Dear Attorney General Campbell,

We are writing to you as someone who we know is deeply concerned about protecting the rights of all Massachusetts residents. Specifically, we are sending this letter to support the request for investigation of the conditions in the Secure Adjustment Unit IV (SAU) at Souza-Baranowski Correctional Center (SBCC) that was sent to your office by the hunger strikers there on October 19, 2023.

As you know, on October 6, 2023, approximately nineteen individuals began a hunger strike in protest of the inhumane and illegal conditions within the SAU in the maximum security SBCC after months of voicing their concerns to administrators at SBCC – conditions which the Department of Correction (DOC) has largely failed to address. The prisoners report being violently attacked by DOC officers for speaking out. The October 19 letter (hereinafter referred to as the “hunger strikers’ letter”), signed by nine individuals within the SAU, detailed the DOC practices that led to the hunger strike and asked your office to launch a formal investigation into the horrific SAU conditions.

We, the undersigned legal organizations, community-based groups and advocates, who work with incarcerated individuals within DOC custody, echo the request made in the hunger strikers’ letter and ask the Massachusetts Attorney General’s Office (AGO) to open a formal investigation into the legality of the SAU practices and conditions at SBCC.

The appendix to this letter details how the reported DOC practices within the SAU at SBCC violate the 2018 Criminal Justice Reform Act (CJRA), the state constitution, and other civil rights laws. These violations include: (1) indefinite confinement for up to 6 years in restrictive housing or its equivalent, without placement reviews; (2) highly restrictive conditions, including limited out of cell time, unnecessary restraints while out of cell, and limited access to telephone calls, visits (only through glass), rehabilitative programs, and food and hygiene purchases from the canteen – not in parity with access given to those in general population; and (3) unlawful retaliation in the form of violent assaults against those who have engaged in protected speech by voicing their concerns about the SAU conditions. As described in the hunger strikers’ letter, many months of enduring these DOC practices in the SAU was a part of what precipitated the hunger strike.

As the hunger strikers’ letter alludes to, these unlawful practices are not new. In fact, ever since the passage of the CJRA in 2018, which sought to eliminate unduly harsh and punitive conditions, DOC has failed to comply with the law’s protections for those in “restrictive housing” (RH). Despite advocacy efforts by legal organizations and incarcerated individuals, including some of the signatories of the hunger

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1 This is not intended to be an exhaustive list of DOC practices within the SAU that violate the law.
2 See e.g. Perry v. DOC, 2284-CV-01667 (Suffolk Superior Court) (putative class action against DOC filed in August 2022 on behalf of all individuals in disciplinary restrictive housing including all detained in the DDU at MCI-CJ, challenging conditions of confinement as violations of the CJRA and the state constitution) (stipulated notice of voluntary dismissal without prejudice filed on September 18, 2023 after MCI-CJ was closed).
strikers’ letter, conditions in the SAU are unnecessarily harsh and punitive. While DOC shut down the Departmental Disciplinary Unit (DDU) at MCI-Cedar Junction in June 2023 and now maintains that there is no more RH in DOC, many of the individuals transferred from the DDU to the SAU at SBCC have seen little change in their conditions, which are strikingly similar to RH in the DDU. As noted in the hunger strikers’ letter, individuals who have already completed lengthy DDU disciplinary sanctions experience extreme unfairness in their housing assignment to the SAU since they may be confined there for another six years with no credit for time served on their completed DDU sentences. In effect, they feel they have been forced to re-start their punishment in what is akin to disciplinary RH, but with a new name on the door. In fact, some of the hunger strikers have heard DOC personnel refer to the SAU as the “new DDU.”

In light of DOC’s continued imposition of RH or its equivalent without complying with the protections of the CJRA, and credible reports of widespread abuse by correctional officers in the SAU, we do not have faith that DOC can conduct the kind of full and independent investigation that is necessary. We therefore request that the AGO: (1) open a formal investigation into the lawfulness of DOC’s practices in the SAU at SBCC, including the widespread use of retaliatory and unnecessary force, and take any remedial action that may be appropriate; and (2) support the passage of the “Rehabilitation, Reentry and Human Rights Act” S.1493/H.2325. This legislation aims to establish universal baseline conditions for all those incarcerated in Massachusetts, including establishing meaningful out-of-cell time, expanding programming, educational, and vocational opportunities. It addresses many of the issues raised by the hunger strikers and could achieve some of the human rights goals that the CJRA was predicated on. It attempts to eliminate the punitive culture of deprivation that currently defines our prison system, and instead center rehabilitation and humane treatment, regardless of housing or security status.

We know that you share our concern about treatment of people who are incarcerated and hope that you share our belief that their reports warrant a thorough investigation independent of the DOC. Please join us in our effort to ensure humane conditions for all in the Commonwealth. We have attached a more detailed description of our concerns and legal claims in the Appendix and look forward to discussing this with you.

Sincerely,

Prisoners’ Legal Services of Massachusetts
Boston College Law School Civil Rights Clinic
ACLU of Massachusetts
BC Defenders
Boston College Innocence Program
BC Law Lifer Parole and Medical Release Clinic
Committee for Public Counsel Services (CPCS)
Exoneree Network
Families for Justice as Healing
Harvard Prison Legal Assistance Project
Lawyers for Civil Rights
MA Association of Criminal Defense Lawyers
Massachusetts Bail Fund
Massachusetts Law Reform Institute
Mental Health Legal Advisors Committee
New England Innocence Project
Shira Diner, Lecturer and Clinical Instructor in BU Criminal Law Clinical Program
The Suffolk Defenders
UU Mass Action
Wallace Holohan and Patty Garin, Co-Directors of Prisoners’ Rights Clinic at Northeastern University
Law School
Appendix

I. DOC’s Practices in the SAU IV (SAU) at SBCC Violate MA Statutory and Constitutional Law.

A. People Held in the SAU Are Entitled to the Restrictive Housing Protections in the CJRA and the Due Process Protections in MA Constitution.

In 2018, the Massachusetts legislature enacted the Criminal Justice Reform Act ("CJRA"), which explicitly defines and protects the rights of incarcerated individuals like those in the SAU, who are subjected to prolonged solitary confinement in what the law refers to as “restrictive housing” (RH). The CJRA defines restrictive housing as “a housing placement where a prisoner is confined to a cell for more than 22 hours per day.” G.L. c. 127 §1. In recognition of the psychological harm from which individuals in solitary confinement suffer, the CJRA established minimum procedural protections to ensure that DOC does not confine individuals in RH for disciplinary purposes beyond a six-month period. After that, DOC may only hold an individual in RH if necessary to manage an unacceptable risk to safety and such risk must be reassessed and reaffirmed every 90 days by means of a multidisciplinary “placement review,” in which the incarcerated individual in question must be given an opportunity to participate. See G.L. c. 127 §§ 39B, 39B(b), 39B(c). The CJRA also requires that people held in non-disciplinary RH receive periodic reviews to determine eligibility for release every 90 days or shorter periods, G.L. c. 127 §§ 39B. Moreover, the due process clause of the MA constitution also requires periodic placement reviews at least every ninety days for anyone in a long-term segregation unit with conditions more restrictive than those in the general population. See LaChance v. Comm’r of Corr., 978 N.E.2d 1199, 1207 (Mass. 2012).

The SAU at SBCC is restrictive housing since individuals in the SAU are confined to a “cell” of some kind for approximately 24 hours a day, 7 days a week. Despite DOC’s claims that individuals in the SAU receive 3 hours of “out-of-cell” time, 1.5 of those hours is spent alone in an empty outdoor caged cell not much bigger than a sleeping cell and the other 1.5 of those hours is spent seated at a table indoors with both feet shackled to the floor and one hand shackled to the table. In light of the so-called outdoor recreation time being nothing more than an outdoor caged cell and the severe restrictions on freedom of movement present at the indoor table, these 3 hours constitute being “confined to a cell” within the statutory definition of RH. G.L. c. 127 §1. The requirements of the CJRA cannot be eluded simply by moving a person from one type of cell to another. Thus, individuals in the SAU are in an RH unit because they are in fact confined to a cell for more than 22 hours per day. Id.

Yet, DOC is failing to provide these individuals with the placement reviews required under the CJRA. See G.L. c. 127 §§ 39B. The hunger strikers along with everyone else in the SAU are no longer serving DDU sentences and the SAU is not purported to be a disciplinary housing unit. If that is the case, the CJRA requires that these individuals, who are being held in non-disciplinary RH, receive periodic reviews to determine eligibility for release every 90 days or shorter periods, G.L. c. 127 §§ 39B. Even if the SAU was to be considered disciplinary restrictive housing, DOC must release these individuals back to general population after 6 months of detention or else provide the required placement review at the 6-month mark and every 90 days thereafter to justify continued detention. G.L. c. 127 §§ 39B, 39B(b), 39B(c).

The hunger strikers’ letter noted that the “(SAU) amounts to indefinite segregated confinement…People in (SAU) are not given out dates, no one housed in (SAU) knows when they are deemed eligible for returning to general population.” Indeed, the SAU Handbook states that individuals incarcerated in the SAU can remain in the SAU for up to six years. See SAU Handbook (Nov. 2022), p. 15. Individuals in the SAU have to wait until an annual classification review to even gain the possibility of release; however, even at these reviews, DOC is looking at their progress towards SAU program completion, which can take years, instead of whether they pose an unacceptable risk to safety, as required.
by the CJRA. Id. In LaChance, the SJC made it clear that such classification reviews do not afford the due process protections owed to people confined indefinitely under conditions similar to the SAU. LaChance, 978 N.E.2d at 1206-07. The hunger strikers’ letter noted “The SAU…has mirrored the same conditions as those previous Restrictive Housing Units (RHUs)…or the Departmental Disciplinary Unit (DDU), [which] was shut down in June of this year for its harsh conditions.” The SAU at SBCC appears to be DOC’s end-run around the CJRA’s RH protections. Separate and apart from the CJRA, the SAU program itself violates due process because it is a long-term segregated unit with conditions more restrictive than those in the general population and yet, DOC is not providing periodic 90-day placement reviews to individuals in the SAU. See id.

B. Highly Restricted Access to Telephone Calls, Visits, Nutritious Food from the Canteen and Programming Beyond a 15-Day Disciplinary Period Violates State Law.

The CJRA states that the rights of visitation and communication for individuals in RH cannot be diminished for disciplinary reasons for more than a 15-day period. G.L. c. 127, § 39(b)(iii). Additionally, the CJRA requires that those in RH have the “same access to canteen purchases and privileges to retain property in a prisoner’s cell as prisoners in the general population at the same facility…” and that canteen access may not be restricted for disciplinary purposes for a period exceeding 15 days. G.L. c. 127 § 39(b)(viii). Individuals held in RH for a period of more than 30 days must be provided vocational, educational, and rehabilitative programs to the maximum extent possible consistent with the safety and security of the unit and good time credit towards reducing their underlying prison sentence for participation in programs at the same rates as the general population. 103 CMR 423.13(n).

Moreover, G.L. c. 127 § 32, requires that incarcerated individuals be treated “with the kindness which their obedience, industry and good conduct merit,” which the SJC has held is for the purpose of assuring that those in segregated housing for non-disciplinary reasons receive equal treatment, as far as may reasonably be, as those in the general population. See Blaney v. Commissioner of Correction, 372 N.E.2d 770, 774 (Mass. 1978). Even if DOC considers the SAU as discipline (which they purport not to), individuals in the SAU cannot be restricted in their visits, telephone calls and canteen access beyond the first 15 days in SAU; after that, DOC must give individuals in the SAU an equal access to visits, telephone calls and canteen purchases, as much as practicable, as general population.

Individuals confined in the SAU only get three visits per week – one non-contact, in-person visit and two 20-minute video visits. They begin by receiving only four 20-minute phone calls per week and can move up to ten phone calls depending on their “progress” in the program; however, if the call gets dropped and they call back, that counts as another phone call for the week used. Additionally, at least one of the hunger strikers in the SAU has been informed by correctional officers that he would not be allowed any non-contact visits with his minor children because “[DOC] did not want kids running through the halls” in that unit. DOC’s actions and statements are not only tearing apart the families of those in the SAU, but are in direct conflict with the statutory provisions, SAU Handbook and DOC Visitation Policy. See G.L. c. 127 § 36C, G.L. c. 127 § 32; 103 CMR 483.01, 103 DOC 427.06(k); SAU Handbook (Nov. 2022), Section IX. This stands in stark contrast to general population where individuals can make an unlimited number of calls during the multiple hours/day that they have open access to the telephone. Moreover, those in general population have multiple visiting periods per week where their number of visits per week can far exceed the number allowed for individuals in the SAU. The discrepancies in visits and telephone calls between general population and the SAU violate G.L. c. 127, §§32 and 39(b)(iii) because even assuming placement in the SAU is considered a “disciplinary sanction”, DOC’s restrictions on phone calls and visits exceed the permissible 15-day period. Individuals in the SAU desperately need social connection with family members and friends to even attempt to fight back some of the harmful mental effects of solitary confinement and thus, DOC’s violation of state law in this regard has led to serious emotional harm due to the barriers erected to limit communications with loved ones.
As reported in the hunger strikers’ letter, the meals given to those incarcerated in the SAU are delivered in small packages to their cell, lack nutrition, are child-sized portions and are often frozen or inedible for other reasons, forcing these individuals to try and purchase nutritious food items from the canteen to supplement their diet and maintain their health. Unfortunately, the canteen list available to individuals in the SAU is limited to mostly snacks of little nutritional value and the purchases are capped at $35/week with a limit of three of any food item and one of any hygiene item. In contrast, those in general population have their purchases capped at $55/week or more with higher quantity caps and larger selection of food and hygiene items, including meat and protein items with nutritional value not available to those in the SAU. DOC uses an incentive program to add a few more canteen items to the SAU list as time goes on as an individual “progresses” through the SAU program. DOC’s restrictions to the canteen list, spending cap and quantity cap for the SAU, which are more severe than those for general population, violate state laws which require equal access as a right, not as an incentive for program participation. G.L. c. 127 §§ 32, 39(b)(viii). Lastly, some of the individuals in the SAU are on prolonged “canteen sanctions,” which means it could be months or years before they can regularly order from the canteen. This violates the CJRA which makes clear that canteen access may not be restricted for disciplinary purposes for a period exceeding 15 days. G.L. c. 127 § 39(b)(viii).

DOC defines the SAU as a highly structured unit that provides “access to cognitive behavioral treatment, education, programs, structured recreation, leisure time activities, and mental health services...” 103 DOC 427. This is a far cry from the reality on the ground in the SAU, where this rule is not being complied with. The SAU offers one wellness class per week that is required to “progress” in the SAU program, but individuals report that the program has little educational value and does not provide good time credit. There are no other educational classes, vocational training or other programs available to all individuals in the SAU. Meanwhile, those in general population have access to more educational, vocational and other kinds of programming with increased opportunities to earn good time credit through those programs. This discrepancy violates the CJRA, which requires that individuals held in RH for a period of more than 30 days must be provided vocational, educational, and rehabilitative programs to the maximum extent possible consistent with the safety and security of the unit and good time credit at the same rates as the general population. 103 CMR 423.13(n). DOC’s attempt to incentivize and weaponize increased access to telephone calls, visits, canteen items and programs for people in the SAU, is unlawful, as state law already requires that these individuals be afforded equal access as general population to those rights. Id.; see also G.L. c. 127 § 32.

II. DOC’s Unlawful Retaliation & Violent Assaults Against Individuals in the SAU for Engaging in Protected Speech Violates the MA Constitution.

Massachusetts Constitution, Decl. of Rights, Art. XVI guarantees freedom of speech rights to incarcerated individuals so long as the right is not inconsistent the legitimate penological objectives of the corrections system. See Champagne v. Commissioner of Correction, 395 Mass. 382, 386 (1985), citing Pell v. Procunier, 417 U.S. 817, 822 (1974). Beginning in June 2023 and throughout the summer, individuals in the SAU filed numerous grievances about the conditions in the SAU including but limited to the indefinite definition in RH without placement reviews and restricted visits, phone calls, canteen access and television – this is permissive speech protected by the MA Constitution. In June, August and October 2023, following verbal complaints about these conditions and requesting to speak with leadership about their concerns, a number of individuals within the SAU, including some of the signatories of the hunger strikers’ letter, were violently attacked by DOC officials.

Between the first two incidents, approximately 28 incarcerated individuals report being assaulted by correctional officers after requesting to speak with DOC administrative leadership about concerns regarding the conditions in the SAU. In both incidents, officers dispersed multiple bursts of chemical agent against individuals, reportedly using multiple cans of chemical agent in each incident. Individuals’ injuries
in both incidents included moderate to severe bruising across their bodies, multiple black eyes, some causing broken blood vessels and blurred vision, gashes across wrists and ankles from extremely tight cuffs and restraints, and ongoing post-traumatic stress and anxiety. DOC’s assaults were unconstitutional and appear designed to suppress protected speech.³

³ DOC’s violent attacks against the free speech rights of incarcerated people in the SAU come on the heels of other retaliatory violence against some in this group – the most egregious example being the racially-motivated mass assaults in January 2020 at SBCC, which is the subject of currently pending litigation. At least four of the eleven prisoners reportedly assaulted in August 2023 were also assaulted during the January 2020 incident.