

# ANALYSIS OF HEALTH CARE COSTS IN THE



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## 10. Section 35, Civil Commitments

Section 35 provides for the commitment of alcoholics or substance abusers for a 30 day period to a facility either approved by the Department of Public Health under the provisions of M.G.L. Chapter 111B, or in the alternative to MCI Bridgewater if a male, or MCI Framingham if a female, provided that there are not suitable facilities available under Chapter 111B. The law also states that the person so committed shall be housed and treated separately from convicted criminals.

In 2010, the Massachusetts legislature enacted a change to Section 35 that will be effective July 1, 2012 that allows for extended stays under Section 35 for up to 90 days, to be followed by case management services in the community.

The new language in the law that affects the Department of Correction is as follows:

*If, after a hearing and based upon competent testimony, which shall include, but not be limited to, medical testimony, the court finds that such person is an alcoholic or substance abuser and there is a likelihood of serious harm as a result of the person's alcoholism or substance abuse, the court may order such person to be committed for a period not to exceed 90 days, followed by the availability of case management services provided by the Department of Public Health for up to one year; provided, however, 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 that release of that person will not result in a likelihood of serious harm.*

The significance of this legislative change is not known at this time; however, without increases in facility beds licensed by the Department of Public Health, it is likely that the civil commitment census at MASAC and Framingham will increase significantly and could double, or even triple if the superintendents aren't able to utilize the release mechanism to manage the overall census. This could affect overcrowding, particularly at Framingham, and increase the cost of substance abuse and health services at both the male and female facilities. The duration of a Section 35 commitment will increase from 30 to 90 days for alcoholics or substance abusers.

There are currently 100 beds at MASAC. The average stay is approximately 20-25 days. If half of the Section 35 commitments require a 90-day commitment, or 3-month occupancy, each bed would turn over four times per year and would allow for only 200 90-day admissions (50 beds x 4 = 200) (The other 50 beds could still turn over 12-18 times per year, depending on the average length of stay). In Calendar Year (CY) 2009, there were 1590 men admitted to MASAC under Section 35, with 1354 in CY 2010 and 937 as of August 31, 2011. The increase in duration to 90 days for half of these beds would have resulted in approximately 490 men in 2009 and 254 men in 2010 who could not have been admitted to MASAC.

In addition to the above, a new treatment program model would need to be developed for a 90 day length of stay, and likely additional clinical staff would be required to deliver the program (cost unknown) to ensure adequate treatment and effective discharge planning. This situation should be monitored closely because the impact will be felt as early as next fiscal year.

At the present time males are being held in the MASAC facility on the Bridgewater Correctional Complex. This facility was originally designed as a "boot camp" when that program operated, and it is now used for Section 35 commitments and as a minimum security facility housing convicted prisoners. There is housing separation at the facility, but the prisoners and Section 35 commitments do have contact in certain common areas of the facility.

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The females are typically housed apart from the prisoner population, but it is difficult to avoid the two populations having contact, due to the design of the Framingham facility. Staff indicates that there is no separate, dedicated program or housing space for the Section 35 commitments.

The physical plant of MASAC is acceptable for the housing of these civil commitments, and the department has developed a reasonably good program for the treatment of these individuals. The same situation does not exist at Framingham, as the facility has physical plant issues and poor logistics for the management of this population. Furthermore, the department has been unable to implement a program suitable for the treatment of this population because of logistical problems, and the other requirements of treating a pretrial and sentenced population often with acute medical and mental health needs.

The placement of these civil commitments in state correctional facilities has been controversial for many years, and does have a history dating back to the early part of last century. In today's modern society it certainly appears more appropriate to treat a civil population with addiction issues in a public health environment and not in a penal environment. Lawmakers have recognized this by enacting a provision of the law Chapter 111B that provides for the treatment of addicts in Department of Public Health approved facilities. Apparently there is insufficient bed space available both for males and females in these facilities and, as a result, MASAC and MCI Framingham by default receive these commitments. MGT believes that the placement of civil commitments in these two facilities is inappropriate and should be discontinued. It is recommended that policy makers take steps to remove Section 35 commitments from the Department of Correction and transfer jurisdiction to the Department of Public Health. We further believe that it is more costly to house these commitments in a correctional facility to the high expense of security related services that would not be required in public health environment.

Moreover, in the case of female inmates, MCI Framingham receives women civilly committed under Section 35 (153 in CY 2009 and 209 in CY 2010). Under the terms of the settlement agreement in Hinckley v. Fair (Hampshire Superior Court, C.A. 88-064), women sent to MCI Framingham under Section 35 are to be moved as quickly as possible to a community-based facility after medical detoxification. Increasing the term of commitment by two thirds would increase the number of women committed to MCI Framingham, at a time when that facility is 112 percent of capacity for sentenced women and an alarming 381 percent of capacity for the Awaiting Trial Unit.

The placement of civil commitments in correctional facilities discussion is not a new one. In 1989, the Governor's Special Advisory Panel on Forensic Mental Health recommended that "only individuals who are subjects of the criminal justice system should receive services at the Addiction Center", which was the facility utilized prior to MASAC. In 2005 Corrections Advisory Council had established at the recommendation of the Governor's Commission on Correctional Reform, recognized this problem with respect MCI Framingham and recommended that women should not be civilly committed to MCI Framingham. The Medical Review Panel, also established by the Governor to examine healthcare issues in the Department of Correction also recommended the removal of civilly committed addicts from the Department of Correction and place jurisdiction with the Department of Public Health. MGT also made a similar recommendation during an operational assessment conducted in 2008.

To date, little progress has been made on this issue and MGT would like to restate the recommendation from the Medical Review Panel and support the recommendation, but also adding that the practice of placing civil commitments in Framingham under Section 35 of MGL Chapter 123 be halted as soon as possible. We advocate a study to determine feasibility of transferring treatment of civil commitments (particularly men served at MASAC to DPH). DPH is in the process of procuring additional secure facilities for women. The practice of placing civil commitments under section 35 in MCI Framingham should be discontinued as soon as possible.