

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**JANE DOE, JANE DOE 2, JANE DOE 3,
JANE DOE 4, JANE DOE 5, JANE DOE 6,
JANE DOE 7, and JANE DOE 8**, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

CHARLES D. BAKER, Governor of the
Commonwealth of Massachusetts;
**MASSACHUSETTS DEPARTMENT OF
CORRECTION; CAROL HIGGINS
O'BRIEN**, Commissioner of the Massachusetts
Department of Correction; and **LYNN
BISSONNETTE**, Superintendent of the
Massachusetts Correctional Institution at
Framingham,

Defendants.

Civil Action No. 1:14-cv-12813-DPW

AMENDED CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiffs Jane Doe, Jane Doe 2, Jane Doe 3, Jane Doe 4, Jane Doe 5, Jane Doe 6, Jane Doe 7, and Jane Doe 8 (“Plaintiffs”)¹ bring this lawsuit on behalf of themselves and all others who are or will be imprisoned at the Massachusetts Correctional Institution at Framingham (“MCI-Framingham”) solely because they have been civilly committed under Chapter 123, Section 35 of the Massachusetts General Laws (“Section 35”). These women are not being held because they have been charged

¹ The uses of “Jane Doe” and “Jane Doe X” in this Complaint are as pseudonyms.

with or convicted of any crime. They are committed solely for the explicit statutory purpose of Section 35: “inpatient care” of individuals at risk of “serious harm” resulting from their addiction. However, women sent to MCI-Framingham are not provided with “inpatient care.” They are put through a brief detoxification, and then they are simply incarcerated.

2. The staff at MCI-Framingham, from the Superintendent to the guards, treat women civilly committed under Section 35 as ordinary prisoners. Upon admission, the civilly committed women must submit to a strip search, which includes a visual inspection of their oral, anal, and vaginal cavities. Their personal property is taken from them. They are issued prison uniforms. Once confined, they are housed with women awaiting trial on criminal charges. They are subject to pat searches conducted by guards and cell “shakedowns.” They must stand by their bunk for regular “counts” four times a day, starting at 6 A.M.

3. Indeed, women civilly committed under Section 35 have less freedom than other prisoners confined at MCI-Framingham. Unlike convicted criminals and pretrial detainees, civilly committed women at MCI-Framingham are allowed to leave their unit only for medical and mental health appointments and for limited outdoor recreation in a small, unsheltered outdoor cage. They cannot pray at the chapel or participate in most recreational programs or organized activities.

4. Civilly committed women are barred from participating in the prison’s substance abuse treatment programs. Following detoxification, treatment is available

only to women being held at MCI-Framingham because they have been charged with or convicted of crimes.

5. The imprisonment of women civilly committed to MCI-Framingham amounts to the criminalization of addiction, unnecessarily stigmatizing those who have an urgent medical need. Placing civilly committed women in prison, rather than an appropriate treatment facility, is traumatic and incompatible with professional judgment regarding the treatment of people with the disease of addiction. It occurs only because Massachusetts has chosen not to establish an adequate number of treatment beds in community facilities to meet the needs of civilly committed women.

6. Massachusetts is the only state in the country that imprisons people for drug or alcohol addiction. As former governor Deval Patrick has recognized, “treating those with substance abuse as prisoners is wrong.”² It is also illegal. Treating Plaintiffs and other class members as criminals instead of as people with a disability requiring professional inpatient care violates their right to substantive due process, guaranteed by the Constitution of the United States, and their rights under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”) to be free from discrimination.

7. For over two decades, multiple governmental advisory panels have recommended terminating the policy of incarcerating individuals committed under Section 35, yet Defendants have failed to act on any of those recommendations.

² Remarks at Reform, Re-entry and Results: Change and Progress in the Massachusetts Criminal Justice System (Feb. 20, 2014), *available at* <http://www.mass.gov/governor/pressoffice/speeches/0220-re-entry-forum-remarks.html>.

8. This class action seeks declaratory and injunctive relief prohibiting Defendants from continuing the unlawful practice of confining women civilly committed solely under Section 35 at MCI-Framingham and requiring Defendants to provide these individuals with “care and treatment of alcoholism or substance abuse” in a Department of Public Health (“DPH”) licensed facility in the community, as required by Section 35.

JURISDICTION & VENUE

9. This Court has jurisdiction over Plaintiffs’ federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

10. Plaintiffs are entitled to declaratory and other relief deemed necessary and proper pursuant to 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.

THE PARTIES

12. Plaintiff Jane Doe has suffered from substance abuse addiction for multiple years. She was civilly committed to MCI-Framingham under Section 35 in June 2014. Ms. Doe was not charged with any crime. Ms. Doe was subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham. She received no substance abuse treatment.

13. Plaintiff Jane Doe 2 has suffered from substance abuse for several years. She was civilly committed to MCI-Framingham under Section 35 in July 2014. Ms. Doe 2 was not charged with any crime. Ms. Doe 2 was subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham.

14. Plaintiff Jane Doe 3 was civilly committed to MCI-Framingham under Section 35 in July 2014. Ms. Doe 3 was not charged with any crime. Ms. Doe 3 was subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham.

15. Plaintiff Jane Doe 4 has suffered from substance abuse addiction for many years. She was civilly committed to MCI-Framingham under Section 35 in January 2015. Ms. Doe 4 was not charged with any crime. She remains imprisoned in MCI-Framingham as of the date of the filing of this Amended Complaint. Ms. Doe 4 is subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham. She is not currently receiving substance abuse treatment.

16. Plaintiff Jane Doe 5 has suffered from substance abuse addiction for many years. She was civilly committed to MCI-Framingham under Section 35 in January 2015. Ms. Doe 5 was not charged with any crime. She remains imprisoned in MCI-Framingham as of the date of the filing of this Amended Complaint. Ms. Doe 5 is subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham. She is not currently receiving substance abuse treatment.

17. Plaintiff Jane Doe 6 has suffered from substance abuse addiction for many years. She was civilly committed to MCI-Framingham under Section 35 in January 2015. Ms. Doe 6 was not charged with any crime. She remains imprisoned in MCI-Framingham as of the date of the filing of this Amended Complaint. Ms. Doe 6 is subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham. She is not currently receiving substance abuse treatment.

18. Plaintiff Jane Doe 7 has suffered from substance abuse addiction for many years. She was civilly committed to MCI-Framingham under Section 35 in January 2015. Ms. Doe 7 was not charged with any crime. She remains imprisoned in MCI-Framingham as of the date of the filing of this Amended Complaint. Ms. Doe 7 is subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham. She is not currently receiving substance abuse treatment.

19. Plaintiff Jane Doe 8 has suffered from substance abuse addiction for many years. She was civilly committed to MCI-Framingham under Section 35 in January 2015. Ms. Doe 8 was not charged with any crime. She remains imprisoned in MCI-Framingham as of the date of the filing of this Amended Complaint. Ms. Doe 8 is subject to the same, if not harsher, treatment as the criminally charged and criminally convicted at MCI-Framingham. She is not currently receiving substance abuse treatment.

20. Defendant Charles D. Baker is the Governor of the Commonwealth of Massachusetts. Defendant Baker maintains an office at the Massachusetts State House, Office of the Governor, Room 280, Boston, Massachusetts 02133. Defendant Baker is sued in his official capacity.

21. Defendant Massachusetts Department of Correction (“DOC”) is an executive department of the Commonwealth of Massachusetts. It is a “public entity” within the meaning of the ADA. *See* 42 U.S.C. § 12131(1).

22. Defendant Carol Higgins O’Brien is the DOC Commissioner. By statute, Defendant O’Brien is designated responsible for the administration of all correctional facilities in Massachusetts. *See* Mass. Gen. Laws ch. 124, § 1. Defendant O’Brien

maintains an office at DOC Central Headquarters, 50 Maple Street, Suite 3, Milford, Massachusetts 01757. Defendant O'Brien is sued in her official capacity.

23. Defendant Lynn Bissonnette is the Superintendent of MCI-Framingham. By statute, Defendant Bissonnette is designated "responsible for the custody and control of all prisoners" in MCI-Framingham. Mass. Gen. Laws ch. 125, § 14. Under DOC policy, she is "ultimately responsible for the overall functioning of the institution." 103 DOC 101.01 (October 2013). Defendant Bissonnette maintains an office at MCI-Framingham, 99 Loring Drive, P.O. Box 9007, Framingham, Massachusetts 01701. Defendant Bissonnette is sued in her official capacity.

CIVIL COMMITMENT UNDER SECTION 35

A. Statutory Framework of Section 35

24. Section 35 allows certain individuals to petition a district or juvenile court for the civil commitment of anyone whom the petitioner alleges is addicted to alcohol or a controlled substance and who allegedly presents a risk of danger to himself or herself or others due to his or her addiction. Mass. Gen. Laws ch. 123, § 35.

25. Section 35 defines a substance abuser or alcoholic as a person who "chronically or habitually" uses controlled substances or alcohol to the extent that "such use substantially injures his health or substantially interferes with his social or economic functioning . . . or . . . he has lost the power of self-control over the use of" controlled substances or alcohol. *Id.*

26. If a court finds, after a hearing and medical examination, that the individual is an alcoholic or substance abuser and that "there is a likelihood of serious harm as a result of the person's alcoholism or substance abuse," then the court may order

the individual to be civilly committed. *Id.* The statutory period of commitment can be up to 90 days. *Id.*

27. Section 35 directs that these individuals shall receive “inpatient care in public or private facilities approved by [DPH] under [C]hapter 111B for the care and treatment of alcoholism or substance abuse.” *Id.* If “suitable facilities” under Chapter 111B are unavailable, the statute authorizes the civil commitment of women to MCI-Framingham. *Id.*

28. DPH has failed to establish a sufficient number of “suitable facilities” to provide care and treatment to women committed under Section 35. As a result, since 2011, more than 540 civilly committed women have been incarcerated at MCI-Framingham.

B. DPH Mandates for the Care of Section 35 Commitments

29. Chapter 111B of the Massachusetts General Laws requires DPH to establish a statewide program for the treatment of persons who are alcoholics. Mass. Gen. Laws ch. 111E, § 7 requires similar services for individuals with substance abuse disorders.

30. All facilities established under these statutes must be licensed or approved by DPH and comply with DPH minimum standards as set forth in 105 Code of Massachusetts Regulations (“CMR”) 164.001 *et seq.* These standards require that each resident receive an individualized treatment plan and at least four hours of treatment per day. 105 CMR 164.073-.074.

31. Although each facility must have policies for managing disruptive behavior, “physical restraint[] in any form” is prohibited. 105 CMR 164.078(C). Each facility must also guarantee its client certain minimum rights, including the “freedom from strip searches and body cavity searches.” 105 CMR 164.079(B)(2).

32. Under its statutory authority, DPH funds High Point, a private vendor, to provide services for women civilly committed under Section 35 at the Women’s Addiction Treatment Center (“WATC”) in New Bedford, Massachusetts. WATC has approximately 90 beds.

33. The program operates acute treatment service beds for detoxification, “step-down” beds for those with less acute treatment needs, and transitional beds for those who have finished their commitment and choose to voluntarily stay until being placed in a half-way house. WATC is staff-secured, but not locked.

34. Every day, women committed at WATC are offered a variety of treatment and recovery options.

35. They are provided with substance abuse treatment programs throughout each day and into the evenings. These include individual and group counseling, family support and education, 12-step programs, trauma awareness, coping skills, and aftercare planning.

36. WATC also provides related programming on issues including relapse prevention, relationships, HIV awareness, domestic violence, nutrition, self-help, and recovery.

37. Women committed at WATC meet with a case manager every day; most case managers have a master's degree in social work or are licensed alcohol and drug counselors. Case management includes planning, goal development, and family unification services. Case managers facilitate referrals for physical and mental health care, legal issues, and vocational and educational needs.

38. WATC staff members assist women in transitioning to residential rehabilitation sites and discharge services.

39. During detoxification, women committed at WATC are provided with the full range of treatment protocols and medication, including methadone, Suboxone (buprenorphine and naloxone), or Vivitrol (naltrexone), based on individualized assessments.

40. Following detoxification, women committed at WATC live in four-person rooms and are allowed to personalize their spaces and have personal items.

41. During the initial stages of their stay, women are expected to remain within the facility and its outdoor patio area. Subsequently, they may be entitled to leave the facility during the day for volunteer work and other activities in the community.

C. MCI-Framingham

42. MCI-Framingham is the most secure prison for women in Massachusetts. It is not designed, equipped, or staffed to serve as a treatment facility for individuals with addiction.³

³ Commonwealth of Mass., Dep't of Corr. Advisory Council, *Final Report 5* (2005).

43. The oldest female correctional institution operating in the United States, MCI-Framingham holds women awaiting trial or sentencing, as well as women serving sentences for serious crimes, including murder.

44. It is surrounded by high walls, two chain-link fences topped with razor wire, and armed guards who monitor the perimeter.

45. Although Mass. Gen. Laws ch. 125, § 16 requires that the DOC maintain at MCI-Framingham “a facility for the treatment and rehabilitation of alcoholics, subject to the approval of [DPH] under the provisions of [C]hapter [111B],” no such facility has been established.

46. Instead, women sent to MCI-Framingham solely due to civil commitment under Section 35 (sometimes called “straight civils”) are housed in the same facility with and treated like prisoners.

47. When women civilly committed under Section 35 first enter MCI-Framingham, they are subject to the same intake procedures as convicted prisoners and pretrial detainees, including a strip search and a visual search of oral, anal, and vaginal cavities.

48. Their personal property is taken from them, and they are issued prison uniforms.

49. Detoxification services for all prisoners at MCI-Framingham are provided in the infirmary unit. During detoxification, women civilly committed under Section 35 may be placed in cells with pretrial detainees.

50. The infirmary has one cell with five beds and an open toilet—which is visible not only to cellmates, but also from the nurses’ station and the hall—and a number of two- and three-person cells with an open toilet in the cell and windows to the hallway, affording little privacy.

51. The infirmary unit follows the DOC treatment protocols for opioid, benzodiazepine, and alcohol detoxification.

52. Consequently, the medications available to individuals going through detoxification at MCI-Framingham are very limited, unlike at DPH facilities.

53. For example, for women suffering from heroin withdrawal, MCI-Framingham provides over-the-counter medication such as acetaminophen, ibuprofen, Tums, and Imodium,⁴ rather than many drugs federally-approved for use in the treatment of opioid addiction, such as methadone, Suboxone, or Vivitrol. 42 C.F.R. § 8.12(h)(2)(i), (iii).

54. After detoxification, which usually takes from one to five days, women civilly committed under Section 35 are housed with pretrial detainees and treated like prisoners. They are held in the Awaiting Trial Unit (“ATU”) or, when the pretrial census is too high for all to be accommodated in the ATU, the civilly committed women and overflow pretrial detainees are housed in a temporary modular building known as the “Mod.”⁵

⁴ The one exception to this policy is that pregnant women have access to methadone.

⁵ Some women are committed under Section 35 *and* have a criminal charge pending against them. These individuals are considered to have “dual status,” and are placed in prison. They may participate in a residential treatment program offered at MCI-

55. In the ATU, civilly committed women are assigned to two-person cells, though they may not have a cellmate. They spend their days in an open unit together with women charged with crimes, including the most violent crimes such as murder, and they are locked in their cells overnight. While pretrial detainees in the ATU unit eat communally in the ATU's "chow hall," civilly committed women generally eat meals locked in their cells, except when they are permitted to eat breakfast in the ATU day room.

56. In the Mod, civilly committed women live in a 40-person dormitory along with pretrial detainees.

57. In both the ATU and the Mod, the women are supervised by uniformed correctional officers, some of whom mock the civilly committed women, refuse to give them access to medical help for symptoms associated with drug withdrawal, and seek to intimidate them when they complain.

58. Along with the standard prison conditions faced by all women at MCI-Framingham, including strip searches, pat searches, cell shakedowns, regular "counts" four times a day, starting at 6 A.M., and the full range of DOC discipline (potentially including solitary confinement), the "straight civils" endure even harsher conditions of confinement than those convicted of crimes.

Framingham for pretrial detainees called "First Steps." These dual status individuals are not members of the proposed class. Approximately one-third of all Section 35 commitments have a criminal charge pending. *See* Mass. Dep't of Pub. Health, Bureau of Substance Abuse Servs., *Sec 35 – Civil Commitments FY12 – Year End Report 4* (2012).

59. Unlike other prisoners, civilly committed women do not have access to the prison campus and main recreation yard. Those housed in the ATU are able to use the ATU yard, a small caged area with a basketball hoop and three picnic tables, topped with razor wire. Those housed in the Mod are escorted to an outdoor recreation area consisting of a small cage covered in black netting with a gravel floor. There is often little or no shade, and the women are not allowed to have water in the cage. Access to the cage is limited to, at most, two and a half hours per day, six days per week.

60. These women also have no access to programs available to the rest of the prison population, including peer-directed groups such as Alcoholics Anonymous, Narcotics Anonymous, and peer counseling. Civilly committed women may not go to the prison chapel or make use of exercise equipment and other indoor facilities open to prisoners, except for limited use of the prison library. They spend the vast bulk of their time locked in their unit.

D. The Impact of Incarceration under Section 35

61. Imprisoning civilly committed women is counter-therapeutic.

62. Addiction is a complex brain disease characterized by the disruption of a person's ability to control her behavior even in the face of devastating consequences. In numerous ways, imprisoning civilly committed people suffering from this disease can impede rather than advance effective treatment.

63. For example, civil commitment to MCI-Framingham is traumatic and stigmatizing. Women experience shame, humiliation, and loss of dignity.

64. The women are often intimidated by the harsh conditions of confinement and can be nervous about being housed with individuals charged with serious crimes who sometimes threaten and assault them.

65. They do not understand why they are in prison when they were supposedly committed to receive treatment.

66. Incarcerating these women also reflects and perpetuates unwarranted prejudices about individuals with alcoholism and substance abuse disorders and reinforces the perception that they are second-class citizens. Indeed, even their family and friends often believe the women must have engaged in crime to end up in prison.

67. Their imprisonment undermines their self-image and causes them to experience fear and confusion regarding the purpose of their confinement.

68. Far from providing an opportunity to begin meaningful recovery, the imprisonment of women civilly committed to MCI-Framingham is punitive. They are simply warehoused and denied participation in programs available to sentenced prisoners and pretrial detainees.

69. Family members who file Section 35 petitions are often horrified, telling the DOC that they would not have initiated the process if they had known their loved one would be sent to prison. Women who self-petition seeking help for addiction are shocked to find themselves treated like criminals and denied treatment, and generally wish they had never initiated the proceeding.

70. Women civilly committed to MCI-Framingham under Section 35 are isolated from their communities both psychologically and physically. Because the prison

is often far from their homes and families, and communication and visitation are restricted, it is difficult to establish relationships with aftercare services in their own communities.

71. By authorizing the civil commitment of women to prison, Section 35 reinforces longstanding societal prejudice against individuals with alcoholism and substance abuse disorders.

72. Defendants have long been aware that imprisoning civilly committed individuals is inconsistent not only with the proper treatment of addiction, but also with the proper mission of the DOC.

73. For example, 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 be committed to prison under Section 35.⁶

74. In 2005, the Governor's Corrections Advisory Council also recommended against committing women to MCI-Framingham under Section 35.⁷

75. In 2008 and again in 2011, an independent consultant retained by the DOC recommended that Massachusetts discontinue civil commitments to MCI-Framingham "as soon as possible."⁸

⁶ Commonwealth of Mass., Governor's Special Advisory Panel on Forensic Mental Health, *Final Report* 33 (1989).

⁷ Commonwealth of Mass., Dep't of Corr. Advisory Council, *Final Report* 5 (2005).

⁸ MGT of America, Inc., *Analysis of Health Care Costs in the Massachusetts Department of Correction* 17, 78 (2011).

76. Nevertheless, the Commonwealth has continued to fail to make sufficient beds available for these women in appropriate treatment facilities.

ALLEGATIONS RELATING TO PLAINTIFFS

A. Plaintiff Jane Doe

77. Plaintiff Jane Doe has experienced all of the prison conditions above described.

78. After being civilly committed, Ms. Doe was transported in a police wagon to MCI-Framingham.

79. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus. She was also forced to sit on a body orifice security scanner chair.

80. Ms. Doe was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform.

81. Ms. Doe was sent to the infirmary unit for detoxification. She was given only over-the-counter medications for her withdrawal symptoms.

82. After detoxification, she was moved to the Mod.

83. Ms. Doe was locked in the Mod for the majority of her days at MCI-Framingham.

84. Ms. Doe declined to visit the unshaded recreational space referred to as the “Kennel” because it is hot and the correctional officers do not provide civilly committed women with water while they are in the Kennel.

85. Ms. Doe did not meet with a caseworker or a mental health counselor during her incarceration at MCI-Framingham.

86. She also has received no substance abuse treatment during her incarceration at MCI-Framingham.

87. Ms. Doe experienced increased anxiety after her arrival at MCI-Framingham, particularly due to the uncertainty regarding when she would leave MCI-Framingham and receive treatment.

B. Plaintiff Jane Doe 2

88. Plaintiff Jane Doe 2 has experienced all of the prison conditions above described.

89. After being civilly committed, Ms. Doe 2 was transported in a police wagon to MCI-Framingham.

90. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus.

91. Ms. Doe 2 was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform.

92. Ms. Doe 2 was sent to the infirmary unit for detoxification. She was given only over-the-counter medications for her withdrawal symptoms.

93. After detoxification, she was moved to the Mod.

94. Ms. Doe 2 was locked in the Mod for the majority of her days at MCI-Framingham.

95. Ms. Doe 2 declined to visit the Kennel because it is simply a gravel-lined cage.

96. Ms. Doe 2 did not meet with a caseworker or a mental health counselor during her incarceration at MCI-Framingham.

97. She also received no substance abuse treatment during her incarceration at MCI-Framingham.

98. Ms. Doe 2 experienced increased anxiety after her arrival at MCI-Framingham, particularly because she was housed in the same unit as pretrial detainees, and because of the uncertainty regarding when she would leave MCI-Framingham.

C. Plaintiff Jane Doe 3

99. Plaintiff Jane Doe 3 has experienced all of the prison conditions above described.

100. After being civilly committed, Ms. Doe 3 was transported in a police wagon to MCI-Framingham.

101. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus. She was also forced to sit on a body orifice security scanner chair.

102. Ms. Doe 3 was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform.

103. Ms. Doe 3 was sent to the infirmary unit for detoxification. The only medications she received were for her withdrawal symptoms.

104. After detoxification, she was moved to the Mod.

105. Ms. Doe 3 was locked in the Mod for the majority of her days at MCI-Framingham.

106. Ms. Doe 3 only visited the Mod's recreation area once, after which she declined to make subsequent visits.

107. Ms. Doe 3 did not meet with a caseworker or a mental health counselor during her incarceration at MCI-Framingham.

108. She also received no substance abuse treatment during her incarceration at MCI-Framingham.

109. Ms. Doe 3 experienced increased anxiety after her arrival at MCI-Framingham, particularly because she was housed in the same unit as pretrial detainees, and because of the uncertainty regarding when she would leave MCI-Framingham and receive treatment.

D. Plaintiff Jane Doe 4

110. Plaintiff Jane Doe 4 has experienced all of the prison conditions above described.

111. After being civilly committed, Ms. Doe 4 was transported in a police wagon to MCI-Framingham.

112. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus.

113. Ms. Doe 4 was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform.

114. Ms. Doe 4 was sent to the infirmary unit for detoxification.

115. After detoxification, she was moved to the Awaiting Trial Unit-East.

116. Ms. Doe 4 has been in the ATU-E for the majority of her days at MCI-Framingham. She is housed alone in a cell with two bunk beds. Like other civilly committed women in ATU-E, but unlike pretrial detainees, she eats meals alone in her cell except that she and the other civilly committed women are sometimes allowed to eat breakfast in the ATU-E day room.

117. Ms. Doe 4 and the other women in ATU-E are locked in their cells from about 9:00 pm until about 7:00 a.m., and at various points during the day. All of them must stand for “counts” several times during the day.

118. Ms. Doe 4 and other civilly committed women in ATU-E leave the unit only for medical and mental health appointments, for visits (if they receive any), and, if they choose, for a weekly visit to the library. Ms. Doe 4 has not been able to visit the library.

119. Ms. Doe 4 has received no substance abuse treatment during her incarceration at MCI-Framingham. She and the other civilly committed women in ATU-East are not allowed to attend the Narcotics Anonymous and Alcoholics Anonymous meetings that are available to the pretrial women housed in the same unit.

120. The only program available to Ms. Doe 4 and other civilly committed women in the ATU-E is a weekly one-hour group session on addiction conducted by a

mental health worker. Otherwise there have no access to recreational, educational or vocational programs. Prison chaplains visit the unit but the civilly committed women are not permitted to leave the unit to attend services in the prison chapel.

121. Ms. Doe 4 is distraught over being incarcerated because she feels her time at MCI-Framingham is like a bad dream.

E. Plaintiff Jane Doe 5

122. Plaintiff Jane Doe 5 has experienced all of the prison conditions above described.

123. After being civilly committed, Ms. Doe 5 was transported in a police wagon to MCI-Framingham.

124. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus.

125. Ms. Doe 5 was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform.

126. Ms. Doe 5 was sent to the infirmary unit for detoxification. Before incarceration, she was prescribed several medications that she has not received while incarcerated.

127. After detoxification, she was moved to ATU-E.

128. Ms. Doe 5 has been housed by herself in a cell with two bunks. She is subject to all of the conditions and treatment described by Ms. Doe 4, including eating most meals alone in her cell, being locked-in overnight and for periods during the day,

and being subject to “counts.”

129. Her inability to leave the unit and her lack of access to recreation and programs are the same as described by Ms. Doe 4.

130. Being in prison is extremely distressing for her because she feels like she is treated just like an inmate and it is demeaning. She was told that, like inmates, civilly committed women can be written up for having a cup in their room, resulting in them being moved to the “back of the list” for release.

131. She has PTSD due to a violent attack on her some years ago, which makes incarceration stressful for her. Being in MCI-F with inmates that have done very cruel things has made her feel like she has to be very careful and look over her shoulder all the time. She feels like she was just discarded and has cried alone in her cell every day she has been at MCI-F.

F. Plaintiff Jane Doe 6

132. Plaintiff Jane Doe 6 has experienced all of the prison conditions above described.

133. After being civilly committed, Ms. Doe 6 was transported in a police wagon to MCI-Framingham.

134. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus.

135. Ms. Doe 6 was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform.

136. Ms. Doe 6 was sent to the infirmary unit for detoxification.

137. While in the infirmary unit, she was locked in a room with two other women, one of whom was criminally charged. She was sent to the ATU-E for one day, and then returned to detox because she could not hold food down.

138. After detoxification, she was moved to ATU-E.

139. Ms. Doe 6 has been housed by herself in a cell with two bunks. She is subject to all of the conditions and treatment described by Ms. Doe 4, including eating most meals alone in her cell, being locked-in overnight and for periods during the day, and being subject to “counts.”

140. Her inability to leave the unit and her lack of access to recreation and programs are the same as described by Ms. Doe 4.

141. Ms. Doe 6 has previously been diagnosed with anxiety disorder and mood disorder. She has submitted two requests to see a mental health counsellor but, after two weeks of incarceration she still had not seen one.

142. Ms. Doe 6 believes that prison is making her addiction worse, instead of treating it, and that she would have been more respected had she actually committed a crime. She hopes to be admitted into an outpatient program on release, and fears that if she finishes her commitment without receiving treatment that she will return to abusing drugs.

G. Plaintiff Jane Doe 7

143. Plaintiff Jane Doe 7 has experienced all of the prison conditions above described.

144. After being civilly committed, Ms. Doe 7 was transported in a police wagon to MCI-Framingham.

145. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus.

146. Ms. Doe 7 was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform.

147. Ms. Doe 7 was sent to the infirmary unit for detoxification. She spent two days detoxing in a cell by herself. Before incarceration, she was prescribed several medications that she has not received while incarcerated.

148. After detoxification, Ms. Doe 7 was sent to the ATU-E.

149. Ms. Doe 7 has been housed by herself in a cell with two bunks. She is subject to all of the conditions and treatment described by Ms. Doe 4, including eating most meals alone in her cell, being locked-in overnight and for periods during the day, and being subject to “counts.”

150. Her inability to leave the unit and her lack of access to recreation and programs are the same as described by Ms. Doe 4.

151. Ms. Doe 7 feels extremely vulnerable being housed with criminally charged women. She is housed in the same unit as an accused murderer and feels threatened and vulnerable because she is small.

H. Plaintiff Jane Doe 8.

152. Plaintiff Jane Doe 8 has experienced all of the prison conditions above

described.

153. After being civilly committed, Ms. Doe 8 was transported in a police wagon to MCI-Framingham.

154. She was subject to the same prison intake procedure as the criminally charged and criminally convicted women, including a strip search and a visual examination of her mouth, vagina, and anus.

155. Ms. Doe 8 was forced to turn over all of her personal items, including her clothing, and was forced to wear a prison uniform

156. Ms. Doe 8 was sent to the infirmary unit for detoxification.

157. After detoxification, Ms. Doe 8 was sent to the ATU-E.

158. Ms. Doe 8 has been housed by herself in a cell with two bunks. She is subject to all of the conditions and treatment described by Ms. Doe 4, including eating most meals alone in her cell, being locked-in overnight and for periods during the day, and being subject to “counts.”

159. Her inability to leave the unit and her lack of access to recreation and programs are the same as described by Ms. Doe 4

160. Ms. Doe 8 did not want to be committed to MCI-Framingham; she had previously been sectioned to WATC and when she heard the WATC beds were full, she regretted sectioning herself and would have preferred to be on the street. She had previously received residential addiction treatment at MCI-Framingham during a brief period as a pretrial detainee, so she expected to have the same treatment when she was committed. She was shocked to be incarcerated with no treatment, because she believed

the system knew what it was doing and she had received treatment as a pretrial detainee.

161. Ms. Doe 8 has been diagnosed with anxiety disorder and depression. She has asked for an appointment with a mental health counsellor twice, but she has not been able to see one.

162. Ms. Doe 8 feels she has been subject to inhumane treatment at MCI-Framingham and treated like a criminal in every way. She will never again agree to be civilly committed due to this experience.

CLASS ACTION ALLEGATIONS

163. This action is properly maintained as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

164. The class is defined as: “All women who are now or will be civilly held at MCI-Framingham based solely on an order under Massachusetts General Laws Chapter 123, Section 35.” *See* Dkt. 49 (granting Dkt. 43, Plaintiff’s Assented to Motion to Amend Motion to Certify Class).

CLAIMS FOR RELIEF

COUNT I

Violation of Substantive Due Process Guaranteed by the Fourteenth Amendment to the United States Constitution

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

166. The Fourteenth Amendment to the United States Constitution provides that “No State shall . . . deprive any person of life, liberty, or property, without due process of law.”

167. Plaintiffs have a liberty interest in not being unjustly incarcerated in prison.

168. Plaintiffs' incarceration in prison represents a substantial departure from accepted professional judgment, practice, or standards. Plaintiffs' incarceration does not bear any reasonable relation to the purpose of Section 35, which, according to the statute, is to provide for "the care and treatment of alcoholism or substance abuse."

169. By their policies, practices, and actions, Defendants violate the rights of Plaintiffs, as well as all members of the proposed Class, to substantive due process guaranteed by the Fourteenth Amendment to the United States Constitution, as enforceable under 42 U.S.C. § 1983.

170. Plaintiffs have suffered immediate and irreparable injury as a result of the unlawful acts, omissions, policies, and practices of Defendants as alleged herein and will continue to suffer that harm unless class-wide relief is granted.

171. Plaintiffs have no adequate remedy at law to protect herself and those similarly situated from this harm. The injunctive relief sought by Plaintiffs is necessary to prevent continued and further injury.

COUNT II

Violation of Title II of the Americans with Disabilities Act

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

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

174. Plaintiffs, as individuals committed under Section 35 for substance addiction, are each a “qualified individual with a disability” under Title II of the ADA, as defined in 42 U.S.C. § 12131(2) and § 12102(1).

175. Defendant DOC is a “public entity” under Title II of the ADA, as defined in 42 U.S.C. § 12131(1).

176. Under Section 35, Plaintiffs were placed in prison solely because of their disabilities. Plaintiffs were not committed because of a criminal charge or conviction. No other citizens in Massachusetts are forced to endure such unjustified incarceration as a condition of receiving needed medical treatment.

177. The imprisonment of Plaintiffs under Section 35, including the imprisonment of all members of the proposed Class, violates Title II of the ADA by subjecting Plaintiffs to discrimination solely on the basis of their disabilities.

178. Plaintiffs have suffered immediate and irreparable injury as a result of the unlawful acts, omissions, policies, and practices of Defendants as alleged herein and will continue to suffer that harm unless class-wide relief is granted.

179. Plaintiffs have no adequate remedy at law to protect themselves and those similarly situated from this harm. The injunctive relief sought by Plaintiffs is necessary to prevent continued and further injury.

PRAYER FOR RELIEF

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

- a. Issue preliminary and permanent injunctions against Defendants, their agents, officials, employees, and all persons acting in concert with them, requiring them to cease and desist from placing any women committed solely under Section 35 in a DOC facility;
- b. Issue a judgment against Defendants declaring that the acts, omissions, policies, and practices of placing women committed solely under Section 35 to DOC facilities are unlawful and violate the Fourteenth Amendment to the United States Constitution and the Americans with Disabilities Act;
- c. Award Plaintiffs their reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12133, Mass. Gen. Laws ch. 93, § 103(d), Fed. R. Civ. P. 54(d), and other applicable law; and
- d. Grant Plaintiffs such other and further relief as the Court considers just and proper.

Dated: January 27, 2015

Respectfully submitted,

/s/ William F. Lee

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Certificate of Service

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 27, 2015.

/s/ William F. Lee
William F. Lee