



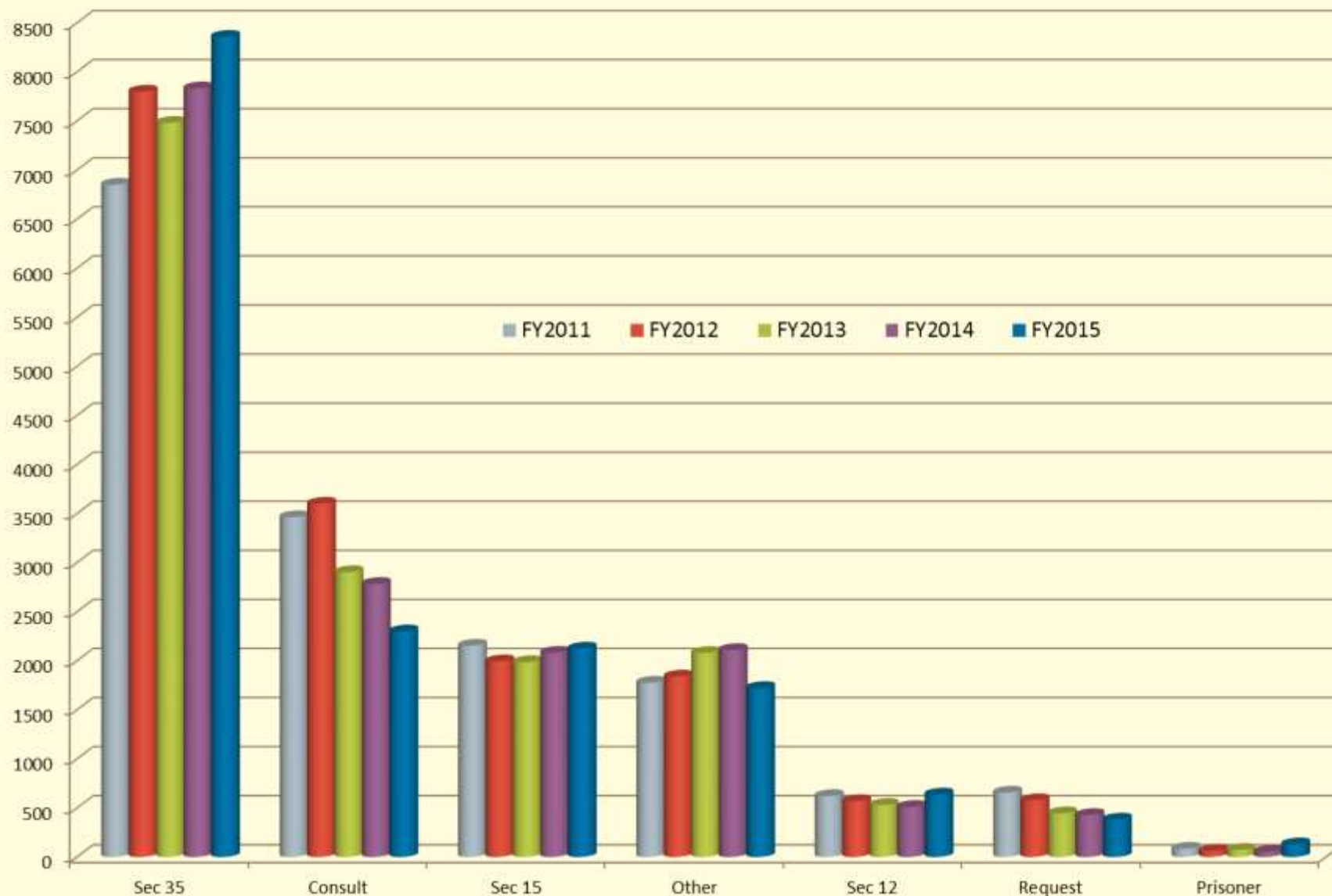
G.L. c. 123, § 35
2018

District and BMC Court Departments Chapter 123 s. 35 Case Filings, FY2010 to FY2018



Beginning in the 3rd quarter of FY2016, the distinction between drug and alcohol commitments was eliminated.

Department of Mental Health - Adult Court Clinics Services Provided by Category Group FY 2011-2015



Who may petition the court?

- ▣ Police Officer
- ▣ Physician
- ▣ Spouse
- ▣ Blood relative
- ▣ Guardian
- ▣ Court Official

3 Court Departments

Uniform Trial Court Rules

Rule 1. Commencement of proceedings

(a) Proceedings under the provisions of G.L. c. 123, § 35 in the **District Court, Boston Municipal Court, and Juvenile Court Departments** shall be commenced by the filing of a written petition, signed under the penalties of perjury...who the petitioner has reason to believe is an individual with an alcohol or substance use disorder, as those terms are defined in G.L. c. 123, § 35. Such a petitioner, including a court official, may petition on behalf of the respondent.



Self Petitions May Implicate Probation

Commentary to Rule 1:

“The statute requires that a police officer, physician, spouse, blood relative, guardian, or court official act as petitioner. **As a result, a person with a substance use disorder desiring his own commitment will need to obtain the assistance of a statutorily-authorized petitioner.**”



In what court may petition be filed?

Rule 1(b) “Proceedings may be commenced in any Division of any of the three Departments without regard to the age, residence, or location of the respondent, but the age, residence, or location of the respondent may determine to which Division or Department any warrant or summons will be returnable pursuant to Rule 3.”



Summons Procedure

Language of § 35:

“Upon receipt of a petition for an order of commitment of a person and any sworn statements the court may request from the petitioner, the court shall immediately schedule a hearing on the petition and shall cause a summons and a copy of the application to be served upon the person in the manner provided by G.L. c. 276, § 25.”

Warrant Procedure

Language of § 35:

“Upon presentation of such a petition, *if there are reasonable grounds to believe that such person will not appear and that any further delay in the proceedings would present an immediate danger to the physical well-being of the respondent*, said court may issue a warrant for the apprehension and appearance of such person before it.”

-Warrant may be in effect for up to 5 business days

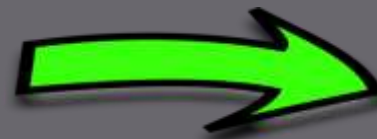
“Sunset Warrant”



“... provided, however that an arrest on such warrant shall not be made unless the person may be presented immediately before a judge of the district court.”

Rule 3 (d): warrant returnable to another division or department

“If the judge determines that the case should be heard in another Division or Department, because of the respondent’s age or location or for other good reason, the judge may, in the exercise of discretion, make the warrant or summons returnable to an appropriate court in another Division or Department. The clerk shall notify the return court of the warrant or summons and transmit the papers listed in Rule 10(a) to the return court.”



“Issuing Court”/“New Court”

Commentary on Rule 10 (continued):

“... This may cause issues with the *petitioner's* ability to arrive at the new court in a reasonable amount of time, and the use of remote testimony or the receipt of hearsay evidence may be appropriate to balance the need for dispatch with the desire for the petitioner's participation.”

Lamb Warning & Counsel Consultation

Commentary to Rule 4: "... counsel must be appointed before the court-ordered examination, pursuant to G.L. c. 123, § 35, ¶ 3, and the attorney should be allowed to consult with the respondent before the examination begins."

Conduct of Hearing: “Clear and Convincing” Standard of Proof

Commentary to Rule 6:

“Rule 6(a) imposes a “clear and convincing” standard of proof for these cases because this is the standard required for other temporary detention orders, specifically pretrial detention based on “dangerousness” under G.L. c. 276, § 58A. *See Mendonza v. Commonwealth*, 423 Mass. 771, 782-84 (1996).”

Testimony Supporting Two prongs



Rule 6:

“After the completion of the examination ordered under Rule 5, the judge shall hold a hearing expeditiously to determine whether there is **clear and convincing evidence** that


(1) the **respondent is an individual with an alcohol or a substance use disorder**, as defined in G.L. c. 123, § 35; and

(2) there is a **likelihood of serious harm**, as defined in G.L. c. 123, § 1, as a result of the respondent’s alcoholism or substance use disorder, to the respondent, the petitioner, or any other person.”

Rule 8: Findings and Order

Rule 8 (a):

“If the judge makes the dual findings required by Rule 6(a), the court may then issue an order of commitment consistent with the terms and requirements set forth in G.L. c. 123, § 35, which shall be for a period not to exceed 90 days.”

ORDER FOR COMMITMENT OF ALCOHOLIC OR SUBSTANCE ABUSER G.L. c.123, § 35		DOCKET NO.: DIVISION:		Trial Court of Massachusetts 	
RESPONDENT'S NAME:		DOB:	AGE:	SSN:	GENDER:
TREATMENT FACILITY TO WHICH COMMITTED:					
<p style="text-align: center;">ORDER OF CIVIL COMMITMENT PURSUANT TO G.L. c. 123, § 35</p> <p>After an examination of the Respondent named above by a qualified physician, psychologist, or social worker; the appointment of counsel, if necessary; and a hearing held in accordance with the applicable court rules; this COURT determines that there is clear and convincing evidence that the Respondent is an individual with a Substance Use Disorder as such terms are defined in G.L. c. 123, § 35, AND that failure to commit the Respondent would create a LIKELIHOOD OF SERIOUS HARM, as defined in G.L. c.123, § 1, to the Respondent or to others; AND that the only appropriate setting for treatment for the Respondent is a secure facility.</p> <p>THEREFORE, pursuant to G.L. c.123, § 35, THIS COURT ORDERS that the Respondent be COMMITTED to the facility indicated above for the purpose of inpatient care and treatment for a period not to exceed ninety (90) days, and that the Superintendent of the receiving facility, and the Superintendent of any facility to which the Respondent is transferred, provide and maintain custody of the Respondent until this commitment properly terminates.</p> <p style="text-align: center;">FURTHER ORDERS</p> <p>I. TRANSPORTATION TO FACILITY: The Court ORDERS any DULY AUTHORIZED OFFICER to deliver the Respondent to the Superintendent of such treatment facility, and to make return of service promptly to the Clerk-Magistrate of this Court, in the space provided below. Nothing in this Order prohibits the Sheriff from taking any action deemed necessary regarding the Respondent's health prior to delivery of the Respondent to the facility, provided that the Sheriff shall maintain custody of the Respondent until said delivery is made.</p> <p>II. ESCAPE, TRANSFER, RELEASE FROM CUSTODY: The Superintendent of any facility with custody of the Respondent is ORDERED TO NOTIFY the Clerk-Magistrate's Office by transmitting the "Notice of Escape, Transfer, or Release" form required by the Trial Court to the Court that issued this order. Notice is to be sent to the court as set forth in the Court electronic transmission list that has been provided to your facility. Such notice shall be transmitted within twenty-four hours of the Respondent's ESCAPE from custody, TRANSFER to another facility, or RELEASE from custody.</p> <p>III. FIREARM PROVISION: This commitment order prohibits the Respondent from being issued a firearm identification card or a license to carry a firearm unless a petition for relief is subsequently granted.</p> <p style="margin-top: 20px;">This Commitment Order will expire on _____ unless terminated earlier upon written determination of the Superintendent pursuant to G.L. c.123, § 35.</p>					
DATE OF ORDER:		JUDGE'S SIGNATURE:			
OFFICER'S RETURN OF SERVICE I have delivered the Respondent to the treatment facility named above along with a copy of this order.					
DATE DELIVERED:		OFFICER'S SIGNATURE:		OFFICER'S TITLE:	

Statute: Transfer

Language of § 35:

“Subsequent to the issuance of a commitment order, the superintendent of a facility may authorize the transfer of a patient to a different facility for continuing treatment; provided, that the superintendent shall provide notification of the transfer to the committing court.”

**NOTICE OF ESCAPE, TRANSFER,
OR RELEASE FROM G.L. c. 123, § 35
TREATMENT FACILITY**

DOCKET NO.:

TRIAL COURT OF MASSACHUSETTS



RESPONDENT NAME:

RESPONDENT DOB:

COURT DIVISION:

DATE OF COMMITMENT:



Facility Name: _____

Facility Address: _____

Facility Telephone No. _____

I, Superintendent of the Facility listed above, do hereby notify the Court of one of the following:

☐ **Respondent Escaped from Treatment Facility**

DATE OF ESCAPE:

TIME OF ESCAPE:

☐ AM
☐ PM

METHOD OF ESCAPE:

FACTS OF ESCAPE:

PARTIES NOTIFIED OF ESCAPE:

OTHER COMMENTS:

☐ **Respondent was Transferred to Different Facility**

DATE OF TRANSFER:

NEW FACILITY NAME:

NEW FACILITY ADDRESS:

☐ **Respondent was Released Prior to the Expiration of Commitment and Such Release Will
Not Result in a Likelihood of Serious Harm (attach details if warranted)**

DATE OF RELEASE:

☐ Released to Court☐ Other _____☐ Released to House of Corrections _____☐ Program Failure (attach details)

This notice form is to be provided to the committing court within 24 hours of the event described herein via electronic mail. Email addresses are available at www.mass.gov/courts.

DATE:

SUPERINTENDENT NAME:

SUPERINTENDENT SIGNATURE:

Firearm Provision

Rule 8(d):

“Upon issuance of a commitment order, the court shall notify the respondent that the respondent is prohibited from being issued a firearm identification card pursuant to G.L. c. 140, § 129B, or a license to carry pursuant to G.L. c. 140, §§ 131 and 131F, unless a petition for relief pursuant to G.L. c. 123, § 35 is subsequently granted.”


Where are the beds?



DOC - “Dual Commitments”

Women Concurrently Held on Bail and §35

- ▣ The statute does not authorize § 35 commitments of women to MCI Framingham unless the female is concurrently held on bail
- ▣ A female respondent with concurrent bail or criminal hold may be ordered to MCI Framingham and – if bail is subsequently posted – transferred to a DMH/DPH facility

ORDER FOR COMMITMENT OF FEMALE RESPONDENT FOR ALCOHOL OR SUBSTANCE USE DISORDER, G.L. c.123, § 35, with CONCURRENT CRIMINAL PROCESS	DOCKET NO.		Trial Court of Massachusetts 	
	DIVISION			
RESPONDENT'S NAME:	DOB:	AGE:	SSN:	GENDER: FEMALE

ORDER OF CIVIL COMMITMENT PURSUANT TO G.L. c. 123, § 35

After an examination of the Respondent named above by a qualified physician, psychologist, or social worker; the appointment of counsel, if necessary; and a hearing held in accordance with the applicable court rules; this COURT determines that there is clear and convincing evidence that the Respondent is an individual with ☐ an Alcohol Use Disorder ☐ a Substance Use Disorder ☐ Alcohol and Substance Use Disorders as such terms are defined in G.L. c.123, § 35; AND that failure to commit the Respondent would create a LIKELIHOOD OF SERIOUS HARM, as defined in G.L. c.123, § 1, to the Respondent or to others; AND that the only appropriate setting for treatment for the Respondent is a secure facility.

This COURT further finds that the Respondent has been ordered committed pursuant to a mittimus in a criminal case.

THEREFORE, pursuant to G.L. c. 123, § 35, THIS COURT ORDERS that the Respondent be COMMITTED for the purpose of inpatient care and treatment for a period not to exceed ninety (90) days. The Respondent shall be delivered to MCI-Framingham pursuant to the mittimus in the criminal case(s). Upon the termination of custody in the criminal case(s), if less than ninety (90) days have passed since the date of this Order, this Court ORDERS the Department of Correction to transport the Respondent to a treatment facility designated by the Department of Public Health. The Superintendent of that facility, and the Superintendent of any facility to which the Respondent is thereafter transferred, shall provide and maintain custody of the Respondent until this commitment properly terminates, no more than ninety (90) days from the date of this order.

FURTHER ORDERS

I. ESCAPE, TRANSFER, RELEASE FROM CUSTODY: The Superintendent of any facility with custody of the Respondent is ORDERED TO NOTIFY the Clerk-Magistrate's Office by transmitting the "Notice of Escape, Transfer, or Release" form required by the Trial Court to the court that issued this order. Notice is to be sent to the court as set forth in the Court electronic transmission list that has been provided to your facility. Such notice shall be transmitted within twenty-four hours of the Respondent's ESCAPE from custody, TRANSFER to another facility, or RELEASE from custody.

II. FIREARM PROVISION: This commitment order prohibits the Respondent from being issued a firearm identification card or a license to carry a firearm unless a petition for relief is subsequently granted.

This Commitment Order will expire on _____, unless terminated earlier upon written determination of the Superintendent, pursuant to G.L. c. 123, § 35.

Comments: _____

DATE OF ORDER:	JUDGE ISSUING ORDER:	SIGNATURE OF JUDGE/CLERK MAGISTRATE
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DOC – Male Commitments

- ▣ MCI Plymouth: 251 beds
- ▣ Respondents who have no concurrent criminal detention are committed to DOC for approximately 20 days
- ▣ If the respondent is held concurrently on a criminal matter, he may be transferred to the Hamden County Sheriff's Department pursuant to an MOU



Stonybrook Stabilization and Treatment Center – Ludlow

- ▣ MOU between DOC and Hampden County Sheriff's Department
- ▣ Effective July 30, 2018, Stonybrook Stabilization and Treatment Center at Ludlow House of Correction accepts § 35 civilly committed men from Berkshire, Franklin, Hampden, Hampshire, and Worcester Counties and accept them directly from the committing court

Stonybrook Stabilization and Treatment Center – Ludlow

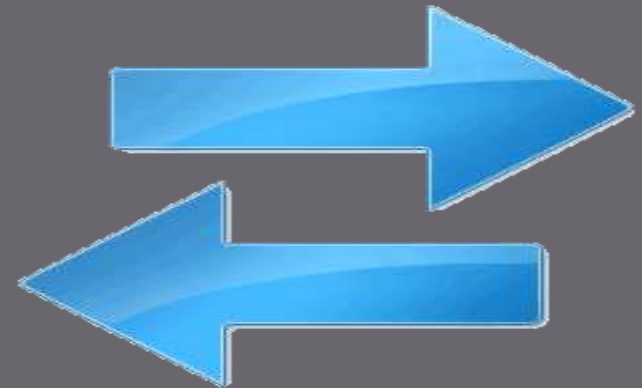
- ▣ Courts from Worcester County and the 5 western counties may commit men directly to Stonybrook at Ludlow.



Transfer of DOC Commitments from Eastern Massachusetts to Ludlow

The Superintendent of MASAC at Plymouth may transfer a (male) respondent to Stonybrook, Ludlow based on:

- Open criminal case(s)
- Outstanding warrant(s)
- Bail
- Pending VOP(s)
- Risk of escape
- Assaultive behavior



Stonybrook Stabilization and Treatment Center – Springfield

- ▣ The Stonybrook Stabilization and Treatment Center at 155 Mill Street, Springfield, MA will operate as a stepdown program for men who have been civilly committed to Stonybrook Ludlow
- ▣ Stonybrook at Springfield will not accept men directly from the committing court

DPH – Male Commitments

- ▣ Men
 - MATC: 108 Level III beds operated by Highpoint Treatment Center
 - Doors are alarmed

DMH – Female Commitments

DMH operated locked beds

45 total beds (combined in 2 units) at Taunton State Hospital known as WRAP (Women in Recovery from Addiction Program)



DPH – Female Commitments

Women:

- WATC: 108 beds operated by Highpoint
- Doors are alarmed



DPH – Female Commitments

- Highpoint at Shattuck:
 - 28 beds created for women on 12th floor of Shattuck Hospital.
 - 14 ATS and 14 CSS beds
 - Exit doors are alarmed

Problems Encountered by Courts in § 35 Commitments

- ▣ Respondents brought to court with serious medical issues
- ▣ No medical staff at the courts to triage medical acuity
- ▣ Sheriff transport to facility may not occur until late in the day, sometimes hours after the respondent has been brought to the courthouse