

RIGHTS REGARDING INVOLUNTARY CIVIL COMMITMENT FOR TREATMENT OF AN ALCOHOL AND SUBSTANCE USE DISORDER IN MASSACHUSETTS

**Prepared by the Mental Health Legal Advisors Committee
August 2018**

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 an alcohol or substance use disorder.¹

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;
- Spouse;
- Blood relative;
- Guardian;
- Court official.²

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, if there are reasonable grounds to believe the person subject to the petition won't appear voluntarily for a hearing, and that further delay would present an immediate physical danger to the person, a judge may issue a warrant for that person. This means that police officers will attempt to locate the person, take the person into custody, and deliver the person to the court for a commitment hearing. The warrant is valid for up to five consecutive days, excluding Saturdays, Sundays, and legal holidays, or until such time as the person goes to court, whichever is sooner. If a judge does not issue a warrant for the person, the person subject to the petition will receive a summons, which is an order to appear in court before a judge.³

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.⁴

At the court hearing, the court shall order examination by a qualified physician, psychologist or social worker.⁵ The person has a right to refuse the examination. The person's attorney may present independent expert testimony or other testimony from family, friends, employers and others concerned.⁶

After testimony and argument, the judge will decide if there is clear and convincing evidence that:

- The person has an alcohol or substance use disorder; and
- There is a likelihood of serious harm as a result of that disorder.

If both criteria are met, the person will be involuntarily committed. If one (or both) criteria are not met, the person will be released.⁷

A judge should order a commitment under Section 35 only when less restrictive alternatives are unavailable.⁸

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.⁹

Where may a person be civilly committed to?

The court may only commit the person to a facility designated by the state Department of Public Health (DPH).¹⁰ The facility must be licensed or approved by DPH or the state Department of Mental Health (DMH) for the treatment of an alcohol or substance use disorder.¹¹

A list of facilities that currently treat persons under Section 35 is available in a state Department of Health and Human Services publication, Section 35 – FAQ about Civil Commitment of those with Substance Abuse problems and other Options, available at <http://www.mass.gov/eohhs/gov/departments/dph/programs/substance-abuse/addictions/drugs-and-alcohol/section-35-faq.html>.

If these facilities are full and cannot accept more patients, or if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility, then the court may commit

- a man to the Massachusetts correctional institution at Bridgewater , or any other correctional facility approved by the Commissioner of the state Department of Correction (DOC), or
- a woman to a secure facility for women approved by DPH or DMH.¹² (Women can no longer be committed to MCI Framingham or any other correctional facility.)

If committed to a correctional facility, the person must be housed and treated separately from persons serving a criminal sentence.¹³

What services should a person committed pursuant to Section 35 receive?

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.¹⁴

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.¹⁵

A person can be released prior to the expiration of the commitment period if the superintendent of the facility states in writing that releasing the person will not likely result in serious harm.¹⁶ Upon release, the person will have access to further treatment, including the option to remain at the facility voluntarily.¹⁷

DPH-licensed facilities

If the person is committed pursuant to Section 35 to a facility licensed by DPH, certain of DPH regulations within 105 CMR 164 apply. Rights pursuant to applicable regulations include:

- The right to an individualized treatment plan.¹⁸
- The right to at least four hours of treatment per day.¹⁹
- The right to a written discharge summary including any appropriate referrals, supports and services available to the client after discharge, and an aftercare and follow-up plan.²⁰
- The right to be free from strip searches, body cavity searches, or similar measures.²¹

DMH-operated units or facilities

If the person is committed pursuant to Section 35 to a facility or unit within a facility operated by DMH, DMH regulations 104 CMR 27.19 apply.²² Rights pursuant to those regulations include:

- The right to space that is safe, comfortable, well-lit, well-ventilated, adequate in size and of sufficient quality to allow for treatment.²³
- The right to treatment upon giving informed consent, or if the person is incapable of providing informed consent, the right to treatment as authorized by a guardian or health care agent. Prior to an adjudication of incapacity and appointment of a guardian, or activation of a health care proxy, the person retains the right to accept or refuse medications as prescribed.²⁴
- The rights set forth in DMH regulation 104 CMR 27.13, such as the right to telephone, mail, visits, access to an attorney or legal advocate, daily access to the outdoors.²⁵
- The human right to have drug screens conducted in a manner that preserves the person's dignity.²⁶
- The right to safeguards to protect rights, including through the right to the assistance of a facility human rights officer and human rights committee.²⁷
- The right to protections regarding the use of restraint and seclusion as provided in DMH regulation, 104 CMR 27.12.²⁸
- The right to make a complaint regarding any incident or condition which the person believes to be dangerous, illegal or inhumane as those terms are defined in DMH regulation, 104 CMR 32.00.²⁹

- The right to competent interpreter services for non-English speaking patients in accordance with the requirements of DMH regulation, 104 CMR 27.18.³⁰
- The right, upon discharge, to a post-discharge treatment plan with identified resources for further treatment.³¹

DOC-operated facilities

If the person is committed pursuant to Section 35 to a facility operated by DOC, DOC regulations 103 DOC 650.17 apply. Rights pursuant to these regulations include:

- The right to at least twenty hours of substance abuse specific treatment per week.³²
- The right to an individualized treatment plan that is reviewed and updated weekly.³³

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

The treatment of men versus women

Currently, there are not been enough beds for men committed under Section 35 to all be treated at licensed inpatient treatment facilities. As a result, men are routinely committed under Section 35 to prisons. In 2016, the state Legislature repealed the provision that had allowed women to be civilly committed to MCI-Framingham. However, in 2017 the Legislature amended Section 35 to allow civil commitment of men under Section 35 to any correctional facility approved by the DOC Commissioner, not just to MCI Bridgewater. The differential treatment of men and women in implementing Section 35 is arguably unconstitutional. Men committed to correctional facilities also have expressed concerns about the stigma associated with the confinement in prison, abuse by correctional officers, limited treatment programs, and some provisions of Section 35 – such as the separation of patients from convicts – not being followed.³⁴

Firearms

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 and the granting of relief would not be contrary to the public interest. If the petition is denied, a person may appeal to the appellate division of the district court.³⁵

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 about Civil Commitment of those with Substance Abuse problems and other Options](#). Another flyer on Section 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

¹ Mass. Gen. L. ch. 123, § 35.

² *Id.*

³ Uniform Rules for Civil Commitment Proceedings for Alcohol and Substance Use Disorders Rule 3: Issuance of Warrant or Summons; Execution of Warrant.

⁴ Uniform Rules for Civil Commitment Proceedings for Alcohol and Substance Use Disorders Rule 4: Appointment of Counsel.

⁵ Uniform Rules for Civil Commitment Proceedings for Alcohol and Substance Use Disorders Rule 5: Order for Examination.

⁶ . Uniform Rules for Civil Commitment Proceedings for Alcohol and Substance Use Disorders Rule 6: Conduct of Hearing; Standard of Proof.

⁷ *Id.*

⁸ *O'Connor v. Donaldson*, 422 U.S. at 576 (1975); *See also Commonwealth v. Nassar*, 380 Mass. 908, 917-18 (1980).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* As of December 2017, the secure setting for men committed pursuant to Section 35 is the Massachusetts Alcohol and Substance Abuse Center (MASAC) at Plymouth, run by the Department of Corrections. While Mass. Gen. L. ch. 123, § 35 still references a facility at Bridgewater, where MASAC used to be located, MASAC has since moved to Plymouth. The secure facilities for women are the WRAP unit located at Taunton State Hospital and a unit at Lemuel Shattuck Hospital, both of which are operated by a vendor, Highpoint. MCI-Framingham was not approved by DPH and women committed pursuant to Section 35 without criminal involvement are no longer sent there. However, women who have both criminal charges and a civil commitment pursuant to Section 35 may still be sent to MCI-Framingham.

¹³ *Id.*

¹⁴ *See* Department of Health and Human Services, Section 35 – FAQ about Civil Commitment of those with Substance Abuse problems and other Options, <http://www.mass.gov/eohhs/gov/departments/dph/programs/substance-abuse/addictions/drugs-and-alcohol/section-35-faq.html>.

¹⁵ M.G.L. c. 123, § 35.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 105 CMR 164.073.

¹⁹ 105 CMR 164.074; 105 CMR 164.133(D)(2).

²⁰ *See* 105 CMR 164.075(A)(3).

²¹ 105 CMR 164.079(B)(2).

²² As of December 2017, DMH operated only one unit authorized to receive persons committed pursuant to Section 35 -- the Women's Recovery from Addictions Program (WRAP) unit located at Taunton State Hospital.

²³ 104 CMR 27.18(9).

²⁴ 104 CMR 27.18(11).

²⁵ 104 CMR 27.18(13).

²⁶ *Id.*

²⁷ *Id.*

²⁸ 104 CMR 27.18(14).

²⁹ 104 CMR 27.18(16).

³⁰ 104 CMR 27.18(17).

³¹ 104 CMR 27.18(21).

³² 103 DOC 650.17(B)5.

³³ 103 DOC 650.17(B)6.

³⁴ Jane Doe v. Patrick, No. 1:14-cv-12813 (D. Mass. 2014), Complaint at 6, 9-10.

³⁵ Mass. Gen. L. ch. 123, § 35.