35 should receive an individualized treatment plan and at least four hours of treatment per day.<sup>14</sup> Persons may not be subject to strip searches, body cavity searches, or similar measures.<sup>15</sup> Physical restraint in any form is prohibited.<sup>16</sup>

### **What issues should one be aware of regarding a Section 35 commitment?**

Historically, there have not been enough beds for persons committed under Section 35 to all be treated at licensed inpatient treatment facilities. As a result, persons are routinely committed under Section 35 to prisons. Persons committed to such facilities have expressed concerns about limited treatment programs, the stigma associated with the prison setting, and some provisions of Section 35 – such as the separation of patients from convicts – not being followed.<sup>17</sup>

A person who has been committed under Section 35 is prohibited from being issued a firearm identification card or a license to carry. After five years from the date of commitment, a person may petition for relief. Relief may be granted if the Court finds that the person is not likely to act in a manner that is dangerous to public safety. If the petition is denied, a person may appeal to the appellate division of the district court.<sup>18</sup>

### **What are some resources on substance abuse treatment and Section 35?**

- [The Substance Abuse and Mental Health Services Administration](#). A website with behavioral health resources.
- [Department of Health and Human Services, Section 35 – FAQ](#). Another flyer on § 35.
- [Committee for Public Counsel Services](#). The state agency that provides legal representation for those who cannot afford an attorney.
- [AA Massachusetts](#). A website with support groups for people who abuse alcohol.
- [Al-Anon Massachusetts](#). A website with support groups for those affected by another person's abuse of alcohol.
- [Nar-Anon New England Region](#). A website with support groups for those affected by another person's abuse of drugs.
- [The Massachusetts Substance Abuse Information and Education Helpline](#), 800-327-5050 (available 24/7). A hotline that provides free and confidential referrals for people who abuse alcohol, drugs and other substances.
- [Department of Public Health Bureau of Substance Abuse Services](#). The state oversight agency for substance abuse treatment services.
- [Massachusetts Organization for Addiction Recovery](#). An organization that supports and advocates for people affected by addiction.

## ENDNOTES

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<sup>1</sup> M.G.L. c. 123, § 35.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> M.G.L. c. 123, § 35.

<sup>6</sup> Department of Health and Human Services, Section 35 – FAQ,

<http://www.mass.gov/eohhs/gov/departments/dph/programs/substance-abuse/addictions/drugs-and-alcohol/section-35-faq.html>.

<sup>7</sup> *O'Connor v. Donaldson*, 422 U.S. at 576 (1975); *See also Commonwealth v. Nassar*, 380 Mass. 908, 917-18 (1980).

<sup>8</sup> M.G.L. c. 123 § 35.

<sup>9</sup> Department of Health and Human Services, Section 35 – FAQ,

<http://www.mass.gov/eohhs/gov/departments/dph/programs/substance-abuse/addictions/drugs-and-alcohol/section-35-faq.html>.

<sup>10</sup> M.G.L. c. 123, § 35.

<sup>11</sup> Department of Health and Human Services, Section 35 – FAQ,

<http://www.mass.gov/eohhs/gov/departments/dph/programs/substance-abuse/addictions/drugs-and-alcohol/section-35-faq.html>.

<sup>12</sup> M.G.L. c. 123, § 35.

<sup>13</sup> M.G.L. c. 123, § 35.

<sup>14</sup> 105 CMR 164.073-.074.

<sup>15</sup> 105 CMR 164.079(B)(2).

<sup>16</sup> 105 CMR 164.078(C).

<sup>17</sup> *Jane Doe v. Patrick*, No. 1:14-cv-12813 (D. Mass. 2014), Complaint at 6, 9-10.

<sup>18</sup> M.G.L. c. 123, § 35.