



## PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

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June 18, 2020

Sen. Cindy F. Friedman, Chair  
Sen Harriette L. Chandler, Vice Chair  
Rep. Daniel R. Cullinane, Vice Chair  
Joint Committee on Health Care Financing  
24 Beacon Street, Room 208  
Boston, MA 02133

Re: H.4531, An Act ensuring access to addiction services

Dear Sen. Friedman, Sen. Chandler and Rep. Cullinane:

The undersigned groups and individuals urge you to favorably report H.4531, which will ensure that those who are civilly committed for treatment of substance use disorder under G.L. c. 123, § 35 (“Section 35”) are treated in a health care setting and not a prison. While Massachusetts amended Section 35 to end the incarceration of female Section 35 patients in 2016, we continue to incarcerate male patients, a practice this H.4531 would stop. This legislation is necessary to end unlawful disability and gender discrimination. Furthermore, a failure to end the incarceration of SUD patients would signal that the legislature is not serious about moving away from the punitive practices that led us to mass incarceration. We must end the incarceration of people who have not even been charged with a crime and who undeniably need medical treatment, not incarceration. It is also far most cost-effective to invest treatment resources in community-based systems of care than in prisons and jails.

Massachusetts is the only state to incarcerate those civilly committed for SUD treatment. Leaders of the Commonwealth for three decades have acknowledged that this is inconsistent with proper treatment and also inconsistent with the correctional mission.<sup>1</sup> When Governor

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<sup>1</sup> See Commonwealth of Mass., Governor’s Special Advisory Panel on Forensic Mental Health, *Final Report* 33 (1989); Commonwealth of Mass., Dep’t of Corr. Advisory Council, *Final Report* 5 (2005); MGT of America, Inc., *Analysis of Health Care Costs in the Massachusetts Department Of Correction* 17, 78 (2011); Division of Capital Asset Management, *The Corrections Master Plan-The Final Report* (2011); recommendations of the Governor’s Opioid Working Group,

Baker in 2016 announced legislation ending the incarceration of female patients, he said, “Now, women with substance use disorder who are civilly committed for substance use disorder will not be sent to MCI Framingham and will get real treatment instead of jail time.”<sup>2</sup> Last year the Section 35 Commission established by Section 104 of Chapter 208 of the Acts of 2018, comprised of a diverse group of stakeholders, lawmakers, attorneys and medical experts, issued a report recommending that the Commonwealth prohibit the use of prisons and jails for Section 35 patients.<sup>3</sup>

Nevertheless, Massachusetts has expanded its reliance on prisons and jails for male section 35 patients in recent years, to the point that before the COVID-19 pandemic some three quarters of such patients were held in the Department of Corrections’ Massachusetts Alcohol and Substance Abuse Center (MASAC) or, pursuant to a memorandum of understanding with DOC, in the custody of the Hampden County Sheriff’s Department. We are informed that as of May 11, 2020 corrections officers have been moved to the periphery of MASAC, which is a welcome step, but begs the question of why the Department of Correction should continue to administer it. The DOC’s continuing contract with Hampden County, which houses Section 35 patients inside its Ludlow House of Correction, is inconsistent with this change at MASAC. Furthermore, community based providers in Western and Central Massachusetts are ready to step into this role. When the Section 35 Commission issued a Request for Information to see how many such providers would be interested in bidding on contracts for such services, in less than three weeks it received six responses in addition to the HCSD.<sup>4</sup>

There is no sound reason to incarcerate people committed under Sec. 35, and many reasons why this is wrong. Patients over the years have complained of harsh and punitive conditions and abusive treatment by corrections officers. Even without this, though, the mere presence of a Section 35 program in a prison is stigmatizing and counter-therapeutic. It instills shame, which fuels addiction, and anger, which can instill resistance to treatment. As one Hampden County patient told us, “It is still a jail.” Time and again, Section 35 patients have told PLS, in shock, “I can’t believe I’m in a jail. I didn’t break any law.”

Section 35 incarceration also perpetuates the stigma that surrounds addiction. As the Baker Administration’s “State Without Stigma” website notes:

*The stigma of drug misuse keeps people from seeking treatment. Words like “junkie,” “addict,” and “druggie” can hurt, damaging self-image and standing in the way of*

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<https://www.mass.gov/files/2017-08/recommendations-of-the-governors-opioid-working-group.pdf>

<sup>2</sup> <https://www.mass.gov/news/governor-baker-signs-legislation-ending-civil-commitments-at-mci-framingham-for-substance-use>.

<sup>3</sup> <https://www.mass.gov/doc/section-35-commission-report-7-1-2019/download>

<sup>4</sup> See Report of Section 35 Commission, Appendix I.

*recovery. Addiction is not a choice. It's a chronic disease similar to diabetes, heart disease and arthritis. Get the facts and embrace a community that needs our support. Join us as we make Massachusetts a #StateWithoutStigma.*

Using prisons and jails to house these patients sends exactly the wrong message to our communities about the nature of addiction. A patient's family, employers, and friends commonly believe the patient must have done something criminal. Incarceration negatively affects their personal relationships, prospects for employment, housing, willingness to continue in treatment after release, and other factors that are critical to the long-term ability to stay clean and sober. In some cases, family members are more hesitant to seek commitment knowing that incarceration is a possible – even likely – outcome.

Imprisoning people solely because of a medical condition and disability is not only bad policy, it is unlawful.

- The disparate treatment of men and women under Section 35 constitutes unlawful gender discrimination in violation of the Massachusetts and United States Constitutions. Women committed under Section 35 can only be sent to inpatient treatment facilities, even if the committing court finds that they need a secure facility. By contrast, men go to a correctional facility whenever there are no other available Section 35 treatment beds, regardless of their actual security needs.
- Confining men to a correctional institution because of their disease also constitutes unlawful disability discrimination. It is a vestige of past times when alcoholism and substance use disorders were seen as shameful, even criminal, moral failings. We do not incarcerate people for any other medical condition or disability. The practice subjects men to stigma and punishment instead of treatment, perpetuates unwarranted negative stereotypes, and reinforces the perception that they are second-class citizens who deserve no better.
- The practice also violates Section 35 patients' fundamental right to due process of law under the U.S. and Massachusetts constitutions. The constitution requires treatment that accords with the exercise of professional judgment. Unless there were no alternative, no doctor would choose a correctional setting for addiction treatment for a person who is not facing criminal charges. The courts have ruled repeatedly that the expense and administrative difficulties of establishing an appropriate treatment environment is no excuse for violating the constitution.

While a period to transition away from correctional administration may be necessary, it should not be allowed to continue indefinitely. We urge the Committee to report out H.4531 favorably.

cc: Rep. Robert DeLeo, Speaker of the House  
 Sen. Karen Spilka, President of the Senate  
 Rep. Ronald Mariano, Majority Leader  
 Sen. Cynthia Creem, Majority Leader  
 Rep. Marjorie C. Decker, Chair, Committee on Mental Health, Substance Use, and Recovery,  
 Sen. Julian Cyr, Chair, Committee on Mental Health, Substance Use, and Recovery  
 Sen. Michael Rodrigues, Chair, Committee on Ways and Means  
 Rep. Aaron Michlewitz, Chair, Committee on Ways and Means,  
 Rep. Ruth Balsler, Chair, Joint Committee on Elder Affairs

Signers:

Prisoners' Legal Services of Massachusetts  
 Mental Health Legal Advisors Committee  
 National Alliance on Mental Illness (NAMI) Massachusetts  
 Committee for Public Counsel Services  
 Community Reentry Program Inc.  
 Metro Boston Recovery Learning Community  
 Southeast Recovery Learning Community  
 Decarcerate Western Mass  
 Progressive Massachusetts  
 Black and Pink, Boston  
 American Civil Liberties Union of Massachusetts  
 Coalition for Effective Public Safety  
 Center for Women's Health and Human Rights, Suffolk University  
 Families for Justice As Healing  
 End Mass Incarceration Together (EMIT)  
 Out Now!  
 Criminal Justice Policy Coalition (CJPC)  
 Danna E. Mauch, CEO, Massachusetts Association for Mental Health (MAMH) and  
 Co-chair, Middlesex County Restoration Center Commission  
 Dianne Zimbabwe, Coordinator for Through Barbed Wire  
 Norma Wassel, NASW; member, steering committee, Mass. Bail Fund; consultant for defense  
 attorneys representing clients in Sec. 35 commitment hearings  
 Aime Matos, Decarcerate Western Mass  
 Lois Ahrens, Founding Director, The Real Cost of Prisons Project  
 Joel Thompson, Managing Attorney, Harvard Prison Legal Assistance Project  
 Patricia Garin, Adj. Professor, Northeastern University School of Law, Prisoners' Rights Clinic  
 Susan Sered, Director, Graduate Program in Crime and Justice Studies, Suffolk University  
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