Massachusetts Sheriffs' Association

44 School Street, Suite 300
Boston, Massachusetts 02108

February 5, 2024

Representative Carlos Gonzalez, Co-Chair
Senator Walter F. Timilty, Co-Chair
Joint Committee on Public Safety and Homeland Security
(Sent VIA Email Only)

Re: HB 2394/SB1477- An Act to Improve Transparency and Accountability in Correctional Facilities.

Dear Chair Gonzalez and Chair Timilty,

On behalf of the Massachusetts Sheriffs' Association (MSA) and the fourteen duly elected Sheriffs of the Commonwealth, I write in my capacity as Executive Director to ask the Joint Committee on Public Safety and Homeland Security to report out unfavorably on House Bill (HB) 2394 and Senate Bill (SB) 1477– *An Act to Improve Transparency and Accountability in Correctional Facilities*, sponsored by Representative David Rogers and Senator Michael Barrett.

HB2394 and SB1477 speak to granting privileged status to and unimpeded access for the media and expanded use of force reporting. The security concerns with the proposed language cannot be overstated. So concerning is the proposition of "special" access to the media that the United States Supreme Court in *Pell v. Procunier* 417 U.S. 817 (1974) held that "[T]he First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *Branzburg v. Hayes*, 408 U. S. 665, 408 U. S. 684. Pp. 417 U. S. 829-835. Based on a case where the news media had access to specific inmates, a riot ensued and both correctional officers and inmates were killed. We do not discount the importance that the media plays in society of informing those in our care. However, the need for privileged access does not and should not exist.

The current CMR regulations governing correctional facilities provides for media access to correctional facilities and to incarcerated individuals consistent with the public interest, the preservation of privacy and the maintenance of order and security in a correctional facility. Access is already available for incarcerated individuals to contact the media through telephone calls, mail and visitation.

Further, with no-cost communication recently implemented, and tablets available, the access has allowed for even greater communication between the incarcerated individual and the media. The legislation would elevate all communication between "news media representatives" and incarcerated individuals to that of a privileged status, which the legislature and courts have reserved for very few sanctified relationships such that any communication had with the media would now be "unmonitored" and "confidential." Privilege is a protected status

reserved for an attorney and their client to allow for the protected communication in the defense of their case. Another concern is the proposed definition of "media," so broad that virtually anyone who has a "website" or a "blog" who purports to "report news" would qualify without any vetting and the security impact could be dangerous especially for those who have disingenuous intentions and would use the "media" outlet to possibly harm someone in the Sheriffs' care, staff or some other nefarious activity.

The bill would mandate "unimpeded, unmonitored and confidential" telephone communication between "media representatives" and incarcerated persons and places. During a riot or other disturbance, when it is important to control communications for security reasons, "media representatives" could insist on "unimpeded, confidential, in person visitation." The provision allowing attorneys to bring news media representatives with them on legal visits would be counterproductive as it would nullify the otherwise privileged nature of the communication. Attorney client communication must take place in confidence and the presence of a third party generally undermines the privilege. *Commissioner of Rev. v. Comcast*, 453 Mass. 293, at 306 (2009). The proposed access with the legislation has the potential, as in the ***Pell*** decision, to create dangerous security concerns and the lessons of the past remain highly instructive today. The law entrusts the Sheriff with the care and custody of the incarcerated population and the wellbeing of the staff and visitors in their facilities. This bill would infringe upon the Sheriffs' ability to carry out these responsibilities.

The proposed legislation also included additional Use of Force Reporting Requirements. The legislation requires the release of use of force data to "any person upon request" without regard to "sustained violations" or "final determinations" but rather includes access to grievances, complaints, investigations, and outcomes and to be published without any connection to "final" or "sustained" determinations. The MSA supports transparency but cannot support the bill.

We respectfully request **the Joint Committee on Public Safety and Homeland Security to report out unfavorably on this legislation.** Please do not hesitate to reach out to us if you require additional information or have any questions.

Thank you for your thoughtful consideration.

Respectfully,

Carrie Hill
Executive Director