

Section 35 – Standards for Medical Review and Sharing Clinical Information



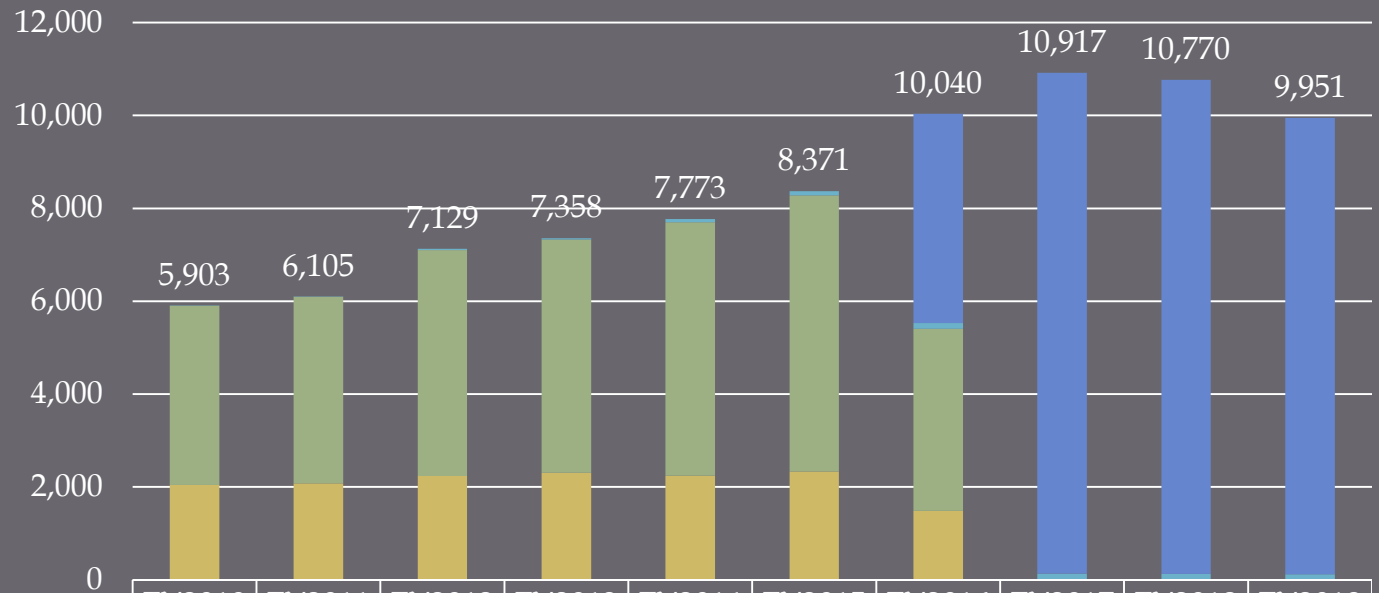
MASSACHUSETTS
Health & Hospital
ASSOCIATION



G.L. c. 123, § 35
2019

)

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.

Who may petition the court?

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

3 Court Departments

Uniform Trial Court Rules

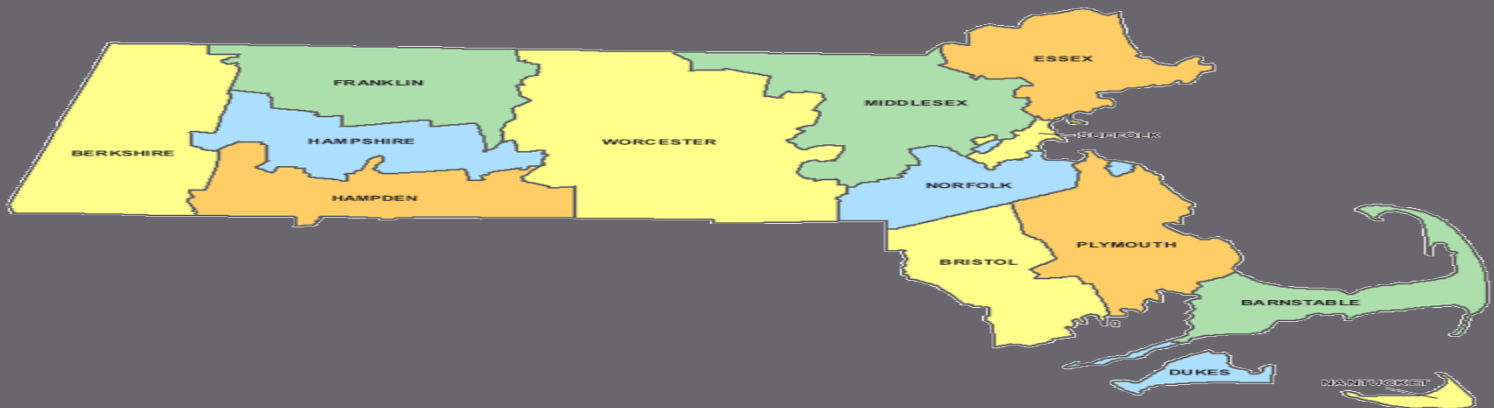
Rule 1. Commencement of proceedings

(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.



In what court division 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.”



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.”

Two Potential Court Events for Physician Petitioners

- ▣ Filing of Petition and related documents
- ▣ Hearing on the Petition for the commitment of the respondent

The Petition Process

Filing of the Petition

- ▣ Uniform Trial Court Forms
 - Petition
 - Affidavit
 - BMC Supplemental Information Affidavit
 - Respondent Information Form
- ▣ Court may request “sworn statements from the petitioner” and may require the presence of petitioner or the petition may be denied

Uniform Trial Court § 35 Petition

PETITION FOR COMMITMENT FOR ALCOHOL OR SUBSTANCE USE DISORDER G.L. c. 123, § 35	DOCKET NO. DIVISION	Trial Court of Massachusetts 	
IN THE MATTER OF (name of respondent)	SOCIAL SECURITY NUMBER (respondent)	DOB OR AGE (respondent)	GENDER (respondent) <input type="checkbox"/> Male <input type="checkbox"/> Female
<p align="center"> PETITION FOR COMMITMENT FOR ALCOHOL OR SUBSTANCE USE DISORDER G.L. c. 123, § 35 </p> <p> The undersigned Petitioner hereby applies to this court for an order committing the Respondent named above for inpatient care and treatment for an alcohol or substance use disorder for a period not to exceed 90 days under the provisions of G.L. c. 123, § 35. </p> <p> The Petitioner has reason to believe that the Respondent has an alcohol or substance use disorder, and petitions the court to find there is a likelihood of serious harm as a result of the Respondent's chronically or habitually consuming or ingesting alcoholic beverages and/or controlled substances or intentionally inhaling toxic vapors to the extent that such use substantially injures the respondent's health or substantially interferes with the Respondent's social or economic functioning, or that the Respondent has lost the power of self-control over the use of such beverages and/or substances. </p> <p> Reasons Respondent may not appear before the Court if summonsed, and reasons Respondent is in immediate danger: </p> <p>_____</p> <p>_____</p> <p>_____</p>			
DATE SIGNED	PETITIONER'S SIGNATURE UNDER THE PAINS AND PENALTIES OF PERJURY		
PETITIONER'S PRINTED NAME	PETITIONER'S TITLE OR RELATIONSHIP, IF ANY, TO RESPONDENT		
PETITIONER'S CELL PHONE	PETITIONER'S HOME PHONE	PETITIONER'S WORK PHONE	
<p align="center">EXCERPTS FROM G.L. c. 123, §§ 1 and 35</p> <p> G.L. c. 123, § 1. Definitions. "Likelihood of serious harm", (1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community." </p> <p> G.L. c. 123, § 35. Commitment for alcohol or substance use disorder. "Alcohol use disorder", the chronic or habitual consumption of alcoholic beverages by a person to the extent that (1) such use substantially injures the person's health or substantially interferes with the person's social or economic functioning, or (2) the person has lost the power of self-control over the use of such beverages." </p> <p> "Substance use disorder", the chronic or habitual consumption or ingestion of controlled substances or intentional inhalation of toxic vapors by a person to the extent that: (i) such use substantially injures the person's health or substantially interferes with the person's social or economic functioning; or (ii) the person has lost the power of self-control over the use of such controlled substances or toxic vapors." </p> <p> "Any police officer, physician, spouse, blood relative, guardian or court official may petition in writing any district court . . . for an order of commitment of a person whom he has reason to believe has an alcohol or substance use disorder. . . . [T]he 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 [I]f 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. If such person is not immediately presented before a judge of the district court, the warrant shall continue day after day for up to 5 consecutive days, excluding Saturdays, Sundays and legal holidays, or until such time as the person is presented to the court, whichever is sooner; 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. . . . The court shall order examination by a qualified physician, a qualified psychologist or a qualified social worker." </p> <p> "If, after a hearing which shall include expert testimony and may include other evidence, the court finds that such person is an individual with an alcohol or substance use disorder and there is a likelihood of serious harm as a result of the person's alcohol or substance use disorder, the court may order such person to be committed for a period not to exceed 90 days to a facility designated by the department of public health, followed by the availability of case management services provided by the department of public health for up to 1 year; provided, that a review of the necessity of the commitment shall take place by the superintendent on days 30, 45, 60 and 75 as long as the commitment continues. A person so committed may be released prior to the expiration of the period of commitment upon written determination by the superintendent of the facility that release of that person will not result in a likelihood of serious harm. Such commitment 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. 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. . . ." </p> <p> "If the department of public health informs the court that there are no suitable facilities available for treatment licensed or approved by the department of public health or the department of mental health, or if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility, then the person may be committed to: (i) a secure facility for women approved by the department of public health or the department of mental health, if a female; or (ii) the Massachusetts correctional institution at Bridgewater, if a male; provided, however, that any person so committed shall be housed and treated separately from persons currently serving a criminal sentence. The person shall, upon release, be encouraged to consent to further treatment and shall be allowed voluntarily to remain in the facility for such purpose." </p>			

Physician as Petitioner

- ▣ The Petition must be signed by a physician
- ▣ Once the Petition has been filed, it cannot be withdrawn without permission of the Court
- ▣ The Judge may require the petitioner's presence in court or the Petition may be denied
- ▣ The Judge will decide whether to have the Respondent brought into court either by summons or warrant of apprehension

Uniform Trial Court Affidavit

**AFFIDAVIT IN SUPPORT OF
PETITION FOR COMMITMENT
UNDER G.L. c. 123, § 35**

COURT DEPARTMENT

**TRIAL COURT OF
MASSACHUSETTS**



RESPONDENT'S NAME

PETITIONER'S NAME

PETITIONER'S ADDRESS

PHONE NUMBER

1. What is your relationship to the Respondent? How often do you see the person? When did you last see the person?

2. Reason for the request for the petition. Please check below if the person is abusing alcohol, substances or both. Describe the frequency of use, and, if substances are involved, what kind.

☐ Alcohol Abuse

☐ Substance Abuse

☐ Both Alcohol and Substance Abuse

3. This person is a danger to self or others for the following reasons (for example, overdose, suicide attempt, hospitalization or criminal activity). Please provide a detailed explanation including dates of events.


Questions on the Uniform Trial Court Affidavit

- ▣ What is your relationship to the Respondent? How often do you see the person? When did you last see the person?
- ▣ Reason for the request for the petition. Please check below if the person is abusing alcohol, substances or both. Describe the frequency of use, and, if substances are involved, what kind.
- ▣ This person is a danger to self or others for the following reasons (for example, overdose, suicide attempt, hospitalization or criminal activity). Please provide a detailed explanation including dates and events.

Questions on the Uniform Trial Court Affidavit

- ▣ Does the Respondent have a history of mental health and/or substance abuse commitments or treatment? If yes, please provide a detailed explanation including when, where, and how recent.
- ▣ Provide any other information you feel will assist the Court in deciding whether or not to commit the Respondent.
- ▣ Provide any other information you feel will assist the Court in deciding whether or not to commit the Respondent.

Uniform Trial Court Affidavit Boston Municipal Court

PETITIONER'S SUPPLEMENTAL INFORMATION AFFIDAVIT pursuant to G. L. c. 123, § 35 Page 1 of 2		COURT DEPARTMENT Boston Municipal Court <hr/> COURT DIVISION West Roxbury		TRIAL COURT OF MASSACHUSETTS 	
As a qualified Petitioner pursuant to G. L. c. 123, § 35, and as required pursuant to BMCD Standing Order 1-17, I hereby submit this Supplemental Information Affidavit together with the Petition and Respondent Information Form requesting an order of commitment for the following Respondent/Patient.					
DATE:					
Name of Petitioner:				Police District:	
Contact Number* (cell phone or pager):		Hospital:			
* Although your physical presence at the preliminary hearing for the issuance of the warrant of apprehension and subsequent hearing is not required, the clinician and court may need to contact you for additional information.					
Name of Respondent/Patient:				Date of Birth, if known, or Approximate Age	
Last Known Address or Whereabouts:				Telephone Number	
City/Town	State	Zip Code			
How long have you known the person? Describe the nature of your relationship, the frequency of your interactions, and any behaviors you have observed that cause you concern for the health and welfare of the person.					
REASON(S) FOR THE PETITION (please check all that apply and provide specific details):					
<input type="checkbox"/> Likelihood of serious harm to this person or harm to others within the community due to his/her use of drugs and/or alcohol. Please provide a detailed explanation below.					
<input type="checkbox"/> Person needs emergency care and treatment due to the following recent event(s) as explained below.					
<input type="checkbox"/> Overdose <input type="checkbox"/> Self-destructive behavior <input type="checkbox"/> Criminal activity <input type="checkbox"/> Hospitalization <input type="checkbox"/> Other					

Questions on the Uniform Petitioner's Supplemental Information Affidavit Boston Municipal Court

- ▣ How long have you known the person? Describe the nature of your relationship, the frequency of your interactions, and any behaviors you have observed that cause you concern for the health and welfare of the person.
- ▣ **REASON(S) FOR THE PETITION (please check all that apply and provide specific details):**
 - Likelihood of serious harm to this person or harm to others within the community due to his/her use of drugs and/or alcohol. Please provide a detailed explanation below.

Questions on the Uniform Petitioner's Supplemental Information Affidavit Boston Municipal Court

- ▣ Person needs emergency care and treatment due to the following recent event(s) as explained below.
 - Overdose
 - Self-destructive behavior
 - Criminal activity
 - Hospitalization
 - Other

Questions on the Uniform Petitioner's Supplemental Information Affidavit Boston Municipal Court

- ▣ Prior suicide attempts or a history of mental health commitments or treatment. Please provide a detailed explanation including when, where, and how recently.
- ▣ Person has a history of violence or threats to commit violence. Please provide a detailed explanation below.
- ▣ Drugs and/or alcohol are contributing factors. Please provide a detailed explanation below.

Questions on the Uniform Petitioner's Supplemental Information Affidavit Boston Municipal Court

- ▣ Person's use of drugs and/or alcohol present a substantial threat to the public safety and the community where he/she resides. Please provide a detailed explanation.

Questions on the Uniform Petitioner's Supplemental Information Affidavit Boston Municipal Court

- ▣ Please attach any police reports, medical reports or other documentation concerning the respondent/patient that will assist the court in determining whether the respondent/patient is an individual with an alcohol or substance use disorder, whether the respondent/patient needs emergency hospitalization and treatment, and whether there is a likelihood of serious harm to respondent, petitioner or any other person.

After printing and signing this form, please fax this form with all attachments, along with the Petition and Respondent Information Form, to Office of Clerk-Magistrate, Attention: Clerk-Magistrate Sean Murphy, at Fax No. (617) 983-0243.

Uniform Trial Court Respondent Information Form

RESPONDENT INFORMATION FORM AS PROVIDED BY PETITIONER G.L. c. 123 § 35		DOCKET NO. (for court use only)		Trial Court of Massachusetts	
This information is requested to help police identify and locate the Respondent in order to serve the Respondent with any summons or execute any warrant of apprehension pursuant to G.L. c. 123 § 35. Please provide as much information as possible.					
RESPONDENT'S NAME			OTHER NAMES USED BY RESPONDENT, IF ANY		
RESPONDENT'S DATE OF BIRTH		RESPONDENT'S PLACE OF BIRTH		RESPONDENT'S SOCIAL SECURITY NUMBER	
MOTHER'S MAIDEN NAME (FIRST, LAST)			FATHER'S NAME (FIRST, LAST)		
SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE	EYE COLOR	HAIR COLOR	HEIGHT	WEIGHT
BUILD					
PHOTO AVAILABLE <input type="checkbox"/> YES (HELPFUL FOR ID) PLEASE ATTACH <input type="checkbox"/> NO		OTHER PHYSICAL CHARACTERISTICS (beard, glasses, scars, tattoos, complexion, hairstyle)			
RESPONDENT'S HOME ADDRESS (NO., STREET, CITY, STATE, ZIP CODE)			APT. NO.	FLOOR NO.	NAME ON DOOR/MAILBOX
RESPONDENT'S HOME PHONE NO.	RESPONDENT'S CELL PHONE NO.	DOES THE RESPONDENT UNDERSTAND ENGLISH? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF NOT, WHAT LANGUAGES?	
RESPONDENT'S EMPLOYER/WORKPLACE			TITLE		DEPARTMENT
WORK ADDRESS (NO., STREET, CITY, STATE, ZIP CODE)			WORK TELEPHONE NO.		WORK HOURS
OTHER PLACES RESPONDENT MAY BE FOUND (friends, bars, relatives, hangouts)			BEST PLACE TO FIND RESPONDENT		BEST TIME TO FIND RESPONDENT
MOTOR VEHICLE LICENSE PLATE	YEAR	MAKE	MODEL		COLOR
DOES THE RESPONDENT HAVE: (describe briefly)					
A history of violence toward police officers? <input type="checkbox"/> YES <input type="checkbox"/> NO _____					
A history of using/abusing drugs or alcohol? If so, what kind? <input type="checkbox"/> YES <input type="checkbox"/> NO _____					
Access to guns, a license to carry, or possess a gun? If so, what kind? <input type="checkbox"/> YES <input type="checkbox"/> NO _____					
Psychiatric/emotional problems? If so, what kind? <input type="checkbox"/> YES <input type="checkbox"/> NO _____					
Any other information which might be helpful in locating the Respondent: _____ _____ _____					
DATE SIGNED		PETITIONER'S NAME (printed)		PETITIONER'S SIGNATURE	

Self Petitions not Authorized by Statute

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.”



Obtaining the Appearance of Respondent at Court

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.”

Warrant of Apprehension

- ▣ When a warrant is issued, the Respondent may be placed in custody by the police, handcuffed, taken to court and detained in a holding cell to wait for a hearing
- ▣ If committed, the Respondent may be placed in the custody of the county sheriff and transported to a facility.
- ▣ The evaluation, hearing and transport process may take several hours
- ▣ There are no medical staff at the Court

Arrival of Respondent at Courthouse

Respondent in Courtroom: May be Placed in Custody

Rule 9. Security of respondent

“The court shall take such action and issue such orders as may be necessary to secure the presence of the respondent after the respondent’s arrival at the court, prior to or during the hearing, and while awaiting transport following the issuance of a commitment order, as the circumstances may require.”



No Medical Staff at Courthouse

- ▣ There are no medical staff at the Court. No respondent should be sent to the Court who requires ongoing medically assisted detox or who requires ongoing medical treatment for a serious medical condition.
- ▣ The wait time in the Courthouse for the evaluation, hearing and for transportation to a facility (if Respondent is committed) may take several hours.

Appointment of Counsel for Respondent

Appointment of Counsel

Statutory language:

“The person shall have the right to be represented by legal counsel and may present independent expert or other testimony. If the court finds the person indigent, it shall immediately appoint counsel.”

Evaluation by Court Clinician

Evaluation at Court

Statutory Language:

“The court shall order examination by a qualified physician, a qualified psychologist or a qualified social worker.”

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Evaluation at Court

- ▣ Statutory Language: “The court shall order examination by a qualified physician, a qualified psychologist or a qualified social worker.”
- ▣ The Court will arrange for a psychologist or social worker (“court clinician”) to evaluate the Respondent.
- ▣ The clinician will interview the Respondent and the Petitioner. The clinician may also contact treatment providers to obtain information to assist the Court to decide whether or not to commit the respondent.

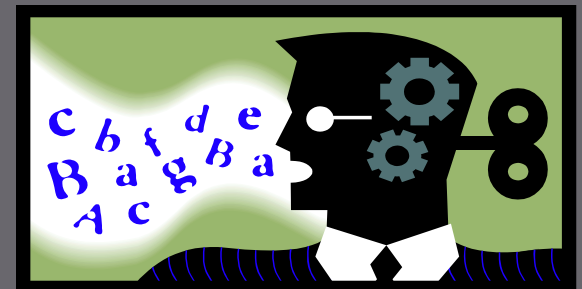
Consultation with Counsel and Lamb Warning

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."

Lamb Warning Required

Commentary to Rule 4:

“Prior to the examination, a psychologist or social worker clinician must provide the respondent with the warnings required by *Commonwealth v. Lamb*, 365 Mass. 265, 270 (1974), regarding the unprivileged nature of communications during the examination, and the respondent must knowingly and voluntarily waive the privilege otherwise afforded by G.L. c. 233, § 20B or G.L. c. 112, § 135B. See *In re Laura L.*, 54 Mass. App. Ct. 853, 858-61 (2002).”



Rule 7(a) - Privileges

- ▣ Privileges and statutory disqualifications shall apply.
- ▣ Psychotherapist – patient privilege G.L. c. 233, § 20B
- ▣ Social Worker – client privilege G.L. c. 112, § 135B

The Hearing on the Petition for Commitment

Conduct of Hearing: Physician Petitioner May Be Required to Appear at Court

Rule 6:

- ▣ (b) The judge may inquire of the petitioner and may accept testimony or other evidence from the petitioner or any other person, including a court official.
- ▣ (c) The respondent shall have the right to cross-examine witnesses, present independent expert evidence, call witnesses, and submit documents or other evidence.
- ▣ (d) All testimony shall be taken under oath and shall be recorded or transcribed.

Witness Testimony

Commentary:

“Rule 6(b) recognizes that, after the amendment of section 35 in St. 2011, c. 142, § 18, nonmedical testimony may be presented to the court in support of a section 35 petition, in addition to the medical testimony of the clinician.”

Other Non-medical (lay) testimony

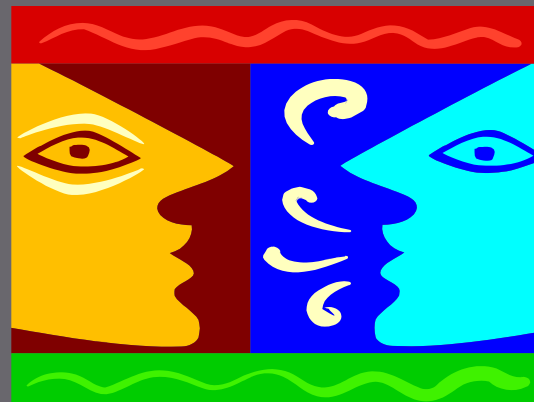
Commentary to Rule 6

- ▣ [T]he judge may inquire of the petitioner (or the nonqualified petitioner who brought the matter to the attention of a court official) to determine whether the petitioner has relevant evidence to present on the petition.
- ▣ [T]he judge may accept testimony or evidence from other witnesses as well. Where court officials, especially probation officers, have had contact with a respondent, they may well have useful information for the court.

Hearsay Evidence

Rule 7 (a)

- ▣ The rules of evidence shall not apply in proceedings under G.L. c. 123, § 35,
- ▣ Hearsay evidence shall be admissible, but may be relied upon only if the judge finds that it is substantially reliable. *In Matter of G.P.*, 473 Mass. 112 (2015)



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.”

Likelihood of Serious harm

- ▣ “...[C]hronic substance abuse, "by itself, is insufficient to establish a 'very substantial risk' of harm." *Matter of G.P.*, 473 Mass. at 128. Instead, there must be an element of imminent risk of serious harm. *Id.* at 127. The evidence must support a conclusion that the imminent harm will materialize "in the reasonably short term -- in days or weeks rather than in months." *Id.* at 128. "We may accept . . . that in the degree that the anticipated physical harm is serious -- approaches death -- some lessening of a requirement of 'imminence' seems justified." *Id.*, quoting *Nassar*, 380 Mass. at 917." *In Matter of A.M.*, 94 Mass. App. Ct 339 (2018)

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

Commentary to Rule 6:

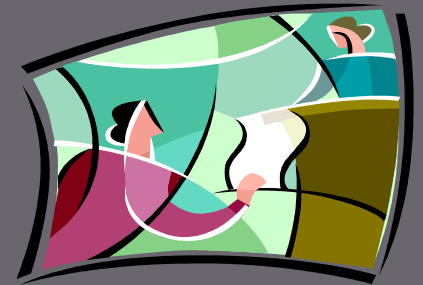
“Rule 6(a) imposes a “clear and convincing” standard of proof for these cases because this is the standard required for other temporary detention orders, specifically pretrial detention based on “dangerousness” under G.L. c. 276, § 58A. *See Mendonza v. Commonwealth*, 423 Mass. 771, 782-84 (1996).”

Court Findings and Order

Statute: Findings and Order

Statutory language of § 35:


“If, after a hearing which shall include expert testimony and may include other evidence, the court finds that such person is an individual with an alcohol or substance use disorder and there is a likelihood of serious harm as a result of the person's alcohol or substance use disorder, the court may order such person to be committed for a period not to exceed 90 days to a facility designated by the department...”




Court Findings

- ▣ If the judge concludes that there is not enough evidence to meet the legal standard for an alcohol or substance use disorder or likelihood of serious harm, the petition will be denied and the respondent will be released.

**Uniform Trial Court
Order of Commitment Form
(Male Respondent and Female
Respondent without Concurrent
Criminal Bail or Detention Order)**

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:	

**Uniform Trial Court
Order of Commitment Form
(Female Respondent with Concurrent
Criminal Order of Detention)**

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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**Uniform Trial Court Form
for Respondent's
Discharge, Transfer or Escape**

**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:

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 Transfer or Release

When a court receives a notice of a transfer or release from a facility, that notice will be docketed and placed in the file.



Notice of Escape

When a court receives a notice of escape, that notice will be docketed and then brought to the attention of a judge immediately. The judge must then decide whether to issue a new warrant of apprehension.



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
- ▣ If the female respondent is concurrently held on bail or is otherwise detained on a criminal case, the female respondent may be ordered to MCI Framingham and, if during the 90 day period following the section 35 commitment the bail is posted or the detention is removed, the respondent will be 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 <input type="checkbox"/>			
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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**Commitment of All Other
Respondents pursuant to
G.L. c. 123, § 35**

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:	

Commitment of Men to DOC

- ▣ MCI Plymouth: 251 beds
- ▣ Respondents who have no concurrent criminal detention may be committed to DOC
- ▣ 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
- ▣ 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 operates as a step-down program for men who have been civilly committed to Stonybrook Ludlow
- ▣ Stonybrook at Springfield will not accept men directly from the committing court

Commitment of Men to DPH's MATC Facility

▣ Men

- MATC: 108 Level III beds operated by Highpoint Treatment Center
- Doors are alarmed but not locked

Commitment of Women to DMH's WRAP Facility

DMH operated locked beds

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



Commitment of Women to DPH's WATC Facility

Women:

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



Commitment of Women to DPH's HighPoint Shattuck Facility

- Highpoint at Shattuck:
 - 28 beds created for women on 12th floor of Shattuck Hospital.
 - 14 ATS and 14 CSS beds
 - Exit doors are alarmed but not locked

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

Problems Encountered by Courts in § 35 Commitments

- ▣ Some individuals may have complicated medical conditions that cannot be appropriately treated in a § 35 facility. Those persons may require “Level 4” treatment, which would take place in a hospital setting, if they have conditions such as the following:
 - Cardiovascular disorders that require monitoring
 - Acute liver disease
 - Biomedical problems that need stabilization and 24-hour medical management, observation, or evaluation
 - Infectious open sores
 - Major head trauma or loss of consciousness that requires monitoring
 - Medical conditions that require a higher level of medication

Leigh Youmans, MPH
Director of Behavioral Health and Healthcare Policy

Section 35 – Standards for Medical Review and Sharing Clinical Information



Standardize Forms for Release of Clinical Information to Court Clinicians

Affidavit Letter

- Affidavit letter issued by a physician that outlines the clinical support for the Section 35 petition

Checklist

- To be used by clinicians to identify what information to include in the letter and supporting clinical documentation to attach

Privacy Memo

- Outlines the federal and state legal protections that allow such disclosures to the court
- Issued by MHA's outside counsel Dave Szabo from Locke Lord

Pilot

- Following this webinar, the forms will be piloted in collaboration with DMH and the Trial Courts this fall

Template Affidavit Letter

Date _____

Hospital Name _____
Hospital Address _____
City, State, Zip _____

Court Department _____ (Please indicate the name of the court - District, Boston Municipal, or Juvenile Court):

Re: Hospital/Physician Affidavit Letter Supporting Section 35 Petition

My name is _____, and I am a licensed physician in the Commonwealth of Massachusetts and Board Certified in _____.

I most recently evaluated _____ on _____ in the _____ (Hospital) (please indicate the ED or Inpatient Unit). In my clinical evaluation of _____, I also obtained information regarding the patient from _____ (please indicate appropriate sources of information – including but not limited to: clinical staff members within the hospital or other locations, reviewing care management notes from other facilities through shared ENS/EMR platform, family members, EMS, patient's medical record, other).

_____ arrived (provide the applicable **Presentation** information from the checklist, including both the method of arrival and the reason for the current visit including the existing medical conditions from the clinical evaluation).

_____ has been previously treated for (provide any past evaluation/treatment information from the checklist)

_____ has a serious health condition(s) that is/are directly affected by his/her (alcohol and/or substance use disorder). Based on my review and in my opinion, _____'s inability to refrain from (alcohol and/or substance use disorder) use puts him/her at significant risk of disability and/or death. In addition to the general risks of regular intoxication, his/her existing medical conditions put him/her at imminent risk of significant medical harm. Ongoing lack of treatment for each of these carries potentially fatal consequences, made more likely by regular (alcohol and/or substance use disorder).

- Providers should complete and attach to the “Affidavit in Support of Petition for Commitment under G.L. 123, Section 35.”
- Please note that the provider should not complete the actual affidavit form ([available here](#)), but indicate on the form, “See Attached Affidavit Letter.”
- Contains specific patient information, outlined in the Checklist for Affidavit Letter.

Supporting Clinical Information Checklist

Section 35 Petition Affidavit – Supporting Clinical Information Checklist/Guidance

The following list provides information that should be included in the hospital/physician affidavit letter or as an attachment to the letter, as outlined below.

1) Trial Court Affidavit

- a. On the “Affidavit in Support of Petition for Commitment under G.L. c. 123, § 35,” we are requesting that the clinician or appropriate staff to simply write in Section 1: “See Attached Hospital/Physician Affidavit Letter Supporting Section 35 Petition.”
- b. The provider should also sign that affidavit. All other fields should be left blank as the appropriate information will be included in the Affidavit Letter.

2) Presentation – information that must be included in the affidavit letter

- a. Method of arrival into the ED (e.g., walked in, versus found in the community and brought by ambulance).
- b. Please indicate information about the current visit as related to the following:
 - i. For opioid use disorder, please include information on any of the following: the reason for the ED visit include opioid overdose; withdrawal; infections related to injecting drugs such as abscess, sepsis, endocarditis; pregnancy related complications due to opioid use; falls; accidents; burn. Please also include information on whether the patient received naloxone prior to the ED visit (provided in the field by bystanders, EMTs, others) to treat overdose.
 - ii. For Alcohol Use Disorder, please include information on any of the following: the reason for the ED visit include alcohol intoxication, withdrawal, seizures, Delirium tremens (DTs), blackouts, falls, accidents resulting in injuries, burn, acute hepatitis, acute hepatic failure, acute pancreatitis and encephalopathy. In addition, information about patients presenting or brought to ED for acute safety risks such as suicidal or homicidal ideation or threats and violent acts or threats in the context of intoxication should be included.
 - iii. For polysubstance use: please include information on any of the following: the reason for the ED visit include that the patient presents with poly substance use (e.g., patient was mixing opioids with benzodiazepines, alcohol, or cocaine) and there was a risk of life threatening complications and/or death.

- This is a reference guide for the hospital/clinician to understand what essential medical information is needed in the “Affidavit Letter” and additional medical information to be attached to the letter (lab and/or medication lists).
- Providers should not include additional information that is not listed on this checklist.
- Information to include:
 - Presentation (in affidavit letter)
 - Past History (in affidavit letter)
 - Lab (attached to letter)
 - Course of treatment in ED or inpatient unit (in affidavit letter)
 - Discharge planning (attached to letter)

Locke Lord Privacy Memo



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May 17, 2019

Anuj K. Goel, Esq.
Vice President, Legal and Regulatory Affairs
Massachusetts Health and Hospital Association
500 District Avenue
Burlington, MA 01803

Re: Section 35 of Chapter 123

Dear Anuj:

You have asked me for my advice concerning the privacy law aspects raised by the participation of a hospital and its physicians in commitment proceedings commenced under Section 35 of Chapter 123. In particular, you have asked whether a physician who has learned of a patient's alcohol or substance abuse disorder as a result of an encounter in a hospital emergency room or an inpatient unit, and who has determined that the patient is likely to suffer serious harm as a result of such condition, may disclose protected health information concerning the patient's disorder to a court in connection with a commitment proceeding brought under Section 35.

The short answer to your question is that such disclosure is permitted by federal and state law.

Discussion

Section 35 of Chapter 123, as amended by the Section 4 of Chapter 8 the Acts of 2016, permits a physician (among others) to petition any district court or the juvenile court for an order of commitment of a person whom he has reason to believe has an alcohol or substance abuse disorder. If after a hearing, which shall include expert testimony and related medical records, the court determines that the individual suffers from an alcohol or substance abuse disorder and there is a likelihood of serious harm as a result of such disorder, the court may order the commitment of such individual.

A commitment hearing under Section 35 will necessarily involve the disclosure of protected health information about the individual, and that information will necessarily include topics that are generally considered highly sensitive due to the stigma associated with a diagnosis of alcoholism or substance abuse. Accordingly, your members and their associated physicians have asked for some assurance that they can provide such information to the court in accordance with applicable privacy laws.

Page 1

- Reviews federal HIPAA Standards, Massachusetts Privacy Laws, and M.G.L. Chapter 123, Section 36A: Court records of examination or commitment; privacy
- Determines that disclosure of protected health information concerning a patient's disorder to a court in connection with a commitment proceeding brought under Section 35 by a physician who has learned of a patient's alcohol or substance abuse disorder as a result of an encounter in a hospital emergency room or an inpatient unit, and who has determined that the patient is likely to suffer serious harm as a result of such condition, is permitted by federal and state law.

Next Steps

Hospitals should begin to use the template affidavit letter and supporting clinical information checklist/guidance.

MHA and DMH will coordinate to pilot the forms to:

Work through process for actual release (issuance of the medical information from the provider to the court in an appropriate manner)

Ensure that the clinical information outlined in the documents is sufficient, or if additional information is needed to assist with care coordination at placement (post-hearing)

Identify any potential gaps in the process.

Questions?

