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PLS Final Report October 1, 2018 – July 31, 2019

On March 14, 2019, PLS filed a class action Complaint, entitled *Does I-X v. Commissioner of Correction, et al.*, Suffolk County Superior Court. No. 1984-00828 on behalf of men civilly committed to correctional facilities under Mass. Gen. Laws Chapter 123, Section 35, for treatment of alcohol or substance use disorders. Massachusetts is the only state to incarcerate people for medical treatment who have not been charged or convicted of a crime. The Complaint claims that:

- (1) Incarcerating civilly-committed men but not women constitutes gender discrimination in violation of the 14th Amendment to the U.S. Constitution, the Massachusetts Declaration of Rights, and the Massachusetts Equal Rights Act. Under Section 35, men who need inpatient treatment for alcohol or substance use disorder go to prison, while women receive treatment in secure treatment facilities in the community.
- (2) Civil commitment to a correctional institution for treatment of a medical condition constitutes unlawful disability discrimination in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Article 114 of the Massachusetts Declaration of Rights. By subjecting men to stigma and punishment instead of treatment, Section 35 perpetuates unwarranted negative stereotypes, and reinforces the perception that they are second-class citizens unworthy of bona-fide treatment.
- (3) Civil commitment to a prison violates the substantive due process provisions of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Articles 1, 10, and 12 of the Massachusetts Declaration of Rights. Plaintiffs' unnecessary incarceration in a prison, rather than in an appropriate treatment facility, represents a substantial departure from accepted professional judgment, practice, and standards. Their confinement in a traumatic and counter-therapeutic environment sabotages the possibility of recovery and bears no reasonable relation to the purpose of Section 35.

The suit seeks a declaratory judgment that Plaintiffs' incarceration violates the constitutional and statutory provisions referred to above, and a permanent injunction prohibiting the civil commitments under Section 35 to a correctional facility.

The Defendants' filed an Answer on May, 1, 2019.

On July 2, 2019, the Court certified a class consisting of:

All men placed or housed in a DOC facility solely pursuant to G.L. c. 123, § 35 from July 2, 2019 through the date of the final judgment in the case, including the named plaintiffs.
(A copy of the decision is attached).

We are now continuing to engage in fact-finding, discovery, and consulting with experts. We are contemplating amending the Complaint to add plaintiffs confined in the recently opened Section 35 unit at the Hampden County House of Correction. There are also ongoing settlement discussions with the Defendants. We hope to file a motion for summary judgment by early 2020, if settlement discussions are not successful.

The filing of the Complaint triggered the Department of Correction to implement numerous reforms at the Massachusetts Alcohol and Substance Abuse Center (MASAC), the prison where Section 35 patients are incarcerated. These include: installing toilets in the solitary confinement cells, no longer requiring patients to wear prison uniforms or prison identification badges that identify them as inmates, removing the recording on the telephone calls saying that the call is from an "inmate at a correctional institution," transferring sentenced prisoners from the facility, and expanding treatment staff. While these changes are welcomed by patients, they do not alter the essential problem: putting men in prison who have not been charged or convicted of a crime. Accordingly, no settlement is possible unless the Defendants agree to stop confining Section 35 men in a correctional facility, and this will require the state to establish approximately 250 new treatment beds to replace the prison beds.

Simultaneously with the litigation, PLS has been working with the media, the Legislature, activists, and other policy makers to end civil commitment of men to a correctional facility for inpatient treatment of alcohol and substance use disorders. The Boston Globe, Boston National Public Radio affiliate WBUR, Filter Magazine and several other prominent outlets have run critical stories scrutinizing Section 35. During this time, PLS has worked to educate the members of the Legislature, the medical and legal communities, and the public about the harm of incarcerating Section 35 patients, including presenting testimony before the Legislature (See <https://www.masslive.com/politics/2019/06/obamas-drug-czar-michael-botticelli-backs-bill-to-get-addiction-patients-out-of-jails.html>) and working with the legislatively-established commission on Section 35, which, on June 27, 2019, recommended that all civil commitments to criminal justice facilities under Section 35 be abolished. (See

<https://www.mass.gov/files/documents/2019/07/01/Section%2035%20Commission%20Report%207-1-2019.pdf>. Two bills (S.1145 and H.1700) have also been filed in the current Legislative session that would end the practice of incarceration of civilly-committed men at MASAC or any other correctional facility, and they have widespread support.

We hope that by continuing to litigate the case vigorously, we will motivate the Legislature, the Defendants and other public officials to develop the systemic changes that are necessary to put an end to this longstanding unconscionable and discriminatory treatment of men with alcohol and substance use disorders.

For more information, please contact:

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