

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 1984CV00828

**JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
JOHN DOE 4, JOHN DOE 5, JOHN DOE 6,
JOHN DOE 7, JOHN DOE 8, JOHN DOE 9,
JOHN DOE 10, JOHN DOE 11, JOHN DOE
12, AND JOHN DOE 13**, individually and on
behalf of all others similarly situated

Plaintiffs,

v.

CAROL MICI, Commissioner of the
Massachusetts Department of Correction;
PAMELA MacEACHERN, Superintendent of
MASAC at Plymouth; **THOMAS TURCO**,
Secretary of the Executive Office of Public
Safety and Security; **MASSACHUSETTS
DEPARTMENT OF CORRECTION;**
MONICA BHAREL, Commissioner of the
Department of Public Health; **MARYLOU
SUDDERS**, Secretary of Health and Human
Services; **DEPARTMENT OF PUBLIC
HEALTH.**

Defendants.

PROPOSED AMENDED COMPLAINT

Introduction

1. Plaintiffs, John Does 1-10 are incarcerated in a prison operated by the Massachusetts Department of Correction (DOC) because they have been civilly committed under Massachusetts General Laws Chapter 123, Section 35 (“Section 35”). Plaintiffs John Does 11-13 are incarcerated in the Section 35 program “Stonybrook Stabilization and Treatment Center” (SSTC) within the Hampden County House of Correction. They are not held because of any

criminal charges, but are imprisoned solely because they need inpatient treatment for an alcohol or substance use disorder (SUD).

2. On July 2, 2019, the Court certified a class of “all men placed or housed in a DOC facility solely pursuant to G.L. c. 123 § 35, from July 2, 2019 through the date of final judgment in this case and including the named plaintiffs.” Plaintiffs bring this amended complaint on behalf of all men civilly committed under § 35 to any correctional facility, and sub-classes of men committed to the DOC’s facility, the Massachusetts Alcohol and Substance Abuse Center (MASAC), and the Hampden County Correctional Facility, respectively.

3. Massachusetts is the only state that imprisons people solely for treatment of alcohol or substance use disorders. Other states recognize what public health experts know: these disorders are medical conditions for which people need treatment, not punishment.

4. Civil commitment to a correctional facility is detrimental to recovery. Patients experience a deep sense of shame, humiliation, and loss of dignity. They are intimidated by the harsh conditions of confinement, and they are angry and confused to find themselves in a correctional institution when they have not been convicted of any crime. Many, if not most, emerge from their incarceration traumatized by the experience and even more vulnerable to relapse and overdose.

5. For more than 30 years, numerous government commissions and task forces have urged the Commonwealth to put an end to incarceration under Section 35. In 2015, Governor Baker’s Opioid Working Group recommended that the Commonwealth transfer responsibility for all Section 35 civil commitments from the DOC to the Executive Office of Health and Human Services, stating: “It is important that treatment occur in a clinical environment, not a correctional setting, especially for patients committed civilly under section 35 of chapter 123 of

the General Laws.”¹ This echoes the recommendation of another Governor’s advisory panel decades earlier that “only individuals who are subjects of the criminal justice system” should be committed to prison under Section 35.²

6. In 2016, the Legislature repealed the provision in Section 35 that allowed women to be committed to a correctional institution. When he announced the change, Governor Baker 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.”³ Secretary of Health and Human Services Sudders echoed these remarks, stating “Drug misuse is not a crime. It’s an illness and we need to treat it as such . . . Since 1987 the Commonwealth has stated its commitment to ending this practice. Finally, the day has come.”⁴

7. That day has not come for men. Instead, in 2017, the Legislature amended Section 35 to increase the number of prison beds for men, authorizing civil commitment not only to MCI Bridgewater, but also to any other correctional facility designated by the DOC Commissioner.

8. More than two thousand men have been committed to prisons under Section 35 every year, although this year the overall commitments have been reduced somewhat due to COVID-19. These men are incarcerated only because the Defendants have chosen not to establish an adequate number of inpatient treatment beds in the community to meet the needs of men committed under Section 35.

¹ <https://www.mass.gov/files/2017-08/recommendations-of-the-governors-opioid-working-group.pdf> (last accessed March 4, 2019)

² Governor’s Special Advisory Panel on Forensic Mental Health, *Final Report* at 33 (1989).

³ <https://www.mass.gov/news/governor-baker-signs-legislation-ending-civil-commitments-at-mci-framingham-for-substance-use> (last accessed March 4, 2019)

⁴ See web.archive.org/web/20160209002502/http://www.mass.gov/governor/press-office/press-releases/fy2016/lt-gov-polito-opens-addictions-program-in-taunton.html (last accessed 1/14/19).

9. Men placed in correctional facilities under Section 35 represent a cross-section of the population of people needing civil commitment. About one-third are committed for alcoholism and the rest for opioid or other substance use disorders.

10. As put simply by former governor Deval Patrick, “treating those with substance abuse as prisoners is wrong.”⁵ For at least three fundamental reasons, it is also unlawful.

11. The disparate treatment of men and women under Section 35 constitutes unlawful gender discrimination. Women committed under Section 35 must be sent to inpatient treatment facilities in the community even if the committing court finds that they need a secure facility. By contrast, men go to prison when there are no other available Section 35 treatment beds, regardless of their actual security needs. In short, men are punished for their alcohol and substance use disorders while women “receive treatment, support, and recovery services in a dignified medical setting.”⁶

12. 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. Even today there is a widespread belief that those with substance use disorders are morally weak, deserving of their fate, and less worthy of care than individuals with other medical conditions. By authorizing their commitment to prison, Section 35 subjects men to stigma and punishment instead of treatment, perpetuates unwarranted negative stereotypes, and reinforces the perception that they are second-class citizens.

⁵ See <https://www.wbur.org/news/2014/02/20/patrick-criminal-justice> (last accessed March 4, 2019).

⁶ See remarks of Lieutenant Governor Karen Polito on July 26, 2016 in <https://blog.mass.gov/governor/opioid-addiction/administration-expands-addiction-program-for-women-at-taunton-state-hospital> (last accessed March 4, 2019)

13. Finally, civil commitment to prison under Section 35 violates the Plaintiffs' fundamental right to due process of law under the U.S. and Massachusetts constitutions. Because Section 35 commitment is a massive curtailment of liberty, it is subject to strict scrutiny under the due process protections in the Massachusetts Declaration of Rights. The Plaintiffs' unnecessary incarceration in correctional institutions, rather than an appropriate treatment facility, cannot survive strict scrutiny because it is not narrowly tailored to serve a compelling governmental interest and is not the least restrictive means available to vindicate that interest. It also represents a substantial departure from accepted professional judgment, practice, and standards. Confinement in a traumatic and counter-therapeutic environment sabotages the possibility of recovery and bears no reasonable relation to the purpose of Section 35.

14. Plaintiffs seek a declaratory judgment that their incarceration under Section 35 violates their rights under the Massachusetts Declaration of Rights; G.L. c. 93 §§ 102 and 103; G.L. c. 231A, § 1; 42 U.S.C. § 1983, the U.S. Constitution; the ADA; and the Rehabilitation Act. They also seek a permanent injunction barring civil commitment of men to correctional facilities under Section 35.

PARTIES

1. Plaintiff John Doe 1 suffers from substance use disorder and was civilly committed to MASAC under Section 35.

2. Plaintiff John Doe 2 has an alcohol use disorder and was civilly committed to MASAC under Section 35.

3. Plaintiff John Doe 3 has an alcohol use disorder and was civilly committed to MASAC under Section 35.

4. Plaintiff John Doe 4 has an alcohol use disorder and was civilly committed to MASAC under Section 35.

5. Plaintiff John Doe 5 has a substance use disorder and was civilly committed to MASAC under Section 35.

6. Plaintiff John Doe 6 has an alcohol use disorder and was civilly committed to MASAC under Section 35.

7. Plaintiff John Doe 7 has a substance use disorder and was civilly committed to MASAC under Section 35.

8. Plaintiff John Doe 8 has a substance use disorder and was civilly committed to MASAC under Section 35.

9. Plaintiff John Doe 9 has a substance use disorder and was civilly committed to MASAC under Section 35.

10. Plaintiff John Doe 10 has a substance use disorder and was civilly committed to MASAC under Section 35

11. Plaintiff John Doe 11 has a substance use disorder and is civilly committed in the Hampden County House of Correction under Section 35.

12. Plaintiff John Doe 12 has a substance use disorder and is civilly committed in the Hampden County House of Correction under Section 35

13. Plaintiff John Doe has a substance use disorder and is civilly committed in the Hampden County House of Correction under Section 35.

14. Defendant Thomas Turco is Secretary of the Executive Office of Public Safety and Security of the Commonwealth of Massachusetts (EOPSS). As such, he oversees the Department of Correction and all of its programs, including the Section 35 program at MASAC.

See G.L. c. 6A, § 18. He maintains an office at 1 Ashburton Place, Boston, MA 02108. He is sued in his official capacity.

15. Defendant Marylou Sudders is Secretary of the Executive Office of Health and Human Services of the Commonwealth of Massachusetts (EOHHS). As such, she oversees all programs and policies of the Department of Public Health (DPH) and the Department of Mental Health (DMH), including Section 35 programs directly operated by DPH and DMH and other treatment programs for alcohol and substance use disorder administered by vendors funded and licensed by DPH. G.L. c. 6A, § 16. She maintains an office at 1 Ashburton Place, Boston, MA 02108. She is sued in her official capacity.

16. Defendant Carol Mici is the Commissioner of the Massachusetts Department of Correction. By statute, Defendant Mici is responsible for the administration of all correctional facilities in Massachusetts, including MASAC. *See* G.L. c. 124, § 1. Defendant Mici maintains an office at 50 Maple Street, Suite 3, Milford, Massachusetts 01757. She is sued in her official capacity.

17. Defendant Monica Bharel is the Commissioner of the Department of Public Health. By statute, she is required to “establish a comprehensive program for the treatment of drug dependent persons” that shall include provision for sufficient inpatient facilities for the treatment of individuals committed for substance use disorders. *See* G.L. c. 111E, § 5. Her address is 250 Washington Street, Boston, MA 02108. She is sued in her official capacity.

18. Defendant Lisa Whalen is the Superintendent of MASAC at Plymouth. By statute, she is designated “responsible for the custody and control of all prisoners” at MASAC at Plymouth. G.L. c. 124, § 14. Under DOC policy, she is “ultimately responsible for the overall functioning of the institution.” 103 DOC 101.01 (October 2013). Defendant Whalen maintains

an office at MASAC at Plymouth, Myles Standish State Forest, One Bumps Pond Road, Plymouth, Massachusetts 02360. She is sued in her official capacity.

19. Defendant Nicholas Cocchi is the Sheriff of Hampden County. Under G.L. c. 126, § 16, he is responsible for the custody and control of all persons held in Hampden County custody. His business address is 627 Randall Road, Ludlow, MA 01056. He is sued in his official capacity.

20. The Massachusetts Department of Correction is a state agency with responsibility for the care and custody of patients committed to MASAC or any other correctional facility under Section 35. It is located at 50 Maple Street, Suite 3, Milford, Massachusetts 01757.

21. The Massachusetts Department of Public Health is a state agency with responsibility for developing and administering programs for the treatment of individuals with alcohol and substance use disorders. *See* G.L. c. 111B and 111E.

FACTS

Statutory Framework for Civil Commitment in Massachusetts

22. Section 35 allows certain individuals, including family members and police officers, to petition a district or juvenile court for the civil commitment of a person whom the petitioner alleges is addicted to alcohol or a controlled substance, and who allegedly presents a risk of serious harm due to his or her addiction. Section 35 defines a substance use or alcohol use disorder as the “chronic or habitual” use of controlled substances or alcohol 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” controlled substances or alcohol. G.L. c. 123 § 35.

23. If the court finds, after a hearing, that the person has an alcohol or substance use disorder and there is a likelihood of serious harm as a result, the court may order such person to be committed for a period not to exceed 90 days. Such commitments “shall be for the purpose of inpatient care for the treatment of an alcohol or substance use disorder in a facility licensed or approved by the department of public health or the department of mental health.” *Id.*

24. Section 35 requires DPH to make available to the court a roster of public and private facilities available for the care and treatment of alcohol and substance use disorders, together with the number of beds currently available and the level of security at each facility.

25. If DPH informs the court that there is no space available in a suitable DPH or DMH approved facility, or “if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility,” then treatment for men and women diverges.

26. Section 35 formerly allowed women to be civilly committed to MCI-Framingham. In the wake of litigation challenging the civil commitment of women to MCI Framingham, Governor Baker proposed legislation prohibiting confinement of women to correctional facilities under Section 35. In 2016, the Legislature adopted the Governor’s proposal, amending Section 35 so that women may now only be committed to facilities licensed or approved by DPH or DMH. They cannot be committed to a correctional institution even if there are no available DPH or DMH approved beds or they need a “secure facility.”

27. By contrast, in the case of male Section 35 patients, Section 35 provides that if no suitable facility approved by DPH is available, or if the court concludes the person needs to be in a “secure facility,” men can be sent to “the Massachusetts correctional institution at Bridgewater, or other such facility as designated by the commissioner of correction.”

28. The DOC no longer uses MCI Bridgewater to house men committed under Section 35. It moved MASAC from the Bridgewater campus to MCI Plymouth in 2017.

DPH's Mandate

29. Chapter 111E of the Massachusetts General Laws requires DPH to “prepare a comprehensive plan for the treatment in public, private, and federal facilities of drug dependent persons and persons in need of immediate assistance due to the use of a dependency related drug.” G.L. c. 111E, § 4; see also G.L. c. 111B, § 4 (making DPH responsible for establishing and coordinating alcoholism programs).

30. G.L. c. 111E, § 5, requires DPH to “establish a comprehensive program for the treatment of drug dependent persons” that shall include provision for inpatient facilities. It further mandates that DPH “shall provide sufficient treatment facilities, public or private, for the treatment of drug dependent persons committed or admitted pursuant to the provisions of this chapter.” G.L.c. 111E, § 6, directs DPH to “plan, construct, establish, cause to be established, and maintain such facilities as may be necessary or desirable for the conduct of its program.”

31. G.L. c. 111B, § 6, and G.L. c. 111E, § 7, provides that all treatment facilities for alcohol and substance use disorders must be licensed or approved by DPH and comply with DPH minimum standards established by DPH. These standards are set forth in 105 Code of Massachusetts Regulations (“CMR”) 164.001 *et seq.*

32. A patient also has the right under G.L. c. 111E, § 18, to “consult privately with his attorney, receive visitors, and send and receive communications by mail, telephone and telegraph. Such communications shall not be censored or read without the consent of such patient.” See also G.L. c. 111B, § 11.

SECTION 35 FACILITIES

Facilities Available for Women

33. DPH and DMH license or approve various facilities for female Section 35 patients.

34. DPH contracts with High Point, a private vendor, to provide services for civilly committed women in the Women's Addiction Treatment Center (WATC) in New Bedford. This facility has 30 acute treatment beds (ATS) where patients are placed on arrival for initial detoxification and monitoring, with use limited to 16-28 due to COVID-19, and 72 clinical stabilization beds (CSS) for ongoing treatment after detox, with only 64 in use due to COVID-19.

35. DPH also contracts with High Point to operate a secure Section 35 unit for women in the Lemuel Shattuck Hospital, with 32 beds. In addition, DMH runs a secure Section 35 program for women, the Women's Recovery from Addiction Program (WRAP) in Taunton State Hospital, with 45 beds.

36. The number of Section 35 beds in the High Point, Shattuck Hospital and DMH facilities has been adequate to accommodate all women civilly committed by the Courts.

37. The High Point programs are licensed or approved by DPH and must comply with DPH regulations. Among the rights guaranteed to patients under these regulations are freedom from physical and psychological abuse; freedom from strip searches and body cavity searches; freedom from coercion; and "treatment in a manner sensitive to individual needs and which promotes dignity and self-respect." 105 CMR § 164.079; 105 CMR 164.012(D)(3).

38. The WRAP program is also approved by DPH and must comply with the DPH regulations. See 104 CMR 27.18 (4).

39. WRAP patients also have the same legal and civil rights as patients in other DMH facilities, including the right to make and receive confidential telephone calls; the right to send and receive sealed, unopened, uncensored mail; and the right to receive visitors of the patient's own choosing daily and in private, at reasonable times. 104 CMR 27.13(6) and 27.18.

40. The WRAP program and the High Point facilities each have a Human Rights Officer who is responsible for ensuring that the rights of patients are protected.

41. Consistent with DPH regulations, all women committed under Section 35 to WRAP, WATC, or Shattuck are offered a minimum of four hours of daily treatment, including on Saturdays and Sundays and in the evenings.

42. Treatment includes individual and group counseling, family support and education, 12-step programs, trauma awareness, coping skills, and aftercare planning.

43. Patients are also provided programming on issues including relapse prevention, relationships, HIV awareness, domestic violence, nutrition, self-help, and recovery.

Facilities Available for Men

44. DPH has failed to establish, license, or approve sufficient inpatient treatment facilities for men committed under Section 35. As a result, in recent years almost three-quarters of all men committed under Section 35 have been placed in correctional facilities.

45. Although far more men than women are committed under Section 35, DPH has licensed only one Section 35 facility for men, the Men's Addiction Treatment Center (MATC), in Brockton. MATC has 32 detox (ATS) beds, reduced to 28 during COVID-19, and 76 ongoing treatment (CSS) beds, reduced to 48 due to COVID-19. MATC beds tend to fill up on most days. Neither DPH nor DMH has licensed or approved any secure facilities for male patients.

46. Men who cannot be accommodated in MATC, whether due to a lack of bed space or because they are found to require a secure facility, are sent to MASAC, a Department of Correction prison located in the Myles Standish State Forest in Plymouth, Massachusetts. MASAC currently has a capacity of 160. On August 31, 2020, there were 112 men incarcerated there.

47. MASAC patients represent a cross-section of all men committed under Section 35. The great majority are committed to MASAC only because there are not enough beds at MATC. Although the Order of Commitment form issued by the court when men are sent to MATC states that the only appropriate setting for treatment is a secure facility, very few men are actually sent to MASAC because the court has made a specific finding that they need to be in a secure facility.

48. On May 10, 2020, the DOC withdrew prison guards from inside MASAC and limited them to providing perimeter security, maintenance and scheduled transportation for patients. The Superintendent is still a DOC employee, as are the treasurer and Correctional Program Officers that work with the patients.

49. DOC has contracted with an outside medical care provider, Wellpath to take responsibility for other administrative and operational functions, including internal security. Wellpath, formerly known as Correct Care Solutions, is a national prison medical and mental health care company. It provides medical and mental health care in all DOC prisons, including substance use treatment at MASAC. However, MASAC remains a correctional institution under the control of the Department of Correction.

50. The DOC has entered into a Memorandum of Understanding with the Hampden County Sheriff's Department (HCSD) to operate two Section 35 units in correctional facilities.

The first is inside the Hampden County Correctional Center (HCCC) in Ludlow and has approximately 50 beds. The HCSD operates an additional unit in Springfield with 32 beds for some of the men who have completed detox and been through the HCCC program. These units are known as Stonybrook Stabilization and Treatment Center (SSTC)-Ludlow and SSTC-Springfield, respectively.

51. Under the Memorandum of Understanding, courts in western Massachusetts can send men directly to the Hampden County Correctional Center under Section 35. DOC also can transfer men there from MASAC if it thinks they “represent an unwarranted risk of escape or assaultive behavior.”

52. The MASAC superintendent retains ultimate responsibility for all Section 35 patients in Hampden County and conducts the release reviews that are required by Section 35 beginning after the first 30 days.

53. G.L. c. 111E, § 7, provides that “no department, agency or institution of the Commonwealth or any political subdivision thereof shall operate a facility without approval from the department [of health] pursuant to this section.” See also, G.L. c. 111B, §§ 4, 6. Neither MASAC nor the SSTC Section 35 units are approved by DPH.

54. DOC has long been aware that imprisoning civilly committed individuals is inconsistent not only with proper care and treatment, but also with the mission of the DOC. In 2006, the superintendent of MASAC declared, “The Department of Correction should not be in the business of treating addiction.”⁷

55. In 2009, DOC announced it was closing MASAC and that patients should be relocated to DPH facilities. The DOC spokesperson explained, “We feel that care for civilly

⁷ See Laura Crimaldi, “Bail prisons out of drug-detox biz.” Boston Herald, January 29, 2006

committed males is a public health function.”⁸ But after officers protested because they feared losing their jobs, and DPH declared that it would not take responsibility for this population, DOC changed its mind.

56. The Corrections Master Plan prepared by the Division of Capital Asset Management in 2011 observed that civil commitment to correctional facilities was unique to Massachusetts, and recommended that these individuals be treated in more appropriate non-correctional settings. It also pointed out that incarcerating patients at MASAC deprived the Commonwealth of reimbursements from Medicaid and Medicare, and that it reduced DOC’s ability to provide treatment to sentenced prisoners.

Conditions and Treatment at MASAC

57. As the Class Representatives alleged in their original Complaint, they felt the sting of incarceration from the moment they arrived in MASAC, which was dominated and controlled by corrections officers. They described a pervasively oppressive environment that was punitive, humiliating, and detrimental to treatment. They cited abusive language and behavior by guards.

58. Although DOC has placed Wellpath in charge of most administrative and operational functions at MASAC, patients remain very much aware that they are in a correctional facility. Barbed razor wire surrounds the compound and bars cover the windows of the housing units. Daily life is regimented and movement is restrictive.

59. Patients arrive after traveling shackled and handcuffed in a prison van, sometimes for several hours and often in the throes of withdrawal. They pass through high fencing topped

⁸ See Laura Crimaldi, “Guards fear prisons will close Massive budget cuts on horizon,” Boston Herald, September 11, 2009.

with razor wire. For some, the sight of the prison is the first time they realize they have been sent to DOC custody.

60. On entry to MASAC patients are still strip searched, during which they must bend over, cough, and spread their buttocks, subjected to a body scan, and then given a uniform of scrubs to wear. In contrast, at MATC patients are not strip searched but are asked to shower and give all clothing over to staff to be laundered; after which their personal clothing is returned.

61. Those overseeing MASAC patients and enforcing its rules are now Wellpath employees called Residential Service Coordinators (RSCs) rather than Corrections Officers. These are not required to have a mental health or SUD treatment background; some are former corrections officers.

62. Locked cells are used for medical seclusion, mental health watch, or for patients who are disruptive. Both staff and patients continue to refer to this as “the hole” – a term commonly used for solitary confinement in prison settings. Patients held in isolation are subject to video surveillance even while using the bathroom. Plaintiff John Doe 12 spent two days locked in a MASAC isolation cell for threatening to escape.

63. One patient who reported a possible staph infection on arrival was locked in an isolation cell for four or five days before the infection was ruled out. He was not allowed out once during that time, and the only time any staff person entered the room during that time was to take a culture of the wound. The sink in his room did not work, so he could not brush his teeth or wash his hands during his ordeal. Nor was he taken out for a shower. He reported the problem but it was not fixed before he moved. During this time he was detoxing from opiates and cocaine, vomiting, shaking, and coming close to having a seizure. His vomit was still on the floor when he was finally released.

64. This patient reported that while he was in the observation cell others were locked in for shorter periods of time, perhaps a day, and he heard them begging to be let out.

65. Patients report a less punitive and abusive atmosphere without corrections officers inside the institution. Yet they report that DOC is still in control, requiring prison-like regimentation and deprivations that undermine efforts made by Wellpath staff to create a therapeutic environment. They say Wellpath staff themselves have acknowledged their hands are tied by DOC.

66. After detox in the C dormitory, patients generally move to the A dormitory, where they may be quarantined for possible COVID-19 exposure, and then most are moved to the B dormitory. While in the A dormitory, patients are scheduled for only two treatment classes a day, held in the nearby dining hall, but may not be given both classes if staff shortages or other circumstances arise. They have one hour of outdoor recreation and, aside from this, they must remain inside. There is no common room so patients must hang out in the hallway if not in their room.

67. In the B dormitory, patients are scheduled for some nine groups a day with SUD counselors or activity specialists. However, there is little attempt to engage the entire group, and many patients simply wander off. Patients report that in nearly all classes, after a few minutes of speaking to the group, the counselor informs them that they may leave and, as long as they have signed in, they will receive credit for the class. Furthermore, some two-thirds of the scheduled groups are not substance use treatment classes but activities such as arts and crafts; even recreation period is counted as an “activity.”

68. Those in B dorm are also allowed only one hour of recreation daily.

69. For all MASAC patients, movement from one part of the compound to another is tightly controlled, and may only occur during designated times when patients are allowed to walk to classes or activities.

70. As in all prisons, four times a day patients must return to their rooms and be counted, a practice known as “count” throughout the DOC. With the change in administration in May, this practice has now been designated as a “wellness check,” but staff still yell “count.”

71. While many Wellpath staff are well-intentioned, some RSCs act like corrections officers and can even be abusive. Meal trays are brought to the housing units before the evening “count,” and the trays sit in the housing units, getting cold for 20-45 minutes until count is done. Recently, when a patient went to get food before count was over, an RSC threw food for the entire group on the ground and went for the patient. When another patient asked why she had thrown the food down, the RSC said “fuck your mother, little boy, hit me.”

72. MASAC patients who have been in MATC and other SUD treatment programs describe more controlled and limited individual access to clinicians in MASAC. Whereas in MATC each patient has a daily check-ins with his clinician, during which he may discuss any problems or needs, at MASAC the counselors do not come into the housing units and patients must attempt to speak with them in the recreation yard. Patients report that while they are promised three hours of personal counseling a week, they do not routinely receive any individual counseling.

73. Access to medical staff is also tightly controlled. As in other DOC facilities, MASAC patients must put in a “sick slip” to see medical staff, even to request an over-the-counter painkiller. It can take a day or longer to be seen – by which time the need for the painkiller may be past.

74. MASAC patients who need hospital care are sent to the Lemuel Shattuck Hospital, where the DOC's other prisoners are treated. During outpatient visits they are mingled with sentenced prisoners and treated like prisoners while they await treatment. If they need in-patient care, they are housed in the DOC Correctional Unit together with sentenced prisoners, including people serving time for 1st degree murder.

75. Nutritious and plentiful food is critical to recovery. Yet MASAC patients uniformly describe the food at MASAC as terrible. A sample breakfast is the sugary cereal Fruit Loops, two slices of bread, and milk. Whereas at MATC patients may snack at any time on peanut butter sandwiches, juice, milk and coffee, at MASAC they get one small snack such as a small chocolate muffin and juice in the morning and one in the afternoon. Snacks are often outdated and even moldy. One patient said that Wellpath staff even took photos of moldy snacks and raised it with superiors.

76. MASAC patients who have the money may purchase food from the same canteen as prisoners in other DOC facilities. The canteen slips identify them as an "inmate."

77. MASAC patients are given one free telephone call per day, and may make more if they or their family fund a debit account. These calls are recorded, though administrators indicate they are not routinely listened to.

78. MASAC patients may be transferred to the Section 35 program in Hampden County if MASAC decides its staff cannot manage them.

79. Unlike MATC, MASAC is a locked facility. When MATC patients "elope" by leaving the facility, they are subject to a three- or four-day bench warrant during which the police may arrest them if they are seen. When MASAC patients elope, the DOC Fugitive Apprehension Team, with armed local police, is called.

80. While patients are generally sectioned for a period of 30-90 days, at MASAC they are told they will remain for 45 days, and are generally held that long regardless of whether they meet benchmarks for release such as attending groups, behaving well, and having a good after-care plan.

81. Overall, patients who have spent time in DOC say MASAC is “exactly the same” as a minimum security prison. And patients who have served time in county jails say there is little difference

Conditions and treatment in SSTC-Ludlow

82. Section 35 patients in HCSD custody are held inside the Hampden County Correctional Center (HCCC) jail for detox and then for some or all of their commitment. This is a maximum security facility, surrounded by barbed wire and razor wire, which holds some 1,000 people who are sentenced to up to 2.5 years of incarceration or awaiting trial for serious crimes as well as misdemeanors. Signs surrounding the facility identify it as a correctional facility. It has three section 35 units within, alongside units for pretrial and sentenced prisoners.

83. On arrival, Section 35 patients are strip searched and made to bend over, cough, and spread their buttocks. Their clothes are taken and they are given a uniform to wear and a badge with their prison i.d. number, a bar code and their mugshot.

84. They are housed in units that are physically identical to other housing units in the jail. They sleep in bare cells that are just like the cells of all other prisoners, with a steel toilet and sink fixture, bunk, fixed desk and chair.

85. Security has primacy over treatment. Corrections officers, not treatment staff, are in charge of running the unit. They carry walkie-talkies, pepper spray, and handcuffs. These

COs may also work in other housing units and treat Section 35 patients like sentenced and pretrial prisoners, ordering them around and calling them by their last name or prison number.

86. Hampden Section 35 patients must stand by their bed for “count” just like sentenced and pretrial prisoners. COs bark orders like “lock in!” and “stand for count!”

87. Just like prisoners, patients may be handcuffed and may be locked in their cells for days at a time. COs may lock patients in their cell for any reason, at their discretion. Patients are locked in their cell if they are verbally argumentative, have a “bad attitude,” or for leaving their cell without wearing a protective mask for COVID-19, even though the officers themselves sometimes fail to wear masks or wear them improperly.

88. Patients are also at times all locked in their cells as collective punishment if, for example, one refuses to attend a group or gets into an argument.

89. When patients are locked in their cells, they do not have access to treatment programs, classes, recreation, or any other activity.

90. Tactical teams, known as “move teams,” made up of 5-6 COs suited in riot gear, are sometimes used to remove patients from the unit. They wear padded clothing and helmets, carry shields and chemical agents, and may use force to overpower patients.

91. When patients make telephone calls, a recorded message informs recipients that the call is coming from a correctional facility and the call is recorded. Calls to family or counsel cost some \$6-7 each, depending on length of time.

92. While sentenced prisoners and pretrial detainees at HCCC can order canteen, Section 35 patients cannot.

93. Patients who have spent time in HCCC or another jail as pretrial or sentenced prisoners indicate that the environment is very much the same. Many say that being imprisoned there makes recovery very difficult, rather than promoting it.

The Impact of Incarceration under Section 35 in DOC and HCCC

94. From their first glimpse of prison razor wire to their degrading strip search and through the last “count” at night, patients are treated as a security threat rather than as individuals with a chronic disease in need of treatment. They are reminded of their inferior status in every shouted order or degrading comment uttered by a CO or other staff person. They are subjected to punishment that would be impermissible, indeed unthinkable, in a DPH-approved facility, such as strip searches and being locked in a cell for hours or even days at a time.

95. Civil commitment to a correctional facility is profoundly stigmatizing. Patients experience a deep sense of shame, humiliation, and loss of dignity. They are intimidated by the harsh conditions of confinement, and do not understand why they are in prison if they have done nothing wrong. Their family and friends commonly believe they must have engaged in crime to end up in prison.

96. The World Health Organization has reported that substance use disorder is the most stigmatized medical condition in the world, with alcoholism not far behind. Stigma is a serious obstacle to recovery. The stigma faced by Section 35 patients because of their disease is compounded by the stigma caused by their confinement in a correctional institution.

97. Prison confinement of men civilly committed for alcohol and substance use disorders necessarily thwarts effective treatment. It severely undermines their self-image and introduces fear and confusion about the purpose of confinement. One patient said, “I feel like

I'm an inmate, even though I've never done a crime.” Even patients who have served time before say it brings back the whole prison mentality and makes them feel like a criminal again.

98. The regimentation and deprivations of prison life create the antithesis of a therapeutic environment. The myriad rules encourage gamesmanship, mistrust, and hostility rather than the openness and trust necessary for effective treatment.

99. Incarcerated patients view the entire experience as punitive rather than an opportunity to begin recovery. Many describe it as the worst experience of their life. Patients who may have been in a jail before can be re-traumatized by their incarceration.

100. Family members who file Section 35 petitions are often horrified when their loved ones are sent to prison. They are desperate to get treatment for their loved ones, but feel betrayed by Section 35. They do not want their loved ones to be in a prison but that is all that is available under Section 35.

101. The shame of incarceration follows these patients into the outside world. They are often ashamed to tell employers, friends, and loved ones where they are. They leave deeply traumatized by the experience and, in many cases, with ties to family, housing and employment frayed by the stigma of incarceration. Their shame and trauma directly undermines their chances at successfully remaining clean and sober.

102. Being incarcerated drives some men away from treatment, damaging relationships with therapists and family members who may have filed the petition.

103. The trauma of imprisonment contributes to difficulty adapting after release, including relapse and overdose. A 2017 DPH study found that opioid-related overdose deaths were 120 times higher for persons released from Massachusetts prisons and jails compared to the rest of the adult population. Overdoses soon after discharge from MASAC are common. One

patient reported that a clinician announced to his group that 77% of patients use again on the first day after discharge. And in 2017, at least one MASAC patient died of an overdose within a few weeks of his release.

INDIVIDUAL PLAINTIFFS' ALLEGATIONS

MASAC Plaintiffs (as alleged in the original Complaint)

John Doe 1

104. Plaintiff John Doe 1 is 24 years old and was civilly committed to MASAC by the Chelsea District Court on February 19, 2019. His mother filed the Section 35 petition because of his substance use disorder.

105. This is Mr. Doe's third civil commitment to MASAC.

106. The C-Unit at MASAC, where Mr. Doe was sent for detox, was filthy. The bathrooms smelled like a dirty, molding mop, and not all the cells had fire alarms. There were no real cleaners except for the sentenced prisoners.

107. In Mr. Doe's experience, the correctional officers do not care that patients need help and generally treat them like garbage. Mr. Does is treated better than other patients because the officers know him from previous commitments, but he still feels like the officers are waiting for him and other patients to make mistakes..

108. Everything the patients do and receive depends on the correctional officers. When Mr. Doe was late for a meal, the officers refused to serve him food. The officers surrounded him after he left the dining hall, and tried to provoke Mr. Doe. It scared him.

109. Mr. Doe was sent to the "hole" for having tobacco, without any verbal or any conversation about what was happening. He was there for five days, with nothing to do and no

treatment. The cell was monitored by video cameras so he had no privacy. Mr. Doe was strip searched and had to use the toilet in front of the cameras.

110. Mr. Doe feels that MASAC does not provide adequate substance use treatment. There are not enough classes and they are sometimes cancelled without anyone informing the patients of the reason.

111. Mr. Doe hasn't spoken to his mother since coming to MASAC because telephone calls are recorded and monitored by officers. His mother does not understand just how horrific MASAC is and how little it helps him.

John Doe 2

112. Plaintiff John Doe 2 was civilly committed to MASAC by the Lowell District Court on February 28th, 2019 due to his opioid use disorder.

113. His mother petitioned for his civil commitment, but he also knew he needed help and wanted to receive treatment before the birth of his daughter. He does not understand why he was taken to a prison instead of a treatment center.

114. During his detox, he was only given Motrin, although his withdrawal symptoms were excruciating.

115. He has heard corrections officers call patients names like "pussy," "bitch," "junkie," and "crackhead," and one officer told him "your mother is a whore."

116. At MASAC he receives minimal programming. He wants to get better for his daughter, but he feels that MASAC is not helping him.

117. He has been incarcerated before, and says the he would rather be in jail than MASAC.

John Doe 3

118. Plaintiff John Doe 3 was civilly committed to MASAC by the Plymouth District Court on March 1st, 2019 because he suffers from alcohol use disorder.

119. Mr. Doe's father filed the Section 35 petition. He and his father both believed that he would be sent to a treatment center, not shackled and brought to a prison.

120. Mr. Doe has never been civilly committed or incarcerated before, and has held a steady job at a roofing company for many years. He does not believe that it is possible to get better at MASAC, and does not understand why he is being treated like a criminal when he has done nothing wrong.

121. Mr. Doe has medical complications stemming from his alcohol use, and the medical staff was unprepared to treat him, giving him cold beef broth and calling it a "liquid diet".

122. He was unable to make phone calls for an extended period of time, causing him to feel further isolated.

John Doe 4

123. Plaintiff John Doe 4 is 34 years old and was civilly committed to MASAC on February 25, 2019 by the Quincy District Court. He suffers from bipolar disorder, attention deficit/hyperactivity disorder, and anxiety.

124. His father petitioned for his civil commitment under Section 35 out of concern over his benzodiazepine and opioid use. Mr. Doe was told there was a bed for him at MATC, where he had previously been committed, so he agreed to the commitment. This is his eighth or ninth civil commitment.

125. Prior to this commitment, Mr. Doe managed his addiction with Suboxone, as prescribed by his doctor. Suboxone is not available at MASAC, so upon arriving at MASAC he began to withdraw from Suboxone cold turkey.

126. While detoxing in the C Dorm, Mr. Doe suffered from shakes, cold sweats, restless legs, an upset stomach, and insomnia.

127. C Dorm is filthy. The dirty bathrooms smell of urine and feces, and the sinks are often full of food. The stench of body odor in the air is strong, and Mr. Doe is concerned about the lack of sanitation around so many sick people. Additionally, for the past two weeks, there has been no toothpaste available apart from toothpaste sold on canteen. Thus, those who don't have a job at MASAC, and don't have outside financial support, could not brush their teeth for two weeks.

128. Mr. Doe was medically cleared from detox after two days, even though he was still experiencing withdrawal symptoms.

129. C Dorm houses disabled patients and those with serious health conditions. Mr. Doe has seen a blind man in C Dorm who has great trouble navigating the crowded ward. Staff refuse to help him get to med line, showers, and elsewhere. Other patients have to help this man. Mr. Doe has seen other patients too infirm to even move around without assistance. If they can't physically get themselves to programs, they don't get any treatment. There is no programming in C Dorm, so patients who can't leave independently just sit and watch TV all day.

130. Mr. Doe's programming consists of three one-hour classes Monday through Friday, and a one hour program on the weekend. Outside of these programs, Mr. Doe has only met with his counselor two times, with each meeting lasting less than ten minutes.

131. Mr. Doe feels that incarceration at MASAC makes his recovery harder. The environment makes him anxious. Because many of the correctional officers are verbally aggressive and threatening, he worries about which correctional officers will be on the next shift, and how to avoid the worst of them.

132. The stigma Mr. Doe feels from being at MASAC is a lot like the shame he felt when he was previously a prisoner in county jail. Commitment to MASAC is like doing a small sentence.

John Doe 5

133. Plaintiff John Doe 5 is 24 years old and was civilly committed to MASAC by the Brockton District Court on March 4th, 2019. His mother filed the Section 35 petition after he suffered a relapse of his substance use disorder.

134. Mr. Doe's mother believed that he would go to MATC or another treatment center. He does not know why he ended up at MASAC and not MATC.

135. Mr. Doe was committed to MASAC once before in 2014 when it was at Bridgewater. Almost immediately after his release, he overdosed on heroin.

136. Mr. Doe has also been committed several times to MATC. Treatment programs at MATC were very helpful to him because the counselors cared about the patients and knew how to get to the core of how to battle addiction.

137. The constant presence, threats, and attitude of the correctional officers makes the environment at MASAC unhealthy and counter-therapeutic.

138. The officer who took his "Inmate" ID picture, instead of using the phrase "say cheese," told him to say "I'm a jackass." Another officer once came into his cell when he was

upset and said, "If anything is damaged, I'm fucking dragging you out of here" to a solitary confinement cell.

139. Mr. Doe did not meet with his assigned counselor until he had been at MASAC for about 8 days. The treatment programs last only three hours every day and are superficial and unhelpful. Because there is so much down time, patients talk constantly about shooting up and getting high.

140. MASAC has caused Mr. Doe to feel worse about himself and made him want to use drugs even more than when he was on the street. At times he has thoughts about harming himself. He feels institutionalized and unable to manage his life. He worries he will leave MASAC worse off than when he came in.

John Doe 6

141. Plaintiff John Doe 6 is 23 years old and was civilly committed to MASAC on March 1, 2019 by the Lawrence District Court. He suffers from bipolar disorder and attention deficit/hyperactivity disorder, and is on the Asperger's spectrum.

142. His mother petitioned for his commitment under Section 35 out of concern over his substance use.

143. Mr. Doe has never been to jail before, nor has he ever been arrested or charged with a crime.

144. This is the first time he has been civilly committed. When he was committed, he thought he was going to a treatment center, and does not understand why he instead ended up in a prison.

145. When he arrived at MASAC, he was ordered to strip naked, and bend over and cough in front of three correctional officers. This was the first time he was ever strip searched, and having correctional officers view his genitals made him feel extremely violated.

146. The day after he arrived at MASAC, Mr. Doe had a panic attack. He was crying, confused, and his mind was racing. He wanted to call his mother, but was denied. He asked to speak to a mental health clinician, but was instead stripped searched in the hallway and made to put on a "turtle suit," a smock that covered his genitals, and placed in a solitary confinement cell.

147. In this cell, he was not allowed to have any bedding, except for a "security blanket." Even the blanket and mattress were eventually taken from him, and from then on he was cold and made to sleep on the plastic bed frame. An officer stood outside his door, watching him at all times. These conditions made him suicidal, and he began banging his head against the cell wall.

148. After two days, he was taken to an office and told he was going to stay in solitary. Distraught, he tried to run, but was restrained on the floor by correctional officers who yelled that he was a "fucking idiot" and told him to "shut the fuck up." He was shackled at his waist and ankles, with his hands cuffed behind his back. He was put back in solitary and remained shackled for a long time. He was told if he acted up he would be restrained to the bed with his arms spread.

149. Mr. Doe remained in "the hole" under these conditions, 24 hours a day, for five days straight, receiving no mental health counselling or substance use disorder treatment.

150. MASAC is very dirty and Mr. Doe has found feces and urine on the toilets, and the bathrooms smell like this human waste. The showers are also very dirty, and the drains are clogged. The cells are also dirty and trash is everywhere.

151. The correctional officers dominate the environment MASAC. They bark commands aggressively, and Mr. Doe is scared to ask them for anything. He once tried asking a question of one, and was told "don't talk to the men in blue." Because of his Asperger's, it is hard for Mr. Doe to process the frequent yelling and cursing of correctional officers, and he gets confused.

152. Mr. Doe believes that because he is in DOC custody, his girlfriend now thinks he must have committed a crime.

153. Mr. Doe speaks to his mother and grandmother but does not feel comfortable talking about feelings and other personal matters because the calls are monitored and he does not want the DOC to know intimate details about his life.

154. MASAC has provided Mr. Doe with no meaningful treatment, has made him more depressed and anxious, decreased his self-esteem, and made him feel less than human. Rather than being on the road to recovery from substance use disorder, he will leave MASAC needing to recover from the experience itself.

John Doe 7

155. Plaintiff John Doe 7 was civilly committed to MASAC by the Wrentham District Court on February 22nd, 2019, due to his opioid use disorder.

156. Mr. Doe sought out the commitment himself. He wanted to get clean, particularly for his daughter, and thought that he would be sent to a treatment facility. He thought that he would be able to address his opioid use disorder in a therapeutic environment, and that this experience would give him the tools to finally stay clean.

157. Prior to his commitment, Mr. Doe was prescribed Suboxone, which he was forced to detox from upon arrival at MASAC. During detox, the patient in the bed next to him urinated and defecated on himself, and no one came to help him clean up.

158. Mr. Doe was placed on suicide watch in solitary confinement during his withdrawal, and was put in a "turtle suit," (an anti-suicide smock), held in a cell with blood on the walls, and given only "finger-foods" (i.e. foods that did not require utensils).

He has been to jail before, and he would prefer prison over MASAC. He states that the corrections officers treat the patients like animals rather than as human beings with a disease.

159. He believes that MASAC has been detrimental to his recovery process.

John Doe 8

160. Plaintiff John Doe 8 is 29 years old and was civilly committed to MASAC by the Roxbury District Court on March 6, 2019. His mother filed the Section 35 petition because of his alcohol use.

161. This is Mr. Doe's first civil commitment.

162. Mr. Doe has never been to jail or prison before, except for one night in a police holding cell in 2015. Before his commitment, Mr. Doe was working two jobs, as a personal trainer and a moving assistant. He lives with his parents and six younger siblings.

163. MASAC makes Mr. Doe feel like a criminal, even though he has not broken the law. He has an "Inmate ID" card, wears prison clothes, and his every move is controlled by corrections officers.

164. Mr. Doe thought civil commitment would be similar to a rehabilitation or treatment center, where he has checked himself in before. He did not know he would be sent to prison until he saw the barbed wire surrounding MASAC.

165. Mr. Doe feels that the MASAC environment is isolating and not therapeutic. The correctional officers are indifferent to the needs of the patients, and it seems like no one cares about them. Mr. Doe often has to ask four or five times for supplies. For example, it took a week for him to receive a thermal undershirt, even though the weather has been cold and snowy.

166. Mr. Doe was not assigned to a treatment class until his 7th day at MASAC, and there is very little to do at the dorms. At most, the patients get an hour a day of recreation time. There is not enough food, and the meals at MASAC are disgusting.

167. Mr. Doe does not want to contact his workplaces because a call or letter from MASAC would identify him as a prisoner. He doesn't know if he will still have a job when he gets out.

168. Mr. Doe has not spoken to his family since coming to MASAC because he feels alienated from them. They have no idea what MASAC is like, and he is upset they sent him here instead of a normal rehabilitation center. MASAC is a prison, and does not make Mr. Doe feel open to receiving treatment.

John Doe 9

169. Plaintiff John Doe 9 is 35 years old and was civilly committed to MASAC by the Plymouth District Court on March 5th, 2019 because he suffers from alcohol use disorder.

170. Mr. Doe's mother filed the Section 35 petition. She thought he would be sent to a treatment facility, not a prison, and she does not feel he belongs in a prison.

171. Mr. Doe has never been to jail before. He doesn't know why he is in a prison and treated like an animal when he hasn't broken the law or done anything wrong. It is a humiliating and extremely distressing experience.

172. Mr. Doe has only been able to speak with his mother once in his eight days at MASAC. When they did speak, she heard a pre-recorded message indicating he was calling from a correctional institution and the same appeared on her caller ID. Their conversation was recorded, which felt like an invasion of privacy to Mr. Doe.

173. Mr. Doe suffers from medical conditions such as cirrhosis of the liver and esophagitis, neuropathy, an eye condition, and walks with a cane. Because of these health conditions, he is not permitted to walk to the buildings where treatment is offered; thus he has not been to groups, classes, or any other programming. He has only met with his treatment counselor once for approximately five minutes. These five minutes are the only treatment he's received at MASAC. Mr. Doe says MASAC is a lockdown and not a treatment facility.

John Doe 10

174. Plaintiff John Doe 10 is 34 years old and was civilly committed to MASAC by the Quincy District Court on March 6, 2019. His mother filed the Section 35 petition because of his substance use disorder.

175. This is Mr. Doe's first civil commitment.

176. Before his commitment, Mr. Doe was working as a commercial fisherman and living with his girlfriend and her two sons.

177. Mr. Doe is a veteran of the Marine Corps, where he served for five years and suffered serious physical injuries and Post Traumatic Stress Disorder. He developed a dependence on opioids after being prescribed Percocet for pain relief.

178. When Mr. Doe was committed, he did not know where he was going. He does not understand why he is a prisoner in a correctional institution, and labeled an "Inmate," when he was supposed to be sent to a treatment facility.

179. MASAC has worsened Mr. Doe's trauma and emotional problems. He feels ashamed and humiliated. He sleeps very little and has night sweats.

180. MASAC correctional officers belittle and talk down to patients. Mr. Doe has heard officers make abusive and threatening remarks, for example, calling one patient a "little bitch." He has also seen people in solitary confinement, and heard one patient in "the hole" banging and screaming.

181. Mr. Doe did not start treatment until his 8th day at MASAC. He does not feel that MASAC is making him any better. He thinks that he is being "cage-trained," and that MASAC will set back his recovery.

182. Being in MASAC has cut Mr. Doe off from his loved ones and his employment. He does not want to call his employer, even though his employer is very understanding about substance use, because he does not want to have to explain why he is in a correctional facility.

Hampden County Correctional Center Plaintiffs

John Doe 11

183. Plaintiff John Doe 11 is 32 years old. He was sent to the Hampden County Correctional Center (HCCC) in Ludlow after doctors in the Bay State Hospital emergency room became concerned about his alcohol and substance use issues and petitioned for his commitment.

184. Although he tested negative for COVID-19 in the hospital, or arrival at HCCC he was placed in a holding cell for six days, with no SUD treatment, activities, or even a TV for distraction.

185. In the Ludlow jail, he is held in the same maximum security building as sentenced and pretrial prisoners. He has been in the HCCC as a prisoner, and feels "there is no real difference between how I am treated now and what it was like when I was here as a prisoner."

186. Based on his experience, the COs in the Section 35 unit are the same as in the rest of the jail, and some even work elsewhere in the jail in addition to the Section 35 unit.

“Although most officers are professional, some are on a power trip and talk to me like I’m worthless or as if I had done some terrible crime to get here.”

187. He has observed that COs “run the unit” and can make it hard for the clinical staff to do their work.

188. He has witnessed COs put a patient in handcuffs. He has also witnessed a tactical team of 5-6 COs in riot gear, with helmets, face shields, and chemical agents, storm the unit to remove a patient. He did not see them tackle the patient but heard the patient screaming.

189. Like other patients, COs may lock him in his cell for 24 for any reason, during which there is no treatment or other activity.

190. He feels that although addiction is recognized as a disease, “putting us in jail sends the message that you are bad. It also upsets our families who don’t want us to be in jail.”

191. He believes that being incarcerated has hindered his recovery. “I want to get better, but being in jail throws off all my positive thoughts. In jail, my first instinct is to want to lash out and revolt. The whole experience has been destructive to recovery. I want help, but I feel like I’m getting chastised for my addiction.”

John Doe 12

192. Plaintiff John Doe 12 is 23 years old. He was civilly committed under Section 35 on August 11, 2020, after his probation officer petitioned due to his history of fentanyl use, and he agreed to go when he was told he would be attending an SUD treatment program.

193. He initially was sent to MASAC and then transferred to Hampden County custody on August 18th, 2020. In both places, he was treated like a prisoner.

194. He was strip searched twice at MASAC, on entry and on departure.

195. During his eight days at MASAC, he was placed in a locked isolation cell for two days as discipline for threatening to escape. During this time he was constantly observed by video camera. When he tried to cover the camera for privacy while using the toilet, staff rushed into the cell and took down the covering.

196. After three days in isolation, three staff members entered the cell and told him he was being “shipped out.” They strip-searched him in front of the video camera, which made him feel violated, humiliated and traumatized.

197. John Doe 12 was taken from MASAC to the HCCC in a DOC transport vehicle in waist chains and shackles. He was strip-searched once more upon arrival and then placed in a cell with steel fixtures, commode, bunk, a thin mattress, desk and chair.

198. In the HCCF, he is supervised by COs who carry walkie-talkies, pepper spray, and handcuffs. They treat patients as if they were prisoners, barking orders like “lock in!” and “stand for count”.

199. A sergeant from the HCCC tactical team entered the unit one day and threatened to “suit up the whole team” in an effort to intimidate the patients.

200. Like other patients, he has been locked in his cell for 24 hours as punishment for “problem behavior.” He was locked in for horseplay, even though he was not fighting with the other patient involved. During that time he had no treatment or other activities, no TV to watch, no recreation, and nothing to do. He was only allowed out of his cell for 10-15 minutes to eat.

201. He may make telephone calls, but is charged \$6 - \$7 per call. This has caused problems, as his mother has to keep adding funds to his account so he may make calls. It has hampered his ability to speak with his criminal defense attorney.

202. His telephone calls are recorded, as if he were a prisoner. And when he makes a call, the outgoing message informs the recipient that the call is coming from a correctional facility. He feels badly that his little brother hears this message when he calls him.

203. While exercise, healthy food and sleep have helped his recovery in the past, “living in prison makes recovery extremely difficult.” He asked for melatonin to help him sleep but was denied because they “don’t give sleeping meds.” The environment is detrimental to his treatment and “makes me want to use when I get out.”

John Doe 13

204. Plaintiff Reynaldo Mantilla was civilly committed to HCCC for SUD treatment after his mother filed a Section 35 petition.

205. He spent the first 7 – 10 days of his commitment locked in the detox unit, where he was forced to withdraw from opiates “cold turkey” and without comfort medications. Before his commitment he had been receiving Suboxone, an opiate substitution medication, to treat his SUD. He was forced to withdraw from this medication and did not receive another such medication, Methadone, until his 17th day in the HCCC.

206. He has spent 16 years in prison, including three years in the HCCC. The only difference between his time in prison and his time sectioned to HCCC is the food and the fact that he does not have to wear a jumpsuit.

207. The corrections officers that supervise him are in uniform and carry handcuffs. They patrol everywhere, such that the unit feels like jail and not treatment.

208. If a patient refuses to attend group, they all are locked in their cells. An argument recently led to the whole unit being locked in their cells.

209. Having spent a lot of time in prison he says, “the environment here makes me feel like a convict again. It’s making me become a rebel.”

CLASS ACTION ALLEGATIONS

210. This action is properly maintained as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure.

211. The putative class is defined as: “All men placed or housed in a correctional facility solely pursuant to G.L. c. 123, § 35 based solely on a civil commitment under Massachusetts General Laws Chapter 123 Section 35, from July 2, 2019 through the date of final judgment in this case and including the named plaintiffs.”

212. Plaintiffs request that the Court certify two subclasses, defined as, respectively:

1. All men placed or housed in a DOC facility solely pursuant to G.L. c. 123, § 35 from July 2, 2019 through the date of final judgment in this case and including the named plaintiffs who were placed or housed in MASAC.
2. All men placed or housed in the Hampden County Correctional Facility based solely on a civil commitment under Massachusetts General Laws Chapter 123 Section 35, from July 2, 2019 through the date of final judgment in this case.

213. The members of the class are so numerous that joinder of all members is impracticable. Over 2,000 men are admitted to correctional facilities every year.

214. Defendants have acted or failed to act in a manner that is generally applicable to each member of the putative class, making class-wide injunctive and declaratory relief appropriate and necessary.

215. The questions of law and fact raised by the named Plaintiffs are common to, and typical of, all members of the putative class. They include:

- a. Whether incarcerating men, but not women, who are civilly committed for treatment under Section 35 constitutes gender discrimination in violation of the U.S. and Massachusetts constitutions;
- b. Whether the civil commitment of men to a correctional institution under Section 35 impermissibly discriminates against them in violation of the Americans with Disabilities Act, M.G.L. c., 93 § 103, and Article 114 of the Massachusetts Constitution; and
- c. Whether the civil commitment of men to a correctional institution under Section 35 solely to treat them for the disease of alcohol or substance use disorder deprives these individuals of their right to substantive due process under the Massachusetts and U.S. constitutions.

216. The legal violations alleged by the named Plaintiffs and the resultant harms are typical of those raised by each member of the putative class.

217. The named Plaintiffs will fairly and adequately protect the interests of the class. There is no conflict between the interests of the named Plaintiffs and the proposed class.

218. Plaintiffs' lawyers are competent and experienced in class action, disability, and complex civil rights litigation. They have committed sufficient resources to fully litigate this case through trial and any appeals.

CLAIMS FOR RELIEF

COUNT ONE

Gender Discrimination in Violation of the Massachusetts Declaration of Rights, the U.S. Constitution, and M.G.L. c. 93 § 102

219. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

220. Section 35 authorizes commitment of men to a correctional facility if there are no beds available in a facility licensed or approved by DPH or DMH, or if the court determines that the man requires treatment in a secure facility.

221. Section 35 only authorizes commitment of women to a treatment facility licensed or approved by DPH or DMH. It does not authorize placement of women in correctional facilities under any circumstances.

222. Section 35's differential treatment of men and women is not narrowly tailored to further a compelling government interest. It therefore violates Article 1 of the Massachusetts Declaration of Rights, as amended by art. 106 of the Amendments, and G.L. c. 93, § 102.

223. The unequal treatment of men and women under Section 35 does not further important governmental objectives by means that are substantially related to the achievement of those objectives. There is no "exceedingly persuasive justification" for the discriminatory classification of men and women under Section 35. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982). Therefore, the disparate treatment of men and women authorized by Section 35 violates the Equal Protection provisions of the Fourteenth Amendment to the United States, G.L. c. 93, § 102, and 42 U.S.C. § 1983.

COUNT TWO

Disability Discrimination in Violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, G.L. c. 93, § 103, and Article 114 of the Massachusetts Declaration of Rights

224. Plaintiffs incorporate the preceding paragraphs of this complaint as if fully set forth herein.

225. Title II of the ADA prohibits a “public entity” from discriminating against a “qualified individual with a disability . . . by reason of such disability.” 42 U.S.C. § 12132.

226. Section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 701 *et seq.*, states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that receives Federal financial assistance.

227. Plaintiffs, as individuals committed under Section 35 for alcohol or substance use disorder, are each a “qualified individual with a disability” under Title II of the ADA, as defined in 42 U.S.C. § 12131(2) and § 12102(1) and Section 504 of the Rehabilitation Act.

228. Defendants DOC and DPH are each a “public entity” under Title II of the ADA, as defined in 42 U.S.C. § 12131(1), and each receives Federal financial assistance.

229. Defendants have deliberately chosen to rely upon correctional facilities as a core component of the Section 35 treatment system instead of establishing sufficient inpatient treatment facilities in the community.

230. Section 35 reflects longstanding and ongoing prejudice and bias against individuals with alcohol and substance use disorders. No other individuals are confined to a correctional institution for treatment of a disease unless they are also charged or convicted of a crime. By authorizing Plaintiffs’ commitment to prison, Section 35 perpetuates unwarranted negative assumptions about individuals with substance abuse disorders reinforces the perception that they are second-class citizens, and is *per se* discriminatory.

231. Section 35 conflicts with another important goal of the ADA - protecting individuals with disabilities from sacrificing the quality of everyday life in order to receive needed medical services. See also, *Olmstead v. L.C.*, 527 U.S. 581 (1999) (ADA prohibits

“distinctions by which a class of disabled persons, or some within that class, are, by reason of their disability and without adequate justification, exposed by a state entity to more onerous treatment than a comparison group in the provision of services”).

232. Plaintiffs are subject to strip searches, shackles and waist chains; their mail is read and their telephone calls are monitored and recorded; they are forced to endure solitary confinement in cells without toilets, harassment from correctional officers, and an overall atmosphere that is punitive and demeaning – all so that they can receive treatment that is inferior to what is provided at DPH licensed facilities. *See also* 28 CFR § 35.152(b)(2) (i) (prohibiting correctional facilities from assigning an inmate to a higher security level than would otherwise be appropriate.).

233. Title II of the ADA also prohibits the unjustified isolation and institutionalization of persons with disabilities, *see* 42 U.S.C. § 12132; *Olmstead*, 527 U.S. 581 (1999), and requires states and other public entities to “administer services, programs, and activities” in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). *See also* 28 CFR § 35.152(b)(2) (requiring that inmates with disabilities be housed “in the most integrated setting appropriate to the needs of the individual.”).

234. Defendants have discriminated against Plaintiffs by incarcerating them in a correctional facility instead of providing treatment in a more integrated and less institutionalized setting, namely a DPH-approved inpatient treatment facility.

235. Defendants have failed to make reasonable accommodations to their policies and practices to ensure that men are not civilly committed to correctional facilities under Section 35.

236. Plaintiffs could all be reasonably accommodated in DPH or DMH facilities without imposing an undue burden on any state agency or fundamentally altering the nature of its

programs or services. It is more expensive to house civilly committed individuals in a correctional facility than a public health facility with a similar level of treatment, because the intensive and costly security related services are not necessary in a public health facility.

237. The imprisonment of Plaintiffs and proposed class members under Section 35 subjects them to disability discrimination in violation of Title II of the ADA, Section 504 of the Rehabilitation Act, G.L. c. 93 § 103, and Art. 114 of the Massachusetts Declaration of Rights.

COUNT THREE

Violation of Substantive Due Process Provisions of the Massachusetts Declaration of Rights and the U.S. Constitution

238. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

239. Plaintiffs' incarceration in a correctional institution is a massive curtailment of their liberty.

240. Section 35 commitment is subject to strict scrutiny under the due process protections in the Massachusetts Declaration of Rights. Accordingly, commitment under Section 35 must be narrowly tailored to serve a compelling governmental interest, and must also be the least restrictive means available to vindicate that interest. *Foster v. Mici*, 484 Mass. 698, 728 (2020),

241. Plaintiffs' incarceration in a correctional institution is not narrowly tailored to serve a compelling governmental interest, and is not the least restrictive means available to vindicate that interest.

242. Plaintiffs' incarceration is a substantial departure from accepted professional judgment, practice, or standards. No clinical or security professional makes the decision that a man committed under section 35 needs treatment in a correctional institution.

243. Plaintiffs' incarceration in a correctional institution is not reasonably related to the treatment and protective purposes of Section 35.

244. The incarceration of the Plaintiffs and the proposed class members therefore violates the substantive due process provisions of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Art. 1, 10, and 12 of the Massachusetts Declaration of Rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- a. Permanently enjoin the Defendants, their agents, officials, employees, and all persons acting in concert with them from placing the Plaintiffs, or any other men, in a correctional facility solely on the basis of their civil commitment under G.L. c. 123 § 35;
- b. Declare that incarcerating men committed solely under Section 35 constitutes gender discrimination in violation of the equal protection provisions of the Massachusetts Declaration of Rights, G.L. c. 93, § 102; and the United States Constitution;
- c. Declare that incarcerating men solely on the basis of their civil commitment under Section 35 violates the Americans with Disabilities Act, the Rehabilitation Act, G.L. c. 93 § 103, and Art. 114 of the Massachusetts Declaration of rights;
- d. Declare that incarcerating men solely on the basis of their civil commitment under Section 35 violates the due process provisions of the United States Constitution and the Massachusetts Declaration of Rights;
- e. Award Plaintiffs their reasonable attorneys' fees and costs; and

f. Grant Plaintiffs such other and further relief as the Court considers just and proper.

Dated: September 10, 2020

Respectfully submitted,

/s/ Bonita Tenneriello

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