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April 1, 2019

McDOWELL FOUNDATION PLS SEMI-ANNUAL REPORT October 1, 2018 – March 31, 2019

In the past six months, PLS has moved through the initial stage of information-gathering and development of legal theories and claims to the filing of the Complaint *Doe v. Mici*, Suffolk County Superior Court. No. 1984-00828, on March 14, 2019. Shortly after filing, PLS served a Motion for Class Certification on the Defendants.

PLS began by doing the fact-finding and client outreach necessary for litigation, including:

- Conducting several rounds of detailed interviews with Section 35 patients incarcerated in the Department of Correction (Massachusetts Alcohol and Addiction Center, or MASAC), and those incarcerated in the newly-opened Section 35 facility run by the Hampden County Sheriff's Department in Western Massachusetts.
- Gathering voluminous records from the Department of Correction, Hampden County Sheriff's Office, Department of Public Health, and Department of Mental Health about their respective Section 35 programs and conducting a detailed analysis of these records.
- Preparing memoranda on our different legal claims.
- Drafting a complaint and motion for class certification.

The filing of the Complaint in March has increased public attention and interest among policymakers to end civil committing 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 the practice of incarcerating men solely due to their need for medical treatment. During this time, PLS also worked to educate the legal community, policy makers and the public about the harm of incarcerating Section 35 patients, through outreach to legislators and a legislatively-established commission on Section 35, bar associations, individual attorneys and activists. PLS' efforts have planted seeds for reform consistent with our litigation. Two bills (S.1145 and H.1700) have 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.

The Complaint names as Defendants the Superintendent of MASAC, the Commissioner of Corrections, the Department of Correction, the Commissioner of Public Health, the Department of Public Health, the Secretary of the Executive Office of Public Safety and Security, and the Secretary of the Executive Office of Health and Human Services. The case was brought by ten men who were all incarcerated at MASAC at the time of filing, identified only as John Does 1-10 in the papers to protect their privacy. It is brought on behalf of a proposed class of all men who are or will be incarcerated at MASAC or any other correctional facility based solely on a Section 35 civil commitment.

The legal claims are:

(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' responses to the Complaint and the Motion for Class Certification are due on May 1, 2019.