

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

**Prepared by the Mental Health Legal Advisors Committee
February 2020**

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 cannot 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.

A judge should order a commitment under Section 35 only when less restrictive alternatives are unavailable.⁷

What constitutes an alcohol or substance use disorder under Section 35?

The chronic or habitual consumption of alcoholic beverages/substances by a person to the extent that:

- such use substantially injures the person's health or substantially interferes with the person's social or economic functioning, or
- the person has lost the power of self-control over the use of such substances.⁸

What constitutes a likelihood of serious harm under Section 35?

1. A substantial risk of physical harm **to the person himself** as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm;
2. A substantial risk of physical **harm to other persons** as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or
3. A very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is **unable to protect himself in the community** and that reasonable provision for his protection is not available in the community.⁹

What happens if the criteria are met?

If the criteria are met, the judge will sign an order for treatment for up to 90 days at an approved treatment facility.¹⁰ If the criteria are not met, the person will be released.¹¹

May a person appeal a Section 35 commitment?

Yes. A person committed under Section 35 has the right to expedited appeal to the Appellate Division of the District Court. Appeals must be filed within 7 days and it takes about 2 weeks to get a hearing. A person should consult with their attorney about whether to appeal.

It may be worth appealing even if the appeal is heard after the person's release, particularly if the person believes they might be sectioned again by the same person on the same or similar facts.¹²

Appealable issues may include:

- Whether the warrant was valid;
- Whether the petitioner had authority to petition;
- Whether the evidence was clear and convincing;
- Whether the risk of harm was imminent;
- Whether admitted hearsay was substantially reliable;
- Whether the commitment was the least restrictive alternative;
- Whether the likelihood of serious harm was in fact due to alcohol/substance use.¹³

Where may a person be civilly committed to?

If committed, the respondent will be returned after the hearing to a holding cell to await transportation to the facility by the local sheriff's department. Transport often does not occur until after the court closes, so the respondent may wait several hours depending on what time the hearing was held.¹⁴

The respondent is handcuffed and shackled and transported to the treatment facility by the sheriff's department. On occasion, civilly committed individuals are transported in the same vehicle as others facing criminal charges, although they may be placed in separate compartments.¹⁵

The court may only commit the person to a facility designated by the Department of Public Health (DPH).¹⁶ The facility must be licensed or approved by DPH or the Department of Mental Health (DMH) for the treatment of an alcohol or substance use disorder.¹⁷

A list of facilities that currently treat persons under Section 35 is available at <http://www.mass.gov/eohhs/gov/departments/dph/programs/substance-abuse/addictions/drugs-and-alcohol/section-35-faq.html> (click on Section 35—Frequently Asked Questions).

What if these facilities are full?

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,
 - any other correctional facility approved by the Department of Correction (DOC) Commissioner, or
 - Hampden County Sheriff's Department (HCSD)
- a woman to
 - a secure facility for women approved by DPH or DMH¹⁸
 - but **not to** a correctional facility.

If committed to a correctional facility, a man must be housed and treated separately from persons serving a criminal sentence.¹⁹

What services should a person committed under Section 35 receive?

Treatment generally consists of detox and rehabilitation services.

Upon arrival at a treatment facility, an individual receives an intake assessment by a medical professional, including of the need for detoxification, as well as medical and mental health services. Intake protocols vary across facilities.

During detox, medical staff monitor the individual's health. If necessary, the person is provided detox treatment. The length of time necessary for detoxification varies depending on the substance(s) used, the amount of use, the time since last use, and the individual's overall health.

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.²⁰

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 of the commitment.²¹

A person may 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.²² Upon release, the person will have access to further treatment, including the option to remain at the facility voluntarily.²³

DPH-licensed facilities

If an individual is committed pursuant to Section 35 to a facility licensed by DPH, the individual has rights including:

- The right to an individualized treatment plan.²⁴
- The right to at least 4 hours of treatment per day.²⁵
- The right to a written discharge summary and an aftercare plan developed with an Aftercare Coordinator including any appropriate referrals to
 - community-based case management,
 - substance use disorder services,
 - medication assisted treatment (MAT)
 - medical and psychiatric appointments
 - recovery coaches,
 - recovery support navigators, and
 - behavioral health community partners.²⁶
- The right to be free from strip searches, body cavity searches, or similar measures.²⁷

DMH-operated units or facilities

If an individual is committed pursuant to Section 35 to a facility or unit within a DMH-operated facility,²⁸ the individual has rights including:

- The right to space that is safe, comfortable, well-lit, well-ventilated, adequate in size and of sufficient quality to allow for treatment.²⁹
- 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.³⁰
- The rights to telephone, mail, visits, access to an attorney or legal advocate, daily access to the outdoors as provided in DMH regulation 104 CMR 27.13.³¹
- The human right to have drug screens conducted in a manner that preserves the person's dignity.³²
- The right to safeguards to protect rights, including through the right to the assistance of a facility human rights officer and human rights committee.³³
- The right to protections regarding the use of restraint and seclusion as provided in DMH regulation 104 CMR 27.12.³⁴
- 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 32.00.³⁵
- The right to competent interpreter services for non-English speaking patients as provided by DMH regulation 104 CMR 27.17.³⁶
- The right, upon discharge, to a post-discharge treatment plan with identified resources for further treatment, including medical and psychiatric appointments, community-based case management services, MAT providers and Recovery Coaches.³⁷

DOC-operated facilities

If an individual is committed pursuant to Section 35 to a DOC-operated facility, the individual has rights including:

- The right to at least twenty hours of substance abuse specific treatment per week.³⁸
- The right to an individualized treatment plan that is reviewed and updated weekly.³⁹

Hampden County Sheriff's Department-operated facilities

If an individual is committed pursuant to Section 35 to a HSCD-operated facility, the individual has rights including those outlined in the Stonybrook Stabilization & Treatment Center at Ludlow Orientation Manual for Civilly Committed Clients (July 2018), available at <http://hcsdma.org/wp-content/uploads/2019/02/SSTC-Ludlow-Manual.pdf>.

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. In March 2019, a group of 10 men committed under Section 35 to MASAC sued the DOC and state agency officials alleging gender discrimination in their placement at a prison for substance use treatment.

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.⁴⁰

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 5 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.⁴¹

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

- Bureau of Substance Addiction Services, Section 35: The Process, <https://www.mass.gov/service-details/section-35-the-process>
- Bureau of Substance Addiction Services, [Section 35 – FAQ about Civil Commitment of those with substance abuse problems and other options.](#)
- [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 Mass. Gen. L. ch. 123, § 35.

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

⁸ Jessica Gallagher, Josh Grammel & Ann Grant, Section 35 Appeals, MCLE (2018), https://www.mcle.org/ePrograms/2190199P01/Gallagher_Section35-Appeals-PowerPoint-September-2018-MCLE1.PPT.

⁹ Mass. Gen. L. ch. 123, § 1.

¹⁰ Mass. Gen. L. ch. 123, § 35.

¹¹ Mass. Gen. L. ch. 123, § 35.

¹² Jessica Gallagher, Josh Grammel & Ann Grant, Section 35 Appeals, MCLE (2018), https://www.mcle.org/ePrograms/2190199P01/Gallagher_Section35-Appeals-PowerPoint-September-2018-MCLE1.PPT.

¹³ Jessica Gallagher, Josh Grammel & Ann Grant, Section 35 Appeals, MCLE (2018), https://www.mcle.org/ePrograms/2190199P01/Gallagher_Section35-Appeals-PowerPoint-September-2018-MCLE1.PPT.

¹⁴ Section 35 Commission, Powerpoint (July 1, 2019), <https://www.mass.gov/lists/section-35-commission-report>.

¹⁵ Section 35 Commission, Powerpoint (July 1, 2019), <https://www.mass.gov/lists/section-35-commission-report>

¹⁶ Mass. Gen. L. ch. 123, § 35.

¹⁷ Mass. Gen. L. ch. 123, § 35.

¹⁸ Mass. Gen. L. ch. 123, § 35. 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.

¹⁹ Mass. Gen. L. ch. 123, § 35.

²⁰ 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>.

²¹ Mass. Gen. L. ch. 123, § 35.

²² Mass. Gen. L. ch. 123, § 35.

²³ Mass. Gen. L. ch. 123, § 35.

²⁴ 105 CMR 164.073.

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

²⁶ See 105 CMR 164.075(A)(3).

²⁷ 105 CMR 164.079(B)(2).

²⁸ 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.

²⁹ 104 CMR 27.18(9).

³⁰ 104 CMR 27.18(11).

³¹ 104 CMR 27.18(13).

³² 104 CMR 27.18(13).

³³ 104 CMR 27.18(13).

³⁴ 104 CMR 27.18(14).

³⁵ 104 CMR 27.18(16).

³⁶ 104 CMR 27.18(17).

³⁷ 104 CMR 27.18(21).

³⁸ 103 DOC 650.17(B)5, available at <https://www.mass.gov/doc/doc-650-mental-health-services/download>.

³⁹ 103 DOC 650.17(B)6, available at <https://www.mass.gov/doc/doc-650-mental-health-services/download>.

⁴⁰ *Jane Doe v. Patrick*, No. 1:14-cv-12813 (D. Mass. 2014), Complaint at 6, 9-10.

⁴¹ Mass. Gen. L. ch. 123, § 35.