

INFORMATION PACKET
Massachusetts General Laws
CHAPTER 123 SECTION 35
(Involuntary Commitment of a Person Abusing Substances)

What is a Section 35 petition?

A Section 35 petition is a civil proceeding (not involving a criminal charge). It allows for the involuntary commitment for substance use disorder treatment of up to ninety days for an individual (respondent) who has an addiction to either alcohol, legal or illegal drugs. In addition, the individual must also as a result of their addiction present an imminent (immediate) “likelihood of serious harm” to themselves or others as strictly defined by law. (In almost all cases the involuntary commitment will be for no more than thirty days.)

Who is eligible to be sectioned under Section 35 (referred to as the respondent)?

Individuals chronically abusing either alcohol, legal or illegal drugs and as a result present an immediate danger to themselves or others as a result of that abuse. The individual must also have refused recent efforts to engage in substance use disorder treatment i.e., detox, outpatient treatment, A.A. or N.A. and/or in-patient hospitalization services. There must be first-hand evidence (from the petitioner and ideally other sources) to confirm both the level of substance use disorder and the increased risk of harm immediately preceding the filing of the petition. Please note it is not enough that the individual refuses to stop abusing substances if there is no imminent risk related to the addiction.

There is no age requirement. So, the mother of an allegedly addicted 16-year-old may file a petition in the District Court even though the respondent is a juvenile.

Who can request / petition for a Section 35 (referred to as the petitioner)?

There are six categories of persons (petitioner) who may petition to have an individual involuntarily committed for substance abuse treatment:

- Family/blood relative
- Spouse
- Police officer
- Officer of the court (i.e. probation officer)
- Medical doctor
- Legal guardian

The following persons cannot petition the court to have an individual committed for substance use disorder treatment involuntarily under Section 35: girlfriend/boyfriend/significant other, therapist, social worker, friend, neighbor, landlord, representative payee, concerned citizen, attorney. Probation officers can only petition if

they have firsthand knowledge/information of the person being petitioned (i.e. not in the role as a family friend). In all cases, the petitioner must be available to testify in court and the person being petitioned must know who has requested the involuntary commitment for substance abuse treatment.

A person may seek their own commitment. But the statute still requires that someone from one of the six categories listed sign the petition. That person would have to talk with the party to make sure that they understand and meet the statutory requirement for involuntary commitment.

How does the Section 35 happen?

The commitment of an individual under a Section 35 petition is a two-part process:

I. Filing the petition:

- A. Petitioner must come to court and file in person in any District Court. However, the District Court of the city or town in which the allegedly addicted party can be located on the day of the petition may be the best venue if circumstances allow. The petitioner should know the location of the allegedly addicted party or alcoholic before filing a petition, otherwise the chances of completing the process within one court day are greatly reduced.
- B. Petitioner must be available throughout the entire process from initial filing to final decision on the petition.
- C. Petitioner will need to first go to the court clinic to meet with the court clinic social worker or psychologist.
- D. Petitioner then signs a petition and fills out a short intake form, which identifies the alleged addict and the reasons and justification for the Judge to review.
- E. Petitioner may also be asked to testify before a Judge in open court or at sidebar (beside the judge's bench) and asked to state the reasons requesting for the petition.
- F. After reviewing the intake data and listening to the petitioner testify under oath, the Judge will then decide to order or deny having the individual brought into court.
 - 1) If the Judge orders, the warrant is issued, and it may be in effect for up to five court business days the warrant is immediately brought to the local police who attempt to apprehend the allegedly addicted party at the address

provided by the petitioner. The police must pick up the person and bring them to the courthouse within that five-court business day period. By law, the police can only apprehend the allegedly addicted party when Court is in session, not at night or on weekends, because this is a civil warrant and not criminal. There may be a cut-off time in the afternoon which can vary depending on the court.

- 2) If the order to pick up the person is denied at this stage, it is because the Judge feels the petitioner has not convinced the Court that the allegedly addicted party is in immediate danger.

II. Hearing the Petition in open court:

- A. The allegedly addicted party is apprehended by the police and brought into the court and placed in custody (lock up) with other defendants (criminal and civil). They are not separated from people facing criminal charges.
- B. An attorney is assigned to represent the respondent/allegedly addicted party immediately. The attorney represents the rights, wishes, and intentions of the allegedly addicted party (for example, not to be committed). They do not represent what might be in the “best interest” of the allegedly addicted party (e.g. substance abuse treatment) unless the respondent agrees.
- C. The respondent is evaluated/interviewed* by a Designated Forensic Psychologist in lock up usually with the attorney present. There is NO physical exam, urine screen or blood work involved. However, collateral sources i.e., former substance abuse or mental health treaters or programs may be contacted if the respondent signs a release.

* Note: If the allegedly addicted party/respondent is not coherent enough to participate, the person could either be placed in protective custody of the police, released, or sent to the hospital emergency room.
- D. The Judge hears testimony from the evaluator as to his/her clinical opinion regarding the person’s addiction as well as the imminent risk of harm due to that addiction.
 1. The rules of evidence do not apply to Section 35 hearings. Hearsay and second hand information is allowed but out of date material will be challenged. The person’s attorney will question the clinician and possibly the petitioner, and the Judge

may do so as well. Vague, general statements (such as “he will die if someone does not do something”) are not sufficient. But “he will die because he is diabetic and drinking heavily every day” could qualify as an immediately harmful situation if the diabetes is verified. The hearing is held in the open courtroom with the public present.

2. After hearing all of the facts, the Judge then determines whether to order the person committed against his/her will for addiction treatment.
- E. If the Judge rules that there is not enough evidence to meet the legal standard for either addiction or risk of harm, the person is immediately freed from custody and can leave. If the Judge decides to commit the person, he/she is held in custody of court officers and transported that day by the Sheriff Dept. to the receiving facility.

Where does the person committed under Section 35 go for treatment? (i.e., receiving facilities)?

The Court cannot commit to a private facility, nor force an insurance company to pay for treatment. There are five public detoxification / treatment facilities in Massachusetts to which the Court can commit under Section 35. There are two facilities for men and three for women. The request for a bed goes to a centralized intake. Please note that the court clinic cannot make the decision regarding which of the two facilities for men will be assigned to an individual male respondent. Central intake will inform the court clinic as to which facility the person has been assigned. The length of stay for the women’s facility and the men’s facilities is usually less than 30 days. They do not hold a person for a court date, but may assist in arranging transport to court depending on whether the Judge orders it.

I. Men’s Treatment Facilities:

Men go to either the Massachusetts Alcohol and Substance Abuse Center (**MASAC**) at 2 Administration Rd., Bridgewater, phone 508-279-3500 or the Men’s Addiction Treatment Center (**MATC**) at 10 Meadow Brook Rd., Brockton, phone 508-742-4400.

- A. **MASAC** is on the grounds but separate from Bridgewater State Hospital and is run by the *Department of Corrections* and serves both civilly committed and those committed with criminal charges. **MASAC** accepts those on bail. It is a locked and secure facility. The **MASAC** facility holds the committed men for their acute detox and for those without criminal charges will usually hold them for the full 30 days. However, for those with bail for criminal charges **MASAC** usually transfers them to Middleton jail for the remainder of their commitment or until their next court date. The Sheriff Department provides transportation from **MASAC** back to Court at the expiration of the Section 35, if the Judge orders it.

- B. **MATC** is located in a community setting in Brockton and is run by Highpoint under contract with the *Department of Public Health*. It is reserved for men who are either civilly committed without criminal charges or with criminal charges but are not on bail. They do not accept men who require strict security or present a high public safety risk.

* NOTE: The decision of which facility is made by central intake and is not up to the Court.

II. Women's Treatment Facilities:

Women are sent to:

The Women's Addiction Treatment Center (**WATC**) or to Women's Recovery from Addiction Program (**WRAP**), or at High Point-Jamaica Plain (**JP**). These facilities will not accept women who have bail or require strict security. These facilities may arrange for transportation back to the courts upon discharge depending on circumstances. However, as a general rule they do not assure return to court for a particular date unless specifically agreed to prior to admission.

- A. **WATC** is located in a community setting in New Bedford. 100 North Front St. New Bedford: **774-628-1000**
- B. **WRAP** is located on the Taunton State Hospital grounds, 60 Hodges Ave., Taunton: **508-977-3444**. It is primarily for women who also have other mental health issues.
- C. **High Point-JP** is located on the grounds of the Lemuel Shattuck Hospital at 170 Morton street, Jamaica Plain – on 12th floor in the rear of the building: **857-273-4929** It is primarily for women who also have other medical issues.

What happens after the commitment is completed and person is discharged?

Aftercare recommendations and referrals are made by the respective facilities and the Court has no influence on whether or not the individual agrees to engage in aftercare treatment following commitment. This law is intended as a life-saving measure during a crisis situation. It is not intended as a long-term solution to addiction issues. The Section 35 law also provides important legal safeguards for the rights of alcoholics and addicted parties who choose to refuse substance abuse treatment and are not in imminent danger to themselves or others.

If you believe a Section 35 may be the best option for a family member who is at risk due to their substance use please contact the Court Clinic at the District Court that is most convenient. The contact information for the Court Clinic at Lynn District Court is:

**Court Clinic
Lynn District Court
580 Essex Street
Lynn, MA 01901
(781) 586-7253 or 7254**