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Senator Pacheco and Representative Cabral
Chairs, Joint Committee on State Administration & Regulatory Oversight
Massachusetts State House
24 Beacon Street, Room 312-B & Room 22
Boston, MA 02133
August 6, 2021

**SUPPORT FOR AN ACT ESTABLISHING A JAIL AND PRISON
CONSTRUCTION MORATORIUM, S.2030**
Joint Committee on State Administration and Regulatory Oversight

Dear Chair Pacheco and Chair Cabral,

On behalf of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, I write to urge the Senate Committee on State Administration and Regulatory Oversight to favorably report out **S.2030**, *An Act establishing a jail and prison construction moratorium*.

The Charles Hamilton Houston Institute for Race & Justice at Harvard Law School was founded in 2005 by Professor Charles J. Ogletree. For the last seven years, our central project has been the Houston/Marshall Plan for Community Justice, which acknowledges the war-like devastation that has been inflicted upon poor communities of color in our nation’s cities. This devastation is the result of policies and practices of disinvestment and neglect that cut across otherwise separate domains—transportation, housing, education, recreation, safety and healing, labor and employment, childcare, and healthcare—that have created an impenetrable web of disadvantage. As many have written, including our recently-retired Managing Director David J. Harris, one significant endeavor to address structural racism is intentional and equitable funding for poor communities of color across these domains.¹ In our view, the proposed jail and prison construction moratorium is therefore a crucial intervention for three reasons: **(1) resetting spending priorities, (2) reducing racial disparities and fighting systemic racism, and (3) transparency and democratic oversight.**

(1) Resetting Spending Priorities

In 2018, the Legislature overwhelmingly passed and Governor Baker signed into law the omnibus “Criminal Justice Reform Act.” The Act’s goals were twofold: “to help the state move away from

¹ See, e.g., Monica Cannon-Grant & David J. Harris, *Structural Racism Is The Real Pandemic*, COMMONWEALTH MAG. (May 17, 2020), <https://commonwealthmagazine.org/opinion/structural-racism-is-the-real-pandemic>; Michelle Wu, Julia Mejia & Ricardo Arroyo, *Boston’s post-pandemic recovery must be equitable*, BOS. GLOBE (Apr. 22, 2020), <https://www.bostonglobe.com/2020/04/22/opinion/bostons-post-pandemic-recovery-must-be-equitable>.



incarceration as punishment and reduce racial disparities.”² Among the act’s initiatives was a “Primary Caretakers” provision, G.L. c. 279 § 6B, that enables people convicted of crimes to request that judges justify a sentence of incarceration and consider a community-based sentence because of the documented trauma of parental incarceration on dependent children. However, the Legislature did not include any requirement to track data on the implementation of that provision.

Passing a moratorium on new jail and prison construction would allow the Legislature time to determine the extent to which this provision, and other incarceration-reducing levers already available in law, are under-utilized and to propose interventions and fixes to continue to reduce incarceration before prematurely building new carceral institutions—capital investments that will require debt-financing for years to come. For example, significant bills pending this session (H.2503/S.1560 and H.1798/S.1600) aim to increase parole releases and eliminate the possibility of revocation of parole for technical violations of conditions, a major source of women’s imprisonment in the Commonwealth. In 2020, 27% of new admissions of women to DOC custody were women re-incarcerated on parole detainers,³ and the overwhelming majority of parole revocations (more than 85%) are for technical violations, not new criminal allegations.⁴ With shifts in policy, the Commonwealth can continue to ensure releases of people from the Commonwealth’s jails and prisons, as well as spending to ensure they can land on their feet when they leave incarceration and arrive back home in their communities to end cycles of re-incarceration.

The 2018 legislation came on the heels of a decade in which incarceration had *already decreased* in double-digit percentages in Massachusetts (by 21% from 2011 to 2018), even as *spending* on incarceration continued to increase (by 25% over the same period)—largely driven by staffing, salaries, and employee benefits, not by investments in programs, education, or family contact for incarcerated people to promote rehabilitation and reduce the cycle of trauma, violence, and

² DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE, DCAMM PROJECT NO. DOC2104, STATEMENT OF WORK FOR STRATEGIC PLAN FOR INCARCERATED WOMEN IN MASSACHUSETTS at 4 (Dec. 28, 2020), <https://www.mass.gov/doc/dsb-20-22-doc2104-statement-of-work-for-strategic-planning-consultant-20-1228/download> (“In 2018, Governor Baker and the legislature enacted the Criminal Justice Reform Law which is intended to help the state move away from incarceration as punishment and reduce racial disparities. The law has seven key provisions including juvenile justice, bail reform, more use of diversion programs, expungement, reduce the use of solitary confinement and other sweeping changes to the criminal justice system in Massachusetts.”).

³ MASS. DEP’T OF CORRECTION, PRISON POPULATION TRENDS at 28 (May 2021), <https://www.mass.gov/doc/prison-population-trends-2020/download#page=33>.

⁴ Jean Trounstein, *The Dysfunctional Mass Parole Board’s Inevitable Coronavirus Crisis*, BOS. INSTITUTE FOR NONPROFIT JOURNALISM (Apr. 21, 2020), <https://binjonline.com/2020/04/21/the-dysfunctional-mass-parole-boards-inevitable-coronavirus-crisis> (“As I reported in 2019, nearly 87% of parole violations that returned people to prison in Mass between 2015 and 2018 were technical (non-criminal), for infractions such as missing a check-in or having dirty urine.”).



imprisonment.⁵ While the number of people in our jails and prisons falls every year, spending on carceral structures continues to rise.⁶

This avoidable and unnecessary pattern has been true for decades. The Commonwealth has grown its investments in the disparate policing, punishment, and incarceration of people of color—particularly Black and Hispanic people—at the expense of investing in the social safety net. In a 2016 report, the nonpartisan think tank MassBudget determined that spending on prisons and probation increased by \$146 million between FY2001 and FY2016, while social services budgets and sources of community safety and stability like early education and care, workforce development, higher education, mental health, and public health were slashed.⁷ In pushing forward the Moratorium Bill, this Committee can create the time and space to reset spending priorities.

(2) Reducing Racial Disparities & Fighting Systemic Racism

Our Commonwealth’s prisons are 58% people of color,⁸ in a state that is 71.1% non-Hispanic white.⁹ Racially disparate imprisonment in state prisons is just one facet of systemic racism. Last year, the seven justices of the Massachusetts Supreme Judicial Court issued a statement urging members of the bar in the Commonwealth to consider the role of systemic racism in the criminal legal system and what we can do to stop it.¹⁰ They wrote:

We must recognize and confront the inequity and injustice that is the legacy of slavery, of Jim Crow, and of the disproportionate incarceration of African-Americans, and challenge the untruths and unfair stereotypes about African-Americans that have been used to justify or rationalize their repression. And we must examine the

⁵ BEN FORMAN AND MICHAEL WIDME, MASSINC, JUSTICE REINVESTMENT AT-A-GLANCE: REVISITING CORRECTIONAL EXPENDITURE TRENDS IN MASSACHUSETTS (May 2018), <https://massinc.org/wp-content/uploads/2018/05/Revisiting-Correctional-Expenditure-Trends-in-Massachusetts.pdf>. See also MARK O’HALLORAN, SENATE COMMITTEE ON WAYS AND MEANS, DEPARTMENT OF CORRECTION & SHERIFFS’ FUNDING OVERVIEW (Sept. 17, 2019), <https://correctionalfunding.com/wp-content/uploads/2019/12/DOC-Sheriffs-Funding-Overview-SWM-Senior-Fiscal-Policy-Analyst-Mark-OHalloran.pptx>.

⁶ Benjamin Swasey, *Over 8 Years, Mass. Spending On Incarceration Is Up 25 Percent Despite Inmate Numbers Dropping 21 Percent*, WBUR (May 22, 2018), <https://www.wbur.org/news/2018/05/21/new-massachusetts-prison-spending-report>.

⁷ JEFF BERNSTEIN, MASS. BUDGET & POL’Y CTR., INCARCERATION TRENDS IN MASSACHUSETTS: LONG-TERM INCREASES, RECENT PROGRESS 9 (2016), <https://www.massbudget.org/reports/pdf/Incarceration%20Trends%20in%20Massachusetts%20Long-term%20Increases,%20Recent%20Progress%201-26-2016.pdf#page=9>.

⁸ MASS. DEP’T OF CORR., JANUARY 2021 MA DOC INSTITUTIONAL FACT CARDS (2022), <https://www.mass.gov/doc/institutional-fact-cards-january-2021/download>.

⁹ U.S. Census Bureau, Quick Facts: Massachusetts, <https://www.census.gov/quickfacts/fact/table/MA/RHI825219#RHI825219> (last visited Aug. 6, 2021).

¹⁰ *SJC judges decry racism in criminal justice system*, COMMONWEALTH MAG. (June 3, 2020), <https://commonwealthmagazine.org/courts/sjc-justices-decry-racism-in-justice-system-broader-society>.



underlying reasons why African-Americans have suffered disproportionately from the COVID-19 pandemic, both in terms of the number of deaths and the extent of economic hardship it has caused, and, where possible, address the causes of those disparities.

In 2016, the Massachusetts Sentencing Commission released snapshot statistics illustrating that Black people are incarcerated at nearly eight times the rate of white people and Hispanic people are incarcerated at nearly five times the rate of white people in Massachusetts.¹¹ The statistics further demonstrated that, in Massachusetts, people of color are: more likely to be convicted of a crime than rate of representation in the population (33% vs. 22%); a greater share in superior court, reflecting higher rates of indictments (68% white in district court vs. 48% white in superior court); a higher rate of sentence to incarceration (38% of sentences to incarceration are for people of color, compared to 33% of convictions); a higher rate of sentence to prison than jail [i.e. on average, longer sentences] (57% of DOC population, compared to 38% of sentences to incarceration); and staggeringly over-represented in state prisons.¹² Reports by the Council of State Governments Justice Center in 2016 confirm these data, finding that a larger portion of Black and Hispanic people received convictions than white people and a larger portion of Black and Hispanic people were sentenced to incarceration than white people.¹³

In response, the late Chief Justice Ralph Gants commissioned a study by Harvard Law School's Criminal Justice Policy Program to evaluate racial disparities in sentencing.¹⁴ The final report, released in September 2020, confirmed that Black and Hispanic people are overrepresented in criminal caseloads compared to their population representation; that they are less likely than white people to have their cases resolved with leniency, such as pretrial probation or a continuance without a finding; and when sentenced to incarceration, Black and Hispanic people receive sentences that are on average at least five months longer than their white counterparts, even controlling for criminal history.¹⁵ The report further found that initial charging decisions account

¹¹ Mass. Sentencing Comm'n, Selected Race Statistics 2 (Sept. 27, 2016), <https://www.mass.gov/files/documents/2016/09/tu/selected-race-statistics.pdf>.

¹² According to a 2016 analysis by The Sentencing Project, in Massachusetts, Black people are incarcerated at roughly 8 times the rate of white people; Hispanic people are incarcerated at roughly 5 times the rate of white people. MASS. SENTENCING COMMISSION, SELECTED RACE STATISTICS 2–3, 5–8 (2016), <https://www.mass.gov/files/documents/2016/09/tu/selected-race-statistics.pdf#page=3>; see also *Massachusetts Profile*, PRISON POLICY INITIATIVE (finding based on 2010 data that the imprisonment rate for black people in Massachusetts is seven times higher than that of white people), <https://www.prisonpolicy.org/profiles/MA.html>.

¹³ See, e.g., COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, WORKING GROUP MEETING 6 INTERIM REPORT ON RACE 9–10 (Dec. 21, 2016), https://csgjusticecenter.org/wp-content/uploads/2016/12/JR-in-Massachusetts_sixth-presentation.pdf#page=9.

¹⁴ Chief Justice Ralph D. Gants, Massachusetts Supreme Judicial Court, Annual Address: State of the Judiciary 5 (Oct. 20, 2016), https://www.mass.gov/files/documents/2017/10/10/state-of-judiciary-speech-sjc-chief-justicegants-2016_0.pdf.

¹⁵ Elizabeth Tsai Bishop et al., Criminal Justice Policy Program, Harvard Law School, Racial Disparities in the Massachusetts Criminal System (2020), <http://cjpp.law.harvard.edu/assets/Massachusetts-Racial-Disparity-Report-FINAL.pdf>.



for 70% of the racial disparities in sentence length in the Commonwealth. This report was a landmark contribution, but it was not new information. In **1979**, the *Boston Globe*'s Spotlight team published a long-form investigation into racial disparities in sentencing after reviewing 4,500 superior court dockets, publishing the expose under the headline "*Blacks Receive Stiffer Sentences*."¹⁶ Efforts to eliminate mandatory minimum sentences, including the sentence of life without the possibility of parole, are evidence-based racial justice measures—and supported by extensive research on the extremely limited recidivism among lifers¹⁷—and the Legislature should seriously contend with this research base, adopt these measures, and make them retroactive to fight the shameful history of racial discrimination baked into the Commonwealth's scheme of criminal punishment. The Moratorium Bill would allow the Legislature time to push forward these innovative, restorative public policies.

The axiom "if they build it, they will fill it" is not merely a catchy phrase—it is unfortunately empirically supported. A rash of jail and prison overcrowding lawsuits decades ago did not lead to decreases in incarceration via releases, diversion, or alternative sentencing; instead, political forces simply built more jails and prisons, filled those cells, and did little to meaningfully address overcrowding.¹⁸ Allowing unfettered jail and prison construction risks binding this body's hands with political and financial commitments to future incarceration that would be out of step with the Commonwealth's public policy trendline; by contrast, a five-year moratorium on jail and prison construction would allow the Legislature to adopt policies along a path to make perpetual incarceration obsolete—including through upstream investments in social determinants of health in long-neglected communities of color.

¹⁶ *Blacks Receive Stiffer Sentences*, BOS. GLOBE (Apr. 4, 1979), A1, <https://www.newspapers.com/clip/81447925/the-boston-globe>.

¹⁷ Nazgol Ghandnoosh, The Sentencing Project, *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences* 29, 29 n.9 (2017), <https://www.sentencingproject.org/wp-content/uploads/2017/01/Delaying-a-Second-Chance.pdf> (citing Nazghol Ghandnoosh, *Minimizing the Maximum: The Case for Shortening All Prison Sentences*; Smart Decarceration: Achieving Criminal Justice Transformation in the 21st Century (Matthew W. Epperson & Carrie Pettus-Davis eds., 2017)); Robert Weisberg et al., Stanford Criminal Justice Ctr., *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* 17 (2011), http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164096/doc/slspublic/SCJC_report_Parole_Release_for_Lifers.pdf; Jean Trounstein, *Why Massachusetts' Parole System Requires Reform*, Boston Mag. (June 25, 2013), <https://www.bostonmagazine.com/news/2013/06/25/massachusetts-needs-parole-reform>; see also Barbara Levine, Citizens Alliance on Prisons & Public Spending, *Issue brief: Paroling people who committed serious crimes: What is the actual risk?* (2014), https://www.prisonpolicy.org/scans/cappsmi/CAPPS_Paroling_people_who_committed_serious_crimes_11_23_14.pdf. See generally Jeffrey T. Ulmer & Darrell Steffensmeier, *The Age and Crime Relationship: Social Variation, Social Explanations*, in *The Nurture Versus Biosocial Debate in Criminology: On the Origins of Criminal Behavior and Criminality* at 377, 380–81, 391–92 (Kevin M. Beaver et al. eds., 2014), https://www.sagepub.com/sites/default/files/upm-binaries/60294_Chapter_23.pdf.

¹⁸ See generally Joshua Guetzkow & Eric Schoon, *If You Build It, They Will Fill It: The Consequences of Prison Overcrowding Litigation*, 49 L. & SOC'Y REV. 401 (2015), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/lasr.12140>.



(3) Transparency & Democratic Oversight

The final reason we urge this Committee to favorably vote out S.2030 is in the interest of democratic oversight, transparency, and public accountability. For the last two years, the Department of Correction, the Executive Office of Public Safety and Security (EOPSS), and the Division of Capital Asset Management and Maintenance (DCAMM) have been pushing forward an effort to build a new women’s prison in the Commonwealth, even as women’s incarceration is presently the lowest it has been in decades, and after years of denying documented health threats at MCI-Framingham and disclaiming any intention to close the prison. They have been trying to get the project off the ground behind closed doors, without sufficient engagement from the Legislature or the public. Formerly incarcerated women and other advocates have been carefully tracing these efforts through public records requests and administrative hearings, and have seen in these records the Baker Administration’s obstruction of public engagement around the misguided women’s prison project. The five developments detailed below particularly bear on this factor.

(i) DOC overestimated incarceration “need” and failed to rectify conditions at MCI-Framingham over many years.

In December 2011, DCAMM published *A System Master Plan for Massachusetts Corrections: The Corrections Master Plan: The Final Report* [hereinafter “Corrections Master Plan”].¹⁹ The Corrections Master Plan detailed “significant overcrowding” at MCI-Framingham and recommended “the development of regional women’s correctional centers,” including the Suffolk County House of Corrections in the East Region, MCI-Framingham in the Central Region, and the Western Massachusetts Regional Women’s Correctional Center (at Chicopee) in the West Region.

The Corrections Master Plan estimated that 1,700 beds for women in the Commonwealth would be “needed” by 2020.²⁰ This estimate was staggeringly off-base. As of April 12, 2021, there were a total of 480 women incarcerated in the Commonwealth (162 at MCI-Framingham, 0 at South Middlesex Correctional Center, 14 in Barnstable County, 42 in Bristol County, 14 in Essex County, 14 in Franklin County, 77 in Hampden County, 10 in Middlesex County, and 147 in Suffolk County).²¹ Perhaps, in part, the estimate was off-base because DCAMM and the DOC continue to hire architects to assess facility needs—who may have a conflict of interest since recommending new prison building could deliver potential future contract opportunities.

¹⁹ DIVISION OF CAPITAL ASSET MANAGEMENT & MAINTENANCE, A SYSTEM MASTER PLAN FOR MASSACHUSETTS CORRECTIONS, THE CORRECTIONS MASTER PLAN, THE FINAL REPORT 4 (2011), <https://www.mass.gov/doc/corrections-master-planpdf/download>.

²⁰ *Id.* at 10.

²¹ MASS. DEP’T OF CORR., WEEKLY COUNT SHEET (Apt. 12, 2021), <https://www.mass.gov/doc/weekly-inmate-count-4122021/download>.



For years advocates and state inspectors had raised alarm about environmental health conditions at MCI-Framingham and the DOC's failure to safeguard the health of women in its custody. MCI-Framingham first opened in 1877, with additional "cottages" opened in 1965. Four of those cottages were closed in 2016 after testing revealed window sealant with high levels of PCBs, a known carcinogen hazardous to human health.²² "In October [2016], women at MCI-Framingham were suddenly moved out of the four cottage housing units on the compound. This led to widespread concern among the women about possible exposure to asbestos or mold, as well as concern over conditions in their new housing. The DOC told [Prisoners' Legal Services of Massachusetts] that the cottages were not closed because of asbestos or mold, but because PCBs were found in the window caulk (the sealant around the window panes)."²³

Conditions at MCI-Framingham have drawn the ire of environmental health inspectors for years. In its most recent public health inspection in January 2020, the Community Sanitation Program (CSP) of the Massachusetts Department of Public Health discovered 116 repeat environmental health violations at MCI-Framingham that DOC had failed to resolve since its prior inspection in June 2019. One of the CSP's chief concerns was the utter lack of cleanliness in food service:

The CSP is concerned with the chronic rodent and insect issue in the food service areas and recommended increasing all pest control methods to twice a week and ensuring that all sticky traps are replaced more frequently. It was stated during the inspection that insects are coming into the Central Kitchen through a crevice around the kettle basin; the CSP strongly recommends blocking this crevice to decrease the presence of insects. The CSP also recommended a higher frequency deep cleaning policy which includes cleaning under all storage shelves and equipment in food service areas.²⁴

Over the last five years, at each bi-annual inspection MCI-Framingham has had more than 100 documented repeat violations; across these 11 inspections, the average is 147 unresolved environmental health violations per inspection.²⁵ In its June 2017 inspection, DPH detailed black drinking water and serious issues of "chronic dampness" and "mold growth," writing, "The

²² See Michelle Williams, *Cost to renovate MCI-Framingham, the oldest women's prison in the U.S., considered prohibitive*, Mass Live News (Feb. 26, 2020), <https://www.masslive.com/news/2020/02/mci-framingham-the-oldest-womens-prison-in-the-us-to-close-inmates-to-be-relocated-to-bay-state-correctional-center-in-norfolk.html>.

²³ *PLS Notes*, Prisoners' Legal Servs. (Jan. 2017), <http://www.plsma.org/wp-content/uploads/2017/02/201701NE.pdf>.

²⁴ Executive Office of Health and Human Services, Dep't of Public Health, Bureau of Environmental Health, Community Sanitation Program, *Facility Inspection – MCI Framingham* (Feb. 14, 2020), <https://www.mass.gov/doc/mci-framingham-january-30-2020/download>.

²⁵ January 2020 (116 repeat violations); June 2019 (107 repeat violations); January 2019 (139 repeat violations); June 2018 (138 repeat violations); January 2018 (147 repeat violations); June 2017 (192 repeat violations); January 2017 (137 repeat violations); June 2016 (124 repeat violations); January 2016 (153 repeat violations); June 2015 (186 repeat violations); January 2015 (180 repeat violations).



Department is strongly concerned with the absence of a safe and sanitary supply of water for normal drinking needs within this area and requests you provide a plan describing the interim measures you have implemented to ensure the health and safety of inmates and staff while this violation is being corrected.”²⁶ Though DOC has repeatedly denied a mold infestation as the impetus for closing the cottages, in a two-year audit of medical care at DOC facilities published in January 2020, Massachusetts State Auditor Suzanne Bump noted, “Because of a mold infestation, some female inmates’ medical files that were stored at Massachusetts Correctional Institution (MCI)—Framingham were quarantined and could not be obtained for review.”²⁷

Despite this extensive record, throughout 2019, DOC denied to advocates at meetings of the Justice Involved Women Panel²⁸ that conditions at MCI-Framingham posed a threat to human health and habitation and that DOC had any intention or plan to shutter MCI-Framingham. The DOC has had an incontrovertible pattern of failing to resolve documented threats to human health at MCI-Framingham, and now, years later, seeks a \$50 million capital improvement project. DOC cannot be rewarded now with massive capital investments for having failed to repair the prison and safeguard the women in its custody over many years. DOC requires oversight from the Legislature and should not be permitted to build a new prison to simply allow it to fall into disrepair again.

(ii) DOC publicly denied an intention to close MCI-Framingham after already having commissioned facility assessments of the Bay State and South Middlesex properties.

Between August and October 2019, the Suffolk County Sheriff’s Department entered into Memoranda of Understanding with Sheriff’s Departments in Norfolk, Plymouth, and Essex Counties to house women held pretrial and women serving county sentences who had, until that time, been incarcerated at MCI-Framingham—following the eastern regional plan identified in the 2011 Corrections Master Plan. Further, throughout the summer and fall of 2019, the firm Faithful+Gould completed draft facility assessments of the South Middlesex Correctional Center (dated July 26, 2019)²⁹ and Bay State Correctional Center (dated September 29, 2019)³⁰ in

²⁶ Executive Office of Health and Human Services, Dep’t of Public Health, Bureau of Environmental Health, Community Sanitation Program, *Facility Inspection – MCI Framingham* at 24 (June 27, 2017), <https://www.mass.gov/files/documents/2017/07/zm/mci-framingham-report-6-17.pdf>. *Id.* (“The unfinished wall and wall behind the warewash machine is constantly exposed to chronic dampness and food debris which has resulted in deterioration and mold growth throughout the area.”).

²⁷ Commonwealth of Mass., Office of the State Auditor, *Official Audit Report of Massachusetts Department of Correction For the Period July 1, 2016 through June 30, 2018* at 7 (Jan. 9, 2020), <https://www.mass.gov/doc/audit-of-the-departmentof-correction/download>.

²⁸ This Panel was created as a standing panel as part of the 2018 Criminal Justice Reform Act omnibus law.

²⁹ FAITHFUL+GOULD, REPORT OF FACILITY CONDITION ASSESSMENT, SOUTH MIDDLESEX CORRECTIONAL CENTER, 135 WESTERN AVENUE, FRAMINGHAM, MASSACHUSETTS 01702 (July 26, 2019), <https://www.mass.gov/files/documents/2019/11/26/DSB-19-40-Draft-FCA-Report-South-Middlesex-Correctional-Center.pdf>.

³⁰ FAITHFUL+GOULD, REPORT OF FACILITY CONDITION ASSESSMENT, BAY STATE CORRECTIONAL CENTER, 28 CLARK STREET, NORFOLK, MASSACHUSETTS 02056 (Sept. 29, 2019),



anticipation of the as-of-then-unannounced effort to close MCI-Framingham and rehab existing correctional campuses to functionally create a new women’s prison. The facility assessments were commissioned and proposed in April and May 2019.³¹

In October 2019, days after the final county MOUs were entered,³² women incarcerated at MCI-Framingham were abruptly moved in the early morning hours to the Suffolk County House of Corrections (“South Bay”), with just hours’ notice to them, without being able to retain all of their property or transfer their commissary funds, and without notice to their families or loved ones. In a public statement released on October 8, 2019, Suffolk County Sheriff Steven W. Tompkins explained that his department had ended its contract with Immigration and Customs Enforcement to detain immigrants because “The jail plans to instead focus resources on women entering the Suffolk County jail, which ‘will soon be an expanded population,’ according to the statement.”³³ Tompkins announced that beginning the week of October 8, “the county jail will begin receiving more women awaiting trial and women who have been convicted and sentenced from Plymouth, Essex, and Norfolk counties.”³⁴

In his initial explanation for entering the MOUs and accepting county-sentenced and pretrial-detained women from Essex, Norfolk, and Plymouth Counties, Sheriff Tompkins explained that he knew MCI-Framingham would be closing and agreed to accept women in view of that decision by DOC. As WGBH News reported on October 11, 2019,

Tompkins said his decision this week to stop housing Immigration and Customs Enforcement detainees at his Boston jail is based on a need to provide more beds for hundreds of [incarcerated women] who would be displaced by the closure of MCI-Framingham.

“When we became aware of the fact that they were going to close, I reached out to Tom Turco, the secretary of public safety,” Tompkins told WGBH. “We do some fantastic gender-specific programming and we are more than willing to take all the little ladies in.”

<https://www.mass.gov/files/documents/2019/11/26/DSB-19-40-Draft-FCA-Report-Bay-State-Correctional-Center.pdf>.

³¹ *Id.* (“This report was completed in general accordance with the ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process, Faithful+Gould’s proposal for Facility Condition Assessment services dated May 8, 2019 and the State of Work for Facility Condition Assessments as issued by the Division of Capital Asset Management and Maintenance and dated April 17, 2019.”).

³² The Essex County MOU was signed by Sheriff Kevin Coppinger on October 8, 2019. The Plymouth County MOU was signed on August 29, 2019.

³³ Tori Bedford, *Suffolk County Sheriff Breaks Contract With ICE*, WGBH NEWS (Oct. 8, 2019), <https://www.wgbh.org/news/local-news/2019/10/08/suffolk-county-sheriff-breaks-contract-with-ice>.

³⁴ *Id.*



Cara Savelli, a spokeswoman for the State Department of Correction, said late Thursday there is no such plan to close MCI-Framingham, which currently holds about 450 inmates.

Roughly 200 of the women held there are awaiting trial, many them sent from county sheriffs' departments — such as Essex, Norfolk and Plymouth counties — whose jails don't have female units.

Those three counties confirmed they now plan to send female inmates to Suffolk County's jail, instead of the state-run prison in Framingham. Sheriffs' departments from Essex, Norfolk and Plymouth counties said Thursday they didn't know of any plans to close Framingham, but they opted for Suffolk because it's closer to their headquarters, easier to reach by public transportation and is more aligned with their treatment programs for inmates.³⁵

However, in a retraction issued the same day that reporting was published, Sheriff Tompkins was apparently compelled to walk back his statements about MCI-Framingham closing. As reflected in a 2:00 PM update to the WGBH News story,

Friday afternoon, Suffolk County Sheriff Steven Tompkins retracted his statements claiming the state-run women's prison at Framingham is closing. He said parts of the prison are closing temporarily for renovations, creating a need for women inmates to be held elsewhere. But a spokesman for the State Department of Correction (DOC) also disputed that statement. Jason Dobson from the DOC said there is no renovation project happening at MCI-Framingham that would reduce prison beds.³⁶

Even as Sheriff Tompkins endeavored to provide a full factual explanation to the public, DOC continued to obfuscate and disclaim its clear intention to close MCI-Framingham and engage in a new public building project—as evidenced not only by the October 2019 move of incarcerated women to South Bay but also by the facility assessments it had solicited for the South Middlesex and Bay State Correctional Centers, prepared in July and September 2019.

³⁵ Chris Burrell & Philip Martin, *State Denies Suffolk Sheriff's Claim That Framingham Women's Prison Is Closing*, WGBH NEWS (Oct. 11, 2019), <https://www.wgbh.org/news/local-news/2019/10/11/state-denies-suffolk-sheriffs-claim-that-framingham-womens-jail-is-closing> (emphasis added).

³⁶ *Id.*



- (iii) **DOC, EOPSS, and DCAMM first issued a public notice of designer selection for the new women’s prison without newspaper publication as required by law, and DCAMM objected to public engagement with the designer selection process.**

On December 4, 2019, DCAMM released a Public Notice of Designer Selection (DSB List# 19-40) through the Designer Selection Board for Mass. State Project No. DOC2002, “Bay State Correctional Center – Women’s Facility.” The Public Notice (DSB List# 19-40) was on behalf of the Department of Correction and the Executive Office of Public Safety and Security (EOPSS). The notice was published in the Commonwealth’s Central Register, Volume 39, Issue 49 (December 4, 2019). It was not published in a newspaper. Proposals in response to the Public Notice were due January 8, 2020.

The project identified in DSB List# 19-40 was for a \$650,000 study of how to design and construct the Bay State Correctional Center into a women’s prison at a cost of roughly \$50 million—which, along with a potential expansion at South Middlesex Correctional Center, would replace MCI-Framingham as the Commonwealth’s women’s prison. DSB List# 19-40 explained DOC’s belief that the construction project would adopt a “trauma-informed design.”

On January 21, 2020, Families for Justice as Healing and the Building Up People Not Prisons Coalition (BUPNP), of which the Houston Institute is a member organization, sent a letter to Governor Charlie Baker and Secretary Thomas Turco III of EOPSS (1) opposing the proposed plan to study the construction and rehabilitation of two existing correctional campuses to effectively create a new women’s prison and (2) disclaiming the false notion that any prison could ever be trauma-informed as incarceration is itself traumatic.

On January 22, 2020, the Designer Selection Board (DSB) met to consider the proposals that had been submitted in response to DSB List# 19-40. Members of Families for Justice as Healing and BUPNP attended to oppose the project and register their concerns on the record at the meeting of the Designer Selection Board.³⁷

On January 29, 2020, the Coalition sent a formal bid protest to the Bid Unit within the Fair Labor Division of the Attorney General’s Office because the Designer Selection Board had failed to advertise DSB List# 19-40 in a newspaper of general circulation, a requirement of the Designer

³⁷ DESIGNER SELECTION BOARD, MINUTES OF THE 987TH MEETING (Jan. 22, 2020), <https://www.mass.gov/doc/minutes-of-the-987th-meeting/download> (“Members from the Families for Justices As Healing (FJAH) were present to share their concerns with the Board regarding building a new prison. In response to the attached letter sent to Governor Baker from the members of FJAH, Rebecca Sherer stated that as a Board the members do not get involved with any monetary value or contracting for any projects set before them. The members role is strictly to select designers for state agencies. Once a designer is selected and given to the agencies the Board does not get involved further. The Board suggested that the members of FJAH get in touch with a representative at Department of Correction (DOC) or maybe a state representative.”).



Selection Law, G.L. c. 7C, § 47.³⁸ The Designer Selection Board was scheduled to meet to interview and choose finalists for Mass. State Project No. DOC2002 (DSB List# 19-40) on February 5, 2020, but that meeting of the Designer Selection Board was cancelled.³⁹

In an email dated February 5, 2020 obtained through a public records request, having learned that these organizations were meeting with finalist firms to express concerns about the project, DCAMM’s Emmanuel Andrade wrote to the Designer Selection Board, “What is the Board’s protocol for this type of public influence on the designer selection process?” DCAMM was apparently concerned about the public engagement with the process, as the Baker Administration attempted to push it forward without engaging public critique. Over the next few months, there was no public confirmation that DCAMM and DOC were cancelling the project, but it was not re-advertised.

- (iv) **In a second version of the women’s prison project, DCAMM solicited RFPs from contractees who had been selected to design and construct courthouses, not prisons—trying to fit a square peg into a round hole and avoid a public process whole cloth.**

On August 19, 2020, DCAMM privately released a new Request for Proposal (RFP) on behalf of User Agency the DOC for a “strategic plan for incarcerated women in the Commonwealth,” using the same Mass. State Project No. DOC2002 which had been used in DSB List# 19-40 for the prison project.⁴⁰ This Request for Proposal was sent to specific firms under existing House Doctor contracts with DCAMM that had been entered into for the study, design, and construction of courthouses on behalf of the Executive Office of the Trial Court.

In late summer and early fall of 2020, members of several advocacy organizations emailed Liz Minnis, Deputy Commissioner for Planning at DCAMM, to ask for the House Doctor RFPs upon hearing a rumor about their existence and to check on the status of the Bay State project. She provided the documents accordingly. Without advocates’ specific requests to see these documents, the House Doctor RFPs were only available to the firms and not to the public until they were specifically requested.

On November 16, 2020, Families for Justice as Healing sent another formal bid protest to the Attorney General’s Office because DCAMM had failed altogether to advertise this new request for proposals under the Designer Selection Law. The bid protest explained that DCAMM had solicited proposals for Mass. State Project No. DOC2002 from substantively inapposite House

³⁸ BUILDING UP PEOPLE NOT PRISONS COALITION, BID PROTEST LETTER (Jan. 29, 2020), <http://charleshamiltonhouston.org/wp-content/uploads/2020/06/Bid-Protest-Letter-and-Enclosure-1.29.20.pdf>.

³⁹ See Designer Selection Board, Agenda of the 988th Meeting, Wednesday February 5, 2020 at 8:30 AM, <https://drive.google.com/file/d/1tdTFPjKbas0f0zXscZ7o-GwfL8rmhwKj/view>.

⁴⁰ See, e.g., DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE, HOUSE DOCTOR REQUEST FOR PROPOSAL TO FINEGOLD ALEXANDER ARCHITECTS (Aug. 19, 2020), <https://drive.google.com/file/d/1GkPfkMk2NnS-NXVomYiLFX3Lc-xDL45/view>.



Doctors, beyond the scope of services in their publicly advertised House Doctor contracts for Mass. State Project No. DCP1921 which were entered for the study, design, and construction of courts on behalf of the Executive Office of the Trial Court. In this way, DCAMM's House Doctor RFP evaded the public notice requirements of the Designer Selection Law, G.L. c. 7C, §§ 44–57.

On November 16, 2020, at a meeting of the Justice Involved Women Panel, a representative from DOC conceded that the intention behind the proposed strategic plan was to inform the building project at Bay State Correctional Center, which DOC continued to pursue under Mass. State Project No. DOC2002.

On Monday, November 30, Assistant Attorney General Deborah Anderson announced a Bid Protest Hearing for this matter on Tuesday, December 8 at 11:00 AM and Position Statements from both parties were due by Friday, December 4. Both parties timely replied on December 4. The DSB's response informed the AG's Office that the matter was moot, as the RFP had been withdrawn. This was the first acknowledgment of withdrawal of the RFP.

- (v) **In a third iteration of RFPs regarding the women's prison project, DCAMM did not provide sufficient public advertisement and, having told potential consultants that a strategic plan for incarcerated women would be completed *prior* to hiring a designer, proceeded to hire a designer before completing the strategic plan.**

On January 13, 2021, the DSB issued a new public notice of designer selection for the "Study and Design of a Correctional Center for Women" (DSB List #21-01), with a submission deadline of February 3, 2021. The project was given a new state project number, Mass. State Project No. DOC2106. The proposal sought a contractee to engage in study and design services for a \$550,000 project. The full "Public Notice of Designer Selection" is available online here: <https://www.mass.gov/doc/dsb-21-01-study-and-design-of-a-correctional-center-for-women/download>. By statute, this project must be advertised in a newspaper of general circulation in the area in which the project is to be undertaken within two weeks of it being due. The newspaper publication deadline was therefore January 20, 2021 at 2:00 PM.

On January 8, 2021, Designer Selection Board Program Coordinator Claire G. Hester requested that an advertisement for this project run in newspapers across the Commonwealth on January 15, 2021. The DSB ran a one-day only, 2 column 2 inch classified legal advertisement in ten local papers: the *Boston Herald*, *Worcester Telegram*, *The Republican*, *Berkshire Eagle*, *New Bedford Standard Times*, *Patriot Ledger*, *Lowell Sun*, *Cape Cod Times*, *Nashoba Valley Voice*, and *Fitchburg Sentinel & Enterprise*. The body of the advertisement in each newspaper read in whole:

"PUBLIC NOTICE DESIGNER SELECTION BOARD PUBLIC NOTICE
Architects and engineers are advised that DSB List(s) #21-01, #21-02 and #21-03 dated January 13, 2021 describing 03 Designer Selection Board project(s) are now available at www.mass.gov/dsb and Autocene."



PUBLIC NOTICE

DESIGNER SELECTION BOARD

PUBLIC NOTICE

Architects and engineers are advised that DSB List(s) #21-01, #21-02 and #21-03 dated January 13, 2021 describing 03 Designer Selection Board project(s) are now available at www.mass.gov/dsb and [Autocene](#).

PUBLIC NOTICE

DESIGNER SELECTION BOARD

PUBLIC NOTICE

This public notice provided no substantive information about the nature of the project, the title of the project, the cost of the project, or any of the other substantive requirements of public notice in the Designer Selection Law. The notice was self-styled as a “Public Notice.”

On Wednesday, February 17, 2021, the Designer Selection Board held a public hearing on DSB List # 21-01, 21-02, and 21-03. At that hearing, the Designer Selection Board reserved fifteen minutes at the end of the meeting for public comment. According to rules announced on the Board’s website, public attendees had to submit requests to offer comment in advance—by 1:00 PM the day before the hearing—and would be allotted two minutes to speak each.

Members of Families for Justice as Healing—who had gotten notice of the project by once again proactively seeking information from DCAMM and the DOC—signed up to speak and participated within the confines allowed by the Designer Selection Board. Every person who offered a public comment spoke in complete opposition to the project. However, at the time that public comment was opened nearly three hours into the scheduled meeting, ***the Designer Selection Board had already voted to advance all three projects it was considering during its meeting***, including DSB List # 21-01 (“Study and Design of a Correctional Center for Women”). In this way, the public comment was woefully insufficient—it came only after the vote had already taken place.

On February 25, 2021, Families for Justice as Healing filed another formal Bid Protest with the Attorney General’s Office, arguing that the advertisement for DSB List #21-01 did not meet the basic statutory elements in G.L. c. 7C, § 47(b) (a description of the project with the design services sought, the time period within which the project is to be completed, and, if available, the estimated construction cost; the qualification required of applicants for the projects; the categories of designers’ and interior designers’ consultants, if any, for which applicants must list the names of consultants; and whether the fee has been set or will be negotiated, and if set, the fee amount). Further, they argued the inclusion of the Designer Selection Board’s main web address (not even the specific link to the relevant project) cannot serve as a substitute for these delineated, mandatory statutory elements. As stated above, the newspaper advertisement listed only the main DSB homepage (www.mass.gov/dsb) for an interested party to find more information about the project. In order to reach the specific project description *to get any information about what the project being advertised was actually about*, a user would have to click through three separate webpages from the DSB homepage to find the link to the PDF.



Only five firms applied for the project identified in DSB List #21-01—firms which all regularly apply for projects before the Designer Selection Board. The DSB’s extremely limited and obscure advertisement may have been sufficient for industry players that regularly do business to obtain notice about the project, but it was insufficient notice to inform the general public about the project—among the policy rationales behind the statute. This kind of inside baseball privileges large, national companies and firms to obtain state contracts—like HDR Architecture, headquartered in Nebraska, which according to nonprofit Worth Rises has designed and built more than 275 prisons and jails over the last 100 years, making hundreds of millions if not billions of dollars. HDR Architecture was ultimately selected as the top finalist for this project, and though the Attorney General’s Office agreed that the spirit of the law had not been met, it did not require the DSB to re-advertise the project. DCAMM entered a contract with HDR Architecture for the study and design of a women’s prison on June 4, 2021. This pattern of releasing woefully insufficient information in the most accessible form of advertisement—newspapers of general circulation—likely contributes to the shameful pattern of disadvantaging smaller and minority-owned firms for projects of all kinds across the Commonwealth.⁴¹ “[M]inority business owners competing for state contracts were awarded \$135 million less in 2018 than they were two decades ago based on inflation-adjusted dollars — a 24 percent decline.”⁴²

Finally, the project was premature by DCAMM’s own admission, as in a contemporaneous but separately advertised Statement of Work for a Strategic Plan for Incarcerated Women in Massachusetts (Mass. State Project No. DOC2104), DCAMM wrote “At this stage, we have decided to take the opportunity to look more broadly at the needs of women in the system, evaluate the potential impacts of the 2018 Criminal Justice Reform Law, and *develop a strategic plan prior to hiring a designer to address the facility needs.*” (Page 5, emphasis added.) Contrary to this assertion, DCAMM selected a designer for the women’s prison *before* a consultant for the strategic plan had even been selected, let alone before the strategic plan itself was developed. DCAMM has also obstructed public engagement through heavily redacted responsive records and even denying public records requests on technicalities, for example when a member of the Coalition sought records related to [HDR Architecture, Inc.](#) instead of [HDR Architecture, P.C.](#)

⁴¹ See Paul Singer, *Baker Administration Inflates Its Claim Of Spending With Minority Businesses*, WGBH NEWS (Sept. 8, 2020), <https://www.wgbh.org/news/local-news/2020/09/08/baker-administration-inflates-its-claim-of-spending-with-minority-businesses> (“In January, GBH News reported that the inflation-adjusted value of state spending with minority-owned businesses had dropped by about 24% over the past two decades. That calculation was based on including all of the indirect spending the state is now claiming credit for. If that excess category were removed, the inflation-adjusted value of current contracts would be about half what it was in 1998.”); Chris Burrell & Paul Singer, *The Color Of Public Money: Black Businesses’ Share Of Public Contracts Has Declined Over 20 Years*, WGBH NEWS (Jan. 13, 2020), <https://www.wgbh.org/news/local-news/2020/01/13/the-color-of-public-money-black-businesses-share-of-public-contracts-has-declined-over-20-years>;

⁴² Chris Burrell, *Black Business Group Pressures Baker For Meeting On Minority-Business Contracts*, WGBH NEWS (Sept. 11, 2020), <https://www.wgbh.org/news/local-news/2020/09/11/black-business-group-pressure-baker-for-meeting-on-minority-business-contracts>.



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The history of this project evinces repeated attempts to forestall public transparency as the Baker Administration prepares to spend tens of millions of public dollars on a prison building project before even completing its own umbrella strategic plan. The Moratorium Bill is an opportunity for the Legislature to take back the reins and inject some much-needed democratic oversight into a matter of such significant public concern.

Sincerely,

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