

Dec. 20, 2022

**AGREEMENT
BETWEEN THE UNITED STATES AND THE
MASSACHUSETTS DEPARTMENT OF CORRECTION**

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I. INTRODUCTION

1. This Agreement pertains to the conditions of confinement for prisoners in mental health crisis in the Massachusetts Department of Correction (MDOC), including the provision of mental health care and supervision.
2. In October 2018, the United States initiated an investigation pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. The investigation focused on (1) whether MDOC violates the constitutional rights of prisoners who have serious mental illnesses or who are otherwise at risk of serious harm from restrictive housing, by placing them in restrictive housing for prolonged periods of time; and (2) whether MDOC violates the constitutional rights of geriatric and palliative care prisoners by failing to provide them with adequate medical care.
3. On November 21, 2019, the United States notified MDOC that the investigation would also assess whether MDOC provides prisoners in mental health crisis with constitutionally adequate mental health care, and whether MDOC provides prisoners in mental health crisis with adequate supervision to provide reasonable protection from self-harm.
4. On November 17, 2020, the United States closed the geriatric and palliative care portion of the investigation, as well as the portion of the investigation related to restrictive housing except as to the United States' findings concerning Mental Health Watch.
5. On November 17, 2020, the United States issued a CRIPA Notice to MDOC, concluding that there is reasonable cause to believe that conditions in MDOC prisons violate the Eighth Amendment of the U.S. Constitution through MDOC's alleged failure to provide constitutionally adequate supervision and adequate mental health care to prisoners in mental health crisis, and its alleged placement of prisoners in Mental Health Watch under "restrictive housing" conditions for prolonged periods of time. The United States concluded that these alleged violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment.
6. MDOC disputes the United States' findings and denies any and all allegations that MDOC violated, or is violating, the Eighth Amendment of the U.S. Constitution. This Agreement does not amount to any admission of wrongdoing by MDOC.
7. The purpose of this Agreement between MDOC and the United States (the Parties) is to ensure that the conditions in MDOC prisons protect the rights of prisoners in mental health crisis, which will also provide for staff safety and promote public safety in the communities it serves. This Agreement has the following goals: (1) ensure that adequate supervision and mental health care are provided to prisoners in mental health crisis at MDOC; and (2) ensure that Mental Health Watch (now known as Therapeutic Supervision) is used appropriately.
8. In order to resolve the issues alleged in the November 17, 2020 Notice without the expense, risks, delays, and uncertainties of litigation, the Parties agree to the terms of this Agreement as stated below. This Agreement resolves the United States' investigation of MDOC's alleged constitutional violations concerning supervision of and mental health care for prisoners in mental health crisis.
9. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

10. The Parties agree that it is in their mutual interest and the public interest to resolve this matter on mutually agreeable terms and without litigation. Accordingly, the Parties have voluntarily entered into this Agreement as follows:

II. DEFINITIONS

11. **Close Observation Watch** refers to a Mental Health Watch status where a staff member maintains visual contact with a prisoner periodically, typically every 15 minutes, and is a status used if a prisoner is not seen as acutely at risk but still demonstrates behavior that indicates the potential for self-injurious behavior.

12. **Constant Observation Watch** refers to a Mental Health Watch status where a staff member maintains full view of a prisoner at all times. A staff member assigned to Constant Observation Watch has no other responsibilities or prisoners to supervise. Constant Observation Watch is reserved for a prisoner who is actively suicidal or who would be considered a high risk for suicide because the prisoner is threatening or engaging in self-injurious behavior.

13. **Designated Qualified Expert (DQE)** refers to an individual chosen by the Parties with expertise in correctional security and mental health care. This individual will assess and report on whether the provisions of this Agreement have been implemented and provide technical assistance to MDOC as set forth in the Agreement.

14. **Effective Date** refers to the date when this Agreement is fully executed by all Parties.

15. **Exigent Circumstances** refers to circumstances, including institutional emergencies, under which the doing of an act otherwise required by this Agreement would create an unacceptable risk to the safety of any person.

16. **Intensive Stabilization Unit (ISU)** refers to a unit operated by MDOC, through its contracted healthcare vendor, to provide intensive stabilization services for prisoners unable to effectively progress with placement on Mental Health Watch or general population due to serious mental illness or marked behavioral dysregulation. Treatment provided in the ISU in accordance with this Agreement will be for prisoners who do not meet the statutory criteria required for inpatient hospitalization but who have been on Mental Health Watch and are clinically appropriate for a higher level of care.

17. **Massachusetts Department of Correction (MDOC)** refers to all existing prison facilities operated by MDOC, as well as any other facilities built or leased to replace or supplement its existing facilities, which includes Boston Pre-Release Center, Bridgewater State Hospital, Lemuel Shattuck Hospital Correctional Unit, Massachusetts Alcohol and Substance Abuse Center at Plymouth, Massachusetts Correctional Institution (MCI) Cedar Junction, MCI-Concord, MCI-Framingham, MCI-Norfolk, MCI-Shirley, Massachusetts Treatment Center, North Central Correctional Institution – Gardner, Northeastern Correctional Center, Old Colony Correctional Center, Pondville Correctional Center, and Souza-Baranowski Correctional Center.

18. **Medical Provider** refers to a physician, physician assistant, or nurse practitioner under contract with MDOC.

19. **Mental Health Unit** refers to any MDOC unit in any of the correctional facilities that includes as one of its primary goals the treatment of prisoners with serious mental illness, which includes, but is not limited to, the Secure Treatment Units, the Intensive Treatment Unit, the Intensive Stabilization Unit, and the Residential Treatment Unit.

20. **Mental Health Watch** refers to a temporary status for prisoners in mental health crisis who require supervision under Close Observation or Constant Observation. MDOC now refers to Mental Health Watch as “Therapeutic Supervision.” To maintain consistency with the November 17, 2020, CRIPA Notice Letter, this Agreement uses the terminology “Mental Health Watch.”
21. **Multi-Disciplinary Team** refers to a team that includes, but is not limited to, MDOC correctional staff and mental health staff from MDOC’s contracted healthcare vendor.
22. **Qualified Mental Health Professional** refers to Massachusetts’ statutory definition at G.L. c. 127, sec. 1.
23. **Self-Injurious Behavior (SIB)** refers to the occurrence of intentional behavior that inflicts damage on one’s body. Common forms of Self-Injurious Behavior include, but are not limited to, cutting, self-mutilation, ingestion of a foreign body, insertion of a foreign body, head banging, biting, and interference with wounds.
24. **Stakeholder** refers to former prisoners, prisoner advocates, family members of current prisoners, Medical Providers, Qualified Mental Health Professionals providing care in MDOC facilities, the Massachusetts Department of Mental Health, and correctional professionals.
25. **Support Person** refers to an individual provided by MDOC’s contracted health care vendor who is part of the Multi-Disciplinary Team. A Support Person engages in non-clinical interactions with prisoners on Mental Health Watch, provides additional activities outside of the three clinical sessions per day, and documents these interactions and the prisoner’s behavior.

III. SUBSTANTIVE PROVISIONS

POLICIES AND PROCEDURES

26. **Policies and Procedures:** Within six months of the Effective Date, MDOC will consult with the Designated Qualified Expert (DQE) to draft and/or revise policies and procedures to incorporate and align them with the provisions in this Agreement.
27. Within one year of the Effective Date, all policies and procedures that needed to be drafted and/or revised to incorporate and align them with the provisions in this Agreement will be finalized by MDOC. MDOC will consult with the DQE to prioritize policies and procedures to accomplish these timeframes.
 - a. Prior to adoption, MDOC will provide a copy of the draft policy or procedure to the United States for review, comment, and the United States’ approval. The United States will not unreasonably refuse to approve submitted policies or procedures. MDOC will address all comments made by the United States within 30 days after receiving the comments and resubmit the policies and procedures to the United States for review and the United States’ approval
 - b. Nothing herein will be construed as supplanting or substituting the role of MDOC’s Commissioner of Correction or other Executive Level MDOC staff in approving any policy or procedure, as set forth in statute, regulation, or policy.
 - c. If any new policies or changes to policy implicate Massachusetts state regulations, the Parties recognize that MDOC must follow the public hearing process required by statute, (G.L. c. 30A, §§ 1-8. See also 950 CMR 20.00 et

seq.; Executive Order 145). Should any provision in this Agreement regarding the adoption and implementation of new policies conflict in any manner with any statute, regulation, or Executive Order pertaining to promulgation of regulations and/or the public hearing process, the requirements of such statute, regulation, or Executive Order will apply in lieu of the Agreement's conflicting provision.

28. No later than six months after the United States' approval of each policy and procedure, unless the public hearing process pertaining to the promulgation of regulations is implicated and/or subject to the collective bargaining process, MDOC will make any necessary modifications to all post orders, job descriptions, training materials, and performance evaluation instruments in a manner consistent with the policies and procedures. Following such modifications of post orders, job descriptions, training materials, and performance evaluation instruments, and subject to the collective bargaining process, MDOC will begin providing staff training and begin implementing the policies and procedures. In the event the public hearing process pertaining to promulgation of regulations is implicated, MDOC will make any necessary modifications to post orders, job descriptions, training materials, and performance evaluation instruments and begin providing staff training and begin implementing the policies and procedures relating to any such regulation after the regulation has been published in the Code of Massachusetts Regulations in accordance with G.L. c. 30A, § 6A. The Parties acknowledge that MDOC may not be able to modify certain post orders, job descriptions, training materials, and performance evaluation instruments or begin certain staff training or begin implementing certain policies and procedures if the collective bargaining process is implicated; however, this will not relieve MDOC of its obligations set forth in this Agreement to modify post orders, job descriptions, etc. or begin training or implementing policies and procedures that do not implicate the collective bargaining process. The Parties agree to defend the provisions of this Agreement, including in collective bargaining and any other matter relating to the Agreement.
29. Unless otherwise agreed to by the Parties, subject to the collective bargaining process and/or because of the public hearing process that could be implicated and affect the timelines in this Agreement, all new or revised policies and procedures that were changed or created to align with this Agreement will be fully implemented (including completing all staff training) within 18 months of the United States' approval of the policy or procedure.
30. If any new policies or changes to policy implicate Massachusetts state regulations, the Parties recognize that MDOC must follow the public hearing process required by statute, which may affect the timing of policy implementation (G.L. c. 30A, §§ 1-8. See also 950 CMR 20.00 et seq.; Executive Order 145).
31. MDOC will annually review its policies and procedures that relate to this Agreement, revising them as necessary. Any substantive revisions to the policies and procedures will be submitted to the United States for review, comment, and the United States' approval in accordance with Paragraph 27 and, if revisions to Massachusetts regulations are at issue, be subject to the public hearing process.

STAFFING PLAN

32. **Staffing Plan Development:** Within four months of the Effective Date, and annually thereafter, MDOC will submit to the DQE and the United States a staffing plan to meet the requirements of this Agreement and ensure that there are a sufficient number of security staff and mental health staff to provide meaningful supervision and/or therapeutic interventions to prisoners in mental health crisis. Each staffing plan will be subject to review and approval by the United States, which approval will not be unreasonably withheld. The Parties acknowledge that day to day staffing needs may fluctuate based on increases and decreases in inmate population and clinical acuity of individuals in mental health crisis.
33. **Security Staffing Escort:** MDOC will increase security staffing as needed to ensure that there are sufficient staff to escort prisoners in mental health crisis to participate in out-of-cell activities such as recreational activities, group activities, etc., in accordance with Paragraphs 62 (Routine Activities), 63 (Exercise), and 65 (Meals out of cell).
34. **Security Staffing Watch:** MDOC will rotate security staff assigned to Constant Observation Watch every two hours, except where such rotation would jeopardize the safety and security of prisoners or staff or in the event of an unanticipated event (e.g., institutional emergency, emergency outside hospital trip) or temporary reduction in security staffing (e.g., COVID-19 pandemic) that impacts MDOC's ability to provide relief to security staff assigned to the watch.
35. **Mental Health Staffing:** To ensure constitutionally adequate supervision of prisoners in mental health crisis, MDOC will:
 - a. Increase mental health staffing, as needed, by ensuring the contracted health care provider hires sufficient additional staff with appropriate credentials, including psychiatrists, psychiatric nurse practitioners, psychiatry support staff, recovery treatment assistants and other mental health staff; and increasing the hours that Qualified Mental Health Professionals are onsite and available by phone on evenings and weekends; and
 - b. Ensure that mental health staff can provide meaningful therapeutic interventions to engage with prisoners on Mental Health Watch.
36. **Staffing Plan for the Intensive Stabilization Unit (ISU):** The supervising clinician of the ISU will be a Qualified Mental Health Professional, and all mental health staff on the unit will report to him/her. The ISU's Multi-Disciplinary Team will include the supervising clinician, correctional staff, and other staff from other disciplines working within the ISU. The supervising clinician will make determinations about treatment decisions and individualized determinations about conditions that are appropriate for the prisoner, such as clothing, showers, lighting, property, privileges, activities, exercise, restraints, and meals. In the event of disagreement over any of these determinations, the matter will be referred to the Mental Health Director and to the Superintendent of the facility as deemed necessary. The Superintendent or Designee, who will consult with MDOC's Deputy Commissioner of Clinical Services and Reentry or Designee and Deputy

Commissioner of Prisons or Designee as deemed necessary, will be responsible for rendering the final decision.

37. **Staffing Plan Implementation:** MDOC will staff its prisons within one fiscal year of the completion of each staffing plan.

TRAINING

38. **Training:** MDOC, in conjunction with the contracted health care provider, will provide pre-service and annual in-service training, using competency-based adult learning techniques, to security and mental health staff on new policies, mental health care, suicide prevention, and de-escalation techniques.
39. Within six months of the date of the policy's final approval, MDOC will incorporate any relevant Agreement requirements and consider recommendations from the DQE into its annual training plan that indicate the type and length of training and a schedule indicating which staff will be trained at which times.
40. Subject to Paragraphs 27-31 of this Agreement, the annual in-service training will ensure that all current security staff are trained within 12 months after new policies have been approved by the United States. MDOC will verify, through receipt of training documentation from the contracted health care provider, that all medical and mental health care staff also receive the appropriate in-service training to cover new policies that affect the provision of medical and mental health care. The Parties acknowledge that the training may take longer if the public hearing process pertaining to the promulgation of regulations is implicated. Subject to Paragraphs 27-31 of this Agreement, new security staff will receive this training as part of pre-service training.
41. Training on mental health care, suicide prevention, and de-escalation techniques will be provided by trainers using current evidence-based standards on these issues, and will include, if available, video(s) depicting individuals speaking about their own experiences or experiences of their family members who have been on Mental Health Watch.
42. **Suicide Prevention Training:** MDOC will ensure, by providing sufficient training, that all security staff demonstrate the adequate knowledge, skill, and ability to respond to the needs of prisoners at risk for suicide. MDOC will verify, through receipt of training documentation from the contracted health care provider, that all medical and mental health care staff have received sufficient training to demonstrate the adequate knowledge, skill, and ability to respond to the needs of prisoners at risk of suicide.
- a. MDOC, in conjunction with its contracted health care provider, will continue its Crisis Intervention Training, a competency-based interdisciplinary de-escalation and responding to individuals with mental illness program for security staff, and, where appropriate, medical and mental health staff.
 - b. Within six months of the Effective Date, MDOC will review and revise its current suicide prevention training curriculum, which will be submitted to the United States for review, comment, and the United States' approval in accordance with Paragraph 27 and include the following additional topics:

1. suicide intervention strategies, policies and procedures;
 2. analysis of facility environments and why they may contribute to suicidal behavior;
 3. potential predisposing factors to suicide;
 4. high-risk suicide periods;
 5. warning signs and symptoms of suicidal behavior (including the suicide screening instrument and the medical intake tool);
 6. observing prisoners on Mental Health Watch (prior to the Mental Health Crisis Assessment/Evaluation (Initial) (see Paragraph 47)) and, if applicable, step-down unit status;
 7. de-escalation techniques;
 8. case studies of recent suicides and serious suicide attempts;
 9. scenario-based trainings regarding the proper response to a suicide attempt, and lessons learned from past interventions; and
- c. Subject to Paragraphs 27-31 of this Agreement, within 15 months of the date of the final approval of all policies, all security staff will complete pre-service training on all of the suicide prevention training curriculum topics for a minimum of eight hours. MDOC will verify, through receipt of training documentation from the contracted health care provider, that all medical and mental health care staff also receive pre-service suicide prevention training. After that, all correction officers who work in intake, Mental Health Units, and restrictive housing units will complete two hours of suicide prevention training annually.
- d. Within six months of the Effective Date (12 months for new hires), MDOC will ensure all security staff are certified in cardiopulmonary resuscitation (“CPR”).

THERAPEUTIC RESPONSE TO PRISONERS IN MENTAL HEALTH CRISIS

43. **Mental Health Crisis Calls/Referrals:** MDOC will ensure that any staff member concerned that a prisoner may be potentially suicidal/self-injurious will inform mental health staff immediately. The prisoner will be held under Constant Observation Watch by security staff until initially assessed/evaluated by mental health staff.
44. During mental health coverage hours (Monday-Friday 8am-9pm; Saturday 8am-4pm), a Qualified Mental Health Professional will respond within one hour to assess/evaluate the prisoner in mental health crisis.
45. During non-business hours, the referring staff will notify the facility’s on-call system. The facility’s on-call Qualified Mental Health Professional will confer with the referring staff regarding the prisoner’s condition. The facility’s on-call Qualified Mental Health Professional will determine what, if any, intervention is appropriate and offer recommendations to the appropriate MDOC personnel and medical staff. The prisoner will be evaluated by a mental health staff member on

the next business day or sooner as determined by the facility's on-call Qualified Mental Health Professional.

46. If a prisoner requests to speak to mental health staff because he or she believes they are in mental health crisis, that prisoner will not be disciplined for that request.
47. **Mental Health Crisis Assessment/Evaluation (Initial):** MDOC will ensure through an audit process that, after the crisis call, the Qualified Mental Health Professional's evaluation will include, but not be limited to, a documented assessment of the following:
 - a. Prisoner's mental status;
 - b. Prisoner's self-report and reports of others regarding Self-Injurious Behavior;
 - c. Current suicidal risk, ideation, plans, lethality of plan, recent stressors, family history, factors that contributed to any recent suicidal behavior and mitigating changes, if any, in those factors, goals of behavior;
 - d. History, according to electronic medical records and Inmate Management System, of suicidal behavior/ideation - how often, when, method used or contemplated, why, consequences of prior attempts/gestures;
 - e. Prisoner's report of his/her potential/intent for Self-Injurious Behavior; and
 - f. Prisoner's capacity to seek mental health help if needed and expressed willingness to do so.
48. During the assessment/evaluation, as clinically indicated, the Qualified Mental Health Professional will consult with a Qualified Mental Health Professional with prescriptive authority for psychiatric medication issues and a clinical supervisor for clinical issues.
49. The Mental Health Crisis Assessment/Evaluation (Initial) will be documented in the prisoner's mental health progress note using the Description/Assessment/Plan (DAP) format.
50. **Placement on Mental Health Watch:** If the Qualified Mental Health Professional determines that the prisoner is at risk of suicide or immediate self-harm, the prisoner will be placed on a clinically appropriate level of Mental Health Watch.
51. Mental Health Watch will not be used as a punishment or for the convenience of staff, but will be used only when less restrictive means are not effective or clinically appropriate. Mental Health Watches will be the least restrictive based upon clinical risk.
52. **Crisis Treatment Plan:** Upon initiating a Mental Health Watch, the clinician will document an individualized Crisis Treatment Plan. The plan will address:
 - a. precipitating events that resulted in the reason for the watch;
 - b. historical, clinical, and situational risk factors;
 - c. protective factors;
 - d. the level of watch indicated;
 - e. discussion of current risk;

- f. measurable objectives of crisis treatment plan;
 - g. strategies to manage risk;
 - h. strategies to reduce risk;
 - i. the frequency of contact;
 - j. staff interventions; and
 - k. review of current medications (including compliance and any issues described by the prisoner) and referral to a psychiatrist or psychiatric nurse practitioner for further medication discussions if clinically indicated.
53. **Watch Level Determination:** A Qualified Mental Health Professional will determine the clinically appropriate watch level, Close or Constant Observation Watch, as defined above.
54. **The Cell:** The prisoner will be placed in a designated suicide-resistant cell with sight lines that permit the appropriate watch level as indicated by the Qualified Mental Health Professional. If the cell used is not suicide resistant, then the watch must be Constant Observation Watch.
55. **Cell Checklist:** MDOC will develop and implement a checklist for security staff to ensure that the cell is free from potential hazards prior to placing a prisoner in the cell. If a prisoner later engages in Self-Injurious Behavior, a supervisor will review the checklist as an auditing tool.
56. **Mental Health Watch Conditions:** The conditions (clothing, showers, lighting, property, privileges, activities, exercise, restraints, and meals) of Mental Health Watch for prisoners in mental health crisis will be based upon their clinical acuity, whether the specific condition has the potential to hurt or help them, and on how long they have been on Mental Health Watch. The conditions identified in Paragraphs 57 to 65 will be documented on the prisoner's Mental Health Watch form. In the event of a disagreement over any of these determinations, the matter will be referred to the Mental Health Director and to the Superintendent of the facility as deemed necessary. The Superintendent or Designee, who will consult with MDOC's Deputy Commissioner of Clinical Services and Reentry or Designee and Deputy Commissioner of Prisons or Designee as deemed necessary, will be responsible for rendering the final decision.
57. **Clothing:** Throughout the prisoner's time on Mental Health Watch, a Qualified Mental Health Professional will make and document individualized determinations regarding the prisoner's clothing, using the following standards:
- a. Prisoners on Mental Health Watch will be permitted their clothing unless there are clinical contraindications, which must be documented and reviewed three times during each day (Monday-Saturday), spaced out throughout waking hours, and one time on Sundays (for prisoners on Constant Observation Watch), to see if those contraindications remain;
 - b. Removal of a prisoner's clothing (excluding belts and shoelaces) and placement in a safety smock (or similar gown) should be avoided whenever possible and

- only utilized when the prisoner has demonstrated that they will use the clothing in a self-destructive manner;
- c. If a prisoner's clothing is removed, a Qualified Mental Health Professional will document individual reasons why clothing is contraindicated to their mental health, and it is the goal that no prisoner should be placed in a safety smock for 24 hours or more; and
 - d. After 48 hours, all prisoners will have their clothes returned with continued monitoring unless MDOC's Director of Behavioral Health is notified and the contracted medical care provider's Director of Clinical Programs is consulted and approves. Individual reasons why clothing is contraindicated to their mental health will be documented by the assessing clinician in the medical record.
58. **Showers:** If a prisoner has been on Mental Health Watch for 72 hours and has not been approved for a shower, a Qualified Mental Health Professional will document individual reasons why a shower is contraindicated to their mental health. Correctional staff will document when an inmate is offered an approved shower.
- a. Similarly, if a prisoner has been on Mental Health Watch for longer than 72 hours and has not been approved for a shower approximately every two days, a Qualified Mental Health Professional will document individual reasons why a shower is contraindicated to their mental health. Correctional staff will document when an inmate is offered an approved shower.
59. **Lighting:** Lighting will be reduced during prisoner sleeping times as long as the prisoner's hands, restraints (if any), and movements can still be clearly observed by MDOC staff.
60. **Property:** Throughout the prisoner's time on Mental Health Watch, a Qualified Mental Health Professional will make and document individualized determinations regarding the prisoner's property, and restrictions should be the least restrictive possible, consistent with prisoner safety.
61. **Privileges:** Throughout the prisoner's time on Mental Health Watch, a Qualified Mental Health Professional will make and document individualized determinations regarding the prisoner's privileges (*e.g.*, a tablet, reading and writing material) using the following standards:
- a. After 24 hours, prisoners will have access to library books and other reading and writing material unless a Qualified Mental Health Professional documents individual reasons why such materials are contraindicated to their mental health each day, and repeats that same process and documentation each and every day.
 - b. After 14 days, prisoners will have access to a tablet unless a Qualified Mental Health Professional documents the individual reasons why this is contraindicated to their mental health on the Mental Health Watch form.
62. **Routine Activities:** Throughout the prisoner's time on Mental Health Watch, a Qualified Mental Health Professional will make and document individualized determinations regarding whether it is clinically appropriate for the prisoner to

participate in routine activities (e.g., visitation, telephone calls, activity therapist visits, chaplain rounds). Absent Exigent Circumstances, the prisoner will be allowed to participate in the routine activities deemed clinically appropriate by the Qualified Mental Health Professional. If a prisoner is not approved for a particular activity, due to clinical contraindication, during a day, a Qualified Mental Health Professional will document individual reasons why that particular activity is contraindicated.

63. **Exercise:** After 72 hours on Mental Health Watch, all prisoners will have access to outdoor recreation/exercise. If a prisoner is not clinically approved such access, the assessing Qualified Mental Health Professional, in consultation with the prison's Mental Health Director or designee, will document on the Mental Health Watch form individual reasons why outdoor exercise is contraindicated to the prisoner's mental health. Correctional staff will document when a prisoner is offered approved recreation.
- a. Similarly, if after 72 hours on Mental Health Watch a prisoner is not clinically approved access to outdoor exercise five days per week for one hour, the assessing Qualified Mental Health Professional, must document individual reasons why outdoor exercise is contraindicated to the prisoner's mental health each and every day, and communicate to appropriate security staff. Correctional staff will document when a prisoner is offered approved recreation.
 - b. During outdoor exercise, escorting officer(s) will provide supervision during the exercise period, consistent with the level of Mental Health Watch. As with considerations regarding use of restraints, MDOC will consider alternatives to strip searches on an individual basis. MDOC may conduct strip searches if deemed necessary to ensure the safety and security of the facility, the staff, the prisoner on watch and/or all other prisoners. In determining whether a strip search is necessary, MDOC may consider factors including but not limited to, whether: the prisoner has a documented history of inserting or hiding implements to self-injure or harm others; the prisoner has a documented history of behavior that may constitute a security risk (e.g., assaulting staff or prisoners, possession of weapons, inserting or swallowing items to use for self-harm or harm of others); the prisoner has a history of engaging in self-injurious behavior; and the property items that have been approved for retention by the prisoner while on watch.
64. **Restraints:** Prisoners in mental health crisis will not be restrained when removed from their cells unless there is an imminent or immediate threat to safety of the prisoner, other prisoners, or staff, as determined by security staff. Security staff will consult the Qualified Mental Health Professional to determine whether restraints are contraindicated, and where there is such a finding, the Qualified Mental Health Professional will document the individual reasons why restraints are clinically contraindicated.
65. **Meals out of cell:** Absent medical, clinical, or safety/security concerns, after 72 hours on Mental Health Watch, all prisoners will have access to meals out of their

cells unless the area where the prisoners are on watch has insufficient space or the Department of Public Health does not permit the space to be used for such purposes.

66. **Mental Health Watch Mental Health Care:** MDOC is committed to providing constitutionally adequate mental health care for prisoners on Mental Health Watch.
67. **Mental Health Crisis Contacts:** Within one (1) year of the Effective Date, MDOC will implement the following requirements. Following the initial mental health crisis assessment/evaluation (see Paragraph 47), MDOC's contracted mental health provider will conduct three daily out-of-cell mental health contacts (either treatment or activity session), document, as applicable, when and why a prisoner requests the contact cell-side or refuses contacts, offer contacts at different times of the day, and document follow-up attempts to meet with a prisoner who refuses contacts.
 68. Mental health staff will ensure that daily mental health triage minutes identify (1) who has refused the contacts, (2) which contacts were refused, (3) reasons why the prisoner has refused the contacts, if known, and (4) what additional efforts/interventions will be tried by mental health staff. The mental health staff will review prior mental health triage minutes as part of this process.
 69. Monday through Saturday for all Mental Health Watches and Sundays for Constant Mental Health Watches, the Qualified Mental Health Professional must update the Mental Health Watch conditions (listed above Paragraphs 57-65) on a Mental Health Watch form to communicate with appropriate security staff and complete a mental health progress note.
70. **Mental Health Watch Documentation:** A Qualified Mental Health Professional will document all attempted interventions, the success of the intervention and the plan moving forward in daily DAP notes regarding the clinical contacts.
 71. Any prisoner who engages in Self-Injurious Behavior while on Mental Health Watch will be re-assessed for modification of interventions when clinically indicated.
72. **Meaningful Therapeutic Interventions:** MDOC will ensure all prisoners on Mental Health Watch receive meaningful therapeutic interventions, including regular, consistent out-of-cell therapy and counseling, in group and/or individual settings, as clinically appropriate.
73. **Out-of-cell Therapeutic Activities:** Throughout the prisoner's time on Mental Health Watch, a Qualified Mental Health Professional will make and document individualized determinations regarding the prisoner's out-of-cell therapeutic activities. All out-of-cell time on Mental Health Watch will be documented, indicating the type and duration of activity.
74. **Therapeutic De-Escalation Rooms:** MDOC will maintain the therapeutic de-escalation room at MCI Shirley and develop a therapeutic de-escalation room for the ISU.

75. **Peer Programs:** MDOC will consider utilizing a peer program for inmates on Mental Health Watch.
76. **Therapy Dogs:** MDOC will consider utilizing therapy dogs in each of its Mental Health Units.
77. **Mental Health Watch Length of Stay Requirements:** Within one (1) year of the Effective Date, MDOC will implement the following requirements. When determined to be clinically appropriate by a Qualified Mental Health Professional, MDOC will ensure prisoners are transferred to a higher level of care (e.g., Secure Treatment Program, Behavior Management Unit, or Intensive Stabilization Unit once such unit is operational). When statutory requirements are met pursuant to G.L. c. 123, §18, the individual will be placed at Bridgewater State Hospital or a Department of Mental Health facility in accordance with the orders of the court
78. **72-hours:** If a prisoner remains on Mental Health Watch for 72 hours (three days), consultation will occur with the Program Mental Health Director, and notification will be made to MDOC's Director of Behavioral Health. Documentation of consideration of a higher level of care will be noted in the medical record.
79. **7 days:** If a prisoner remains on Mental Health Watch for seven days, the Program Mental Health Director and Site Mental Health Director will consult with, and discuss next steps with, MDOC's Director of Behavioral Health and MDOC's Assistant Deputy Commissioner of Clinical Services. The assessing Qualified Mental Health Professional, with input from others as necessary, will document (1) consideration of a higher level of care and (2) specific individualized reasons if a higher level of care is not clinically indicated in the medical record using the Description/Assessment/Plan (DAP) progress note.
80. **14 days:** If a prisoner remains on Mental Health Watch for 14 days, for that day and each day following, the Program Mental Health Director and Site Mental Health Director will consult with, and discuss next steps with, MDOC's Director of Behavioral Health, MDOC's Assistant Deputy Commissioner of Clinical Services, and MDOC's Deputy Commissioner of Re-entry and Clinical Services. Further, each day the prisoner remains on Mental Health Watch without being transferred to a higher level of care, the assessing Qualified Mental Health Professional, with input from others as necessary, will document (1) consideration of a higher level of care and (2) specific individualized reasons if a higher level of care is not clinically indicated in the medical record using the Description/Assessment/Plan (DAP) progress note, in addition to (3) re-evaluating all mental health interventions and (4) updating the Crisis Treatment Plan.
81. **Mental Health Watch Discharge:** MDOC will develop and implement a step-down policy and procedure for prisoners being released from Mental Health Watch.
82. MDOC will ensure through an audit process that a Qualified Mental Health Professional approves discharge from Mental Health Watch as early as possible after an out-of-cell mental health assessment using a suicide risk assessment format and a consultation with the mental health team during the daily mental health triage meeting which will include the Site Mental Health Director and, when clinically

indicated, an upper-level provider (*i.e.*, psychiatrist, psychiatric nurse practitioner, advanced practice registered nurse, or psychologist), or a consultation with the Site Mental Health Director prior to the daily triage meeting. The Qualified Mental Health Professional will document that they have determined that the prisoner presents lower risk of imminent self-injury prior to discharge. When clinically indicated, a psychiatrist or psychiatric nurse practitioner will be consulted. In the event that a prisoner is not seen out-of-cell at the time of discontinuation, the rationale for this decision will be documented in the prisoner's record.

83. When a prisoner is discharged from Mental Health Watch, the Qualified Mental Health Professional will document a discharge plan which will be communicated to appropriate mental health and security staff and will include any recommended referral to clinically appropriate housing, and a safety plan that addresses the risk factors specific to that prisoner, follow-up and continued plan of care, as well as a brief mental status update. This will be documented on a Discontinuation of Crisis Plan form.
84. All prisoners discharged from Mental Health Watch must receive timely and adequate follow-up assessment and care, at a minimum of within 24 hours, 72 hours, and again seven days following discharge. A Qualified Mental Health Professional may schedule additional follow-ups within the first seven calendar days of discharge if clinically indicated. A Qualified Mental Health Professional will review a treatment plan within seven calendar days following discharge and, if clinically indicated, update the treatment plan in consultation with an upper-level provider (*i.e.*, psychiatrist, psychiatric nurse practitioner, advanced practice registered nurse, or psychologist).
85. Prior to discharge, if clinically indicated, prisoners on Mental Health Watch will be interviewed by an upper-level provider (*i.e.*, psychiatrist, psychiatric nurse practitioner, advanced practice registered nurse, or psychologist) to determine mental health stability and potential mental health diagnosis (if undiagnosed) or misdiagnosis.
86. When a prisoner on Mental Health Watch is transferred in accordance with G.L. c. 123, §18 (Section 18), the Mental Health Watch at MDOC necessarily terminates, but it would be impossible (and clinically inappropriate) for MDOC to comply with the requirements set forth in Paragraphs 81-85 as the prisoner would then be committed or transferred to either Bridgewater State Hospital or the Department of Mental Health for up to 30 days of observation and examination and possibly further committed for care and treatment at Bridgewater State Hospital or the Department of Mental Health. Whenever a prisoner returns to MDOC from a Section 18 transfer/evaluation/commitment, the prisoner will be reassessed by MDOC mental health staff to determine if a new placement on Mental Health Watch is appropriate at that time.

SUPERVISION FOR PRISONERS IN MENTAL HEALTH CRISIS

87. **Mental Health Watch – Close and Constant Observation:** MDOC will establish and implement policies and procedures for administering Close and Constant Observations of prisoners who are on Mental Health Watch. These protocols will ensure that:
 88. The level of observation needed will be determined by a Qualified Mental Health Professional based on their assessment of the prisoner’s risk of Self-Injurious Behavior, and will be re-evaluated every 24 hours if the prisoner is on Constant Observation. If the prisoner is on Close Observation, the prisoner will be evaluated every 24 hours (with the exception of Sundays and holidays).
 89. MDOC policy does not permit placement on Mental Health Watch for disciplinary purposes.
 90. Procedures will be established to notify appropriate security, medical, and mental health staff about incidents of Self-Injurious Behavior that occur on Mental Health Watch, including following the procedures outlined in Paragraph 105.
 91. Staff who observe and/or discover an incident of Self-Injurious Behavior will immediately make appropriate notifications to a medical professional and a Qualified Mental Health Professional.
 92. Staff who observe and/or discover an incident of Self-Injurious Behavior will document such incidents in a centralized electronic location, including any statements about self-harm, and/or suicide attempts.
 93. Consistent with MDOC policy, behavior that is in violation of MDOC policies or rules by any staff who play a role in observing a prisoner on Mental Health Watch, in connection with their role supervising Mental Health Watch, including falling asleep, will be subject to investigation and/or discipline.

MDOC Staff

94. MDOC will ensure that any Correctional Officer who observes prisoners on Mental Health Watch has the proper training to appropriately interact with and observe a prisoner in mental health crisis in an appropriate way. This means that Correctional Officers who observe prisoners on Mental Health Watch will participate in in-service training about how to appropriately observe prisoners on Mental Health Watch as that training is available and scheduled. Until the in-service training is available, Correctional Officers will read the new policies about how to observe Mental Health Watch, and attest to the fact that they have read, understand, and will follow those policies. This read and attest will occur within six (6) months of the Effective Date of the Agreement. MDOC will post the current policy about observing Mental Health Watch in visible places on every unit where Mental Health Watches take place.
95. A Correctional Officer will remain in direct line of sight with the prisoner at all times during a Constant Watch, consistent with MDOC policy.

96. A Correctional Officer will check for signs of life in the prisoner every 15 minutes (*e.g.*, body movement, skin tone, breath sounds, chest expansion), and document every 15 minutes.
97. Where cell door construction allows and if not prohibited by any fire/safety codes, rules or regulations, MDOC staff will use door sweeps in cells designated for Mental Health Watches in an attempt to prevent any contraband and/or foreign bodies that prisoners may try to use to engage in Self-Injurious Behavior.

Support Persons

98. MDOC will ensure that the contracted health vendor retains Support Persons at each medium and maximum security institution where Mental Health Watches occur within one (1) year of the Effective Date.
99. A Support Person is an individual provided by the health care vendor, and is part of the Multi-Disciplinary Team. A Support Person engages in non-clinical interactions with prisoners on Mental Health Watch, provides additional activities outside of the three clinical sessions per day, and documents these interactions and the prisoner's behavior.
100. A Support Person will receive 40 hours of training pre-service training prior to engaging with prisoners on Mental Health Watch, which will include training about how to appropriately interact with, and document interactions with, prisoners on Mental Health Watch. Support Persons will also receive Crisis Intervention Training.
101. A Qualified Mental Health Professional will be on site to oversee the Support Person and provide guidance on appropriate non-clinical activities and ensure there is efficacy in the interactions with the prisoner on Mental Health Watch. Interactions with the Support Person must be determined to be clinically appropriate for each prisoner on Mental Health Watch.
102. The Support Persons will be assigned to work at least six days per week, 8 hours per day, on the days and shifts when data indicates that Self-Injurious Behavior is more likely to occur so as to be of the most benefit to inmates on Mental Health Watch.
103. At each shift transition, the departing Qualified Mental Health Professional will discuss with the oncoming Qualified Mental Health Professional what kind of Support Person activities are clinically appropriate for each of the prisoners on Mental Health Watch.
104. Throughout each shift, a Support Person will document all interactions. The Support Person's documentation will be reviewed with the clinical team during the following day's triage meeting.
105. **Self-Injurious Behavior:** MDOC will update its policy and procedure for responding to Self-Injurious Behavior that occurs during a Mental Health Watch. Upon identification of an incident of Self-Injurious Behavior, MDOC will:

106. If the incident of suicide attempt or Self-Injurious Behavior is life threatening, the Code 99 (103 DOC 562) procedure will be activated immediately.
 - a. Code 99 Procedures will take into consideration factors such as whether there are suspected weapons in the room, communicable diseases, barricaded doors, safety of the scene, and the severity of the harm when determining the type of protective equipment and clothing to be utilized when responding to a Code 99 for a prisoner on Mental Health Watch.
107. If the incident of Self-Injurious Behavior does not require immediate medical intervention, MDOC staff will engage with the inmate and encourage cessation of the behavior. In addition, MDOC staff will notify their supervisor as soon as possible to inform the designated medical personnel and Qualified Mental Health Professional of the incident.
108. Within 24 hours, a Qualified Mental Health Professional will complete a Self-Injurious Behavior Occurrence Report (SIBOR).
109. Any Self-Injurious Behavior that occurs during a Mental Health Watch will be documented by the officer who was responsible for observing the prisoner. The documentation will describe the Self-Injurious Behavior as it occurred while the prisoner was on Constant or Close watch.
110. Within 24 hours, a Qualified Mental Health Professional will conduct an assessment and modify the prisoner's treatment plan if clinically appropriate.
111. If necessary, follow the procedures laid out in its ingestion of foreign body policy enumerated in Paragraph 112.
112. **Foreign Body Ingestion:** MDOC will update its policy and procedure for safely recovering internally concealed foreign substances, instruments, or other contraband to ensure facility security and prisoner safety and health. The policy will institute clear search and monitoring procedures, and clearly define the roles of Medical Providers and Qualified Mental Health Professionals. MDOC will continue to use Body Orifice Security Scanner (BOSS) chairs, body scanners, and/or hand wands to detect foreign bodies prior to putting a prisoner on Mental Health Watch.

INTENSIVE STABILIZATION UNIT

113. **Intensive Stabilization Unit Policy and Procedure:** Within 1 year of the Effective Date, MDOC will draft Intensive Stabilization Unit policies and procedures, consistent with the process in the Policies and Procedures section above.
114. **Intensive Stabilization Unit:** No later than eighteen (18) months of the Effective Date, MDOC will operate the Intensive Stabilization Unit (ISU).
115. **ISU Purpose:** MDOC, through its contracted healthcare vendor, will provide intensive stabilization services for prisoners unable to effectively progress with placement on Mental Health Watch or general population due to serious mental illness or marked behavioral dysregulation. ISU treatment will be for prisoners who do not meet the statutory criteria required for inpatient hospitalization but who have been on Mental Health Watch and are clinically appropriate for a higher level of care. While designed as a short-term placement, the ISU focus of treatment is to address immediate clinical needs

in an intensive environment restoring safety and stabilizing symptoms while working with the prisoner to identify treatment needs to maintain in a non-ISU environment.

116. Specialized interventions are based on the prisoner's mental health needs, behavioral needs, and level of functioning. Each prisoner will be assigned to treatment and programming in accordance with their individualized treatment plan. The primary goals for ISU treatment include the following: stabilizing of primary symptoms necessitating referral, providing a supportive, intensive therapeutic milieu for inmates with mental health needs, and preparing each prisoner for reintegration into the general prison population or Residential Treatment Unit offering a reasonable expectation of success given current mental health needs.
117. Any MDOC units that are developed to serve the same purpose as the ISU will follow the guidelines enumerated in this section.
118. **ISU Selection:** Prisoners who are assessed by MDOC's contracted healthcare provider as dysregulated and/or decompensated for whom multiple interventions have been ineffective will be referred by the contracted healthcare provider for transfer to the ISU. Duration of symptoms, utilization of Mental Health Watch and implementation of behavior management plans must be considered prior to referral. In discussion with the ISU Director, the referring treatment team will identify the goals for ISU placement and any treatment resistance or barriers thus far. Prisoners should be active participants in the interventions and in their own treatment planning, and thus may request to be considered for ISU placement. This self-identification will be considered, but MDOC's contracted healthcare provider has the ultimate authority over ISU placement.
119. **ISU Treatment:** Each prisoner will be assigned a stabilization clinician from the ISU treatment team.
120. Upon admission to the ISU, all prisoners will be evaluated daily (Monday through Saturday) by the treatment team when in initial phases and the recommended frequency for ongoing individual contacts and group programming (if group programming is deemed clinically appropriate) will be documented in the prisoner's individualized ISU treatment plan.
121. Group programming will be available in the ISU and prisoners will be referred based on their progress in treatment and individualized treatment plan. Group programming available will be maintained with rolling admission, allowing prisoners to enter the group at varying stages of treatment and based on length of stay in the ISU. Assignment to core group treatment modules is at the sole discretion of the ISU treatment team and is based on the prisoner's individualized treatment needs.
122. **Out of Cell Time:** The ISU will permit out of cell time and opportunities for congregate activities, commensurate with the clinical stability and phase progression of the prisoner, with the intention of reinforcing symptom and behavioral stability. Following the discontinuation of a Mental Health Watch in the ISU, ISU participants will have the following privileges/restrictions/clinical contacts:

123. Access to all on-unit programming and activities as outlined in the individualized treatment plan, and will not restrain prisoners unless necessary;
124. In addition to the requirements described in Paragraphs 120-121, individual clinical assessment by a Qualified Mental Health Professional at least one time per week;
125. Contact visits and phone privileges commensurate with general population;
126. MDOC will work with the Department of Public Health to satisfy the requirements necessary to obtain the Department of Public Health's approval to provide meals in the on-unit dining area. Upon approval, meals in the on-unit dining area will be provided in a group setting unless clinically contraindicated;
127. Clothing and other items are allowed in-cell commensurate with general population;
128. Recreation will be provided in on-unit outdoor and indoor recreation areas;
129. Movement will be restricted to the ISU (other than for visits, medical appointments, or other off unit activities approved by the treatment team).
130. **Tracking:** MDOC will track out-of-cell time offered to prisoners, as well as whether out-of-cell time is accepted or refused.
131. **Restraints Off-Unit:** For all off-unit activities (visits, medical appointments, etc.), ISU prisoners will not be restrained unless necessary.
132. **Support Persons:** Support Persons will be used in the ISU consistent with Paragraph 25. Support Persons will engage in non-clinical interactions with prisoners on Mental Health Watch, will provide supplemental activities and interactions with prisoners between the three offered clinical sessions, and will document these interactions and prisoner behavior.
133. **Activity Therapists:** Activity therapists will be used in the ISU to provide one-on-one and group structured and unstructured interactions for ISU participants as determined by the treatment providers in the individualized treatment plan.
134. **Therapeutic Interventions:** Therapeutic interventions or non-treatment interactions will be used by staff, including Support Persons and Activity Therapists prior to initiating a Mental Health Watch when clinically indicated.
135. **De-Escalation Areas:** The Intensive Stabilization Unit will have a therapeutic de-escalation area for prisoners.

BEHAVIORAL MANAGEMENT PLANS

136. **Behavioral Management Plans:** When clinically appropriate, the Qualified Mental Health Professional will create an individualized incentive-based behavioral management plan based on the following principles:
 - a. measurable and time-defined goals are agreed upon by the prisoner and mental health staff, with the first goal being "active participation in treatment;"
 - b. incentives or rewards must be individualized and must be provided to the prisoner on a prescribed schedule for achieving these goals;

- c. prisoners should be encouraged to talk honestly about any self-injurious thoughts while at the same time avoiding the use of threats to manipulate staff;
- d. all reports of feeling “unsafe” should be taken seriously;
- e. discouraging the use of disingenuous or false statements to obtain goals other than safety-oriented goals;
- f. time intervals should be considered carefully and modified based on the prisoner’s clinical presentation and level of functioning such that prisoners with very poor impulse control may benefit from shorter reward periods and staff can attach greater and cumulative rewards to gradually increased time periods to encourage increased self-control and commitment to the program over time;
- g. choosing the right treatment interventions must be done with the prisoner, maintaining regular contact with staff, and the prisoner should be given “homework” based on their individual level of functioning; and
- h. these plans should be time limited to three to six months to look for measurable improvement and then modified to a maintenance model.

QUALITY ASSURANCE

- 137. **Quality Assurance Program:** MDOC will ensure that its contracted healthcare vendor engages in a quality assurance program that is adequately maintained and identifies and corrects deficiencies with the provision of supervision and mental health care to prisoners in mental health crisis. MDOC will develop, implement, and maintain a system to ensure that trends and incidents are promptly identified and addressed as clinically indicated.
- 138. **Quality Assurance Policies:** MDOC will draft Quality Assurance policies and procedures, consistent with the process in the Policies and Procedures section above, to identify and address trends and incidents in the provision of supervision and mental health care to prisoners in mental health crisis.
- 139. **Monthly Quality Assurance Reports:** Within three (3) months of the Effective Date, MDOC will begin tracking and analyzing patterns and trends of reliable data concerning supervision and mental health care to prisoners in mental health crisis to assess whether measure taken by MDOC are effective and/or continue to be effective in preventing and/or minimizing harm to prisoners who are on Mental Health Watch. MDOC will review this data annually to consider whether to modify data tracked and analyzed. Any modifications will be subject to the approval of the United States, which will not be unreasonably withheld. While nothing in this Agreement precludes MDOC from considering additional or different data, the data that is to be tracked and analyzed will include the data set forth in Paragraph 139 (a) and will be reflected in monthly quality assurance reports.
 - a. Each monthly report will include the following relevant and reliable aggregate data, separated by prison facility:

Length of Stay Data

- 1. The total number of prisoners placed on Mental Health Watch during the month.
- 2. The total number of prisoners who spend time on Mental Health Watch during the month.

3. An attached Excel spreadsheet of all prisoners who spend time on Mental Health Watch during the month organized as follows:
 - i. A separate row for each Mental Health Watch stay (which could show if prisoners had multiple Mental Health Watch stays during the month)
 - ii. Prisoner first and last name
 - iii. Prisoner ID number
 - iv. Date of start of Mental Health Watch
 - v. Date of end of Mental Health Watch (leave blank if not ended)
4. The total number of prisoners whose Mental Health Watch time lasted, inclusive of consecutive Mental Health Watch time spent in a previous month (noting if there are prisoners that had multiple Mental Health Watches during the month):
 - i. 24 hours or less - Defined as Cohort 1
 - ii. 24 - 72 hours - Defined as Cohort 2
 - iii. 72 hours - 7 days - Defined as Cohort 3
 - iv. 7 days - 14 days - Defined as Cohort 4
 - v. Longer than 14 days - Defined as Cohort 5

Self-Injurious Behavior (SIB) Data

5. An attached Excel spreadsheet of all incidents of Self-Injurious Behavior that occurred on Mental Health Watch during the month organized as follows:
 - i. A separate row for each incident (which could show repeat prisoners if they had multiple incidents during the month)
 - ii. Prisoner first and last name
 - iii. Prisoner ID number
 - iv. Date of incident
 - v. Time of incident
 - vi. Type of incident
 - vii. Type of Watch – Close or Constant when Self-Injurious Behavior occurred
 - viii. Whether an outside hospital trip occurred as a result of the Self-Injurious Behavior
 - ix. Whether an outside medical hospital admission occurred as a result of the Self-Injurious Behavior
6. The total number of incidents of Self-Injurious Behavior that occurred on Mental Health Watch:
 - i. The overall total;
 - ii. Self-Injurious Behavior incident that occurred on Close Observation Watch versus Constant Observation Watch;

iii. The total broken down by type of Self-Injurious Behavior:

- (1) Asphyxiation
- (2) Burning
- (3) Cutting
- (4) Head banging
- (5) Ingestion of object
- (6) Ingestion of substance
- (7) Insertion
- (8) Jumping
- (9) Non-suspended hanging
- (10) Other
- (11) Overdose
- (12) Scratching
- (13) Suspended hanging

iv. The total broken down by Cohort (defined in Paragraph 139(a)(4) above), at the time of the SIB.

Other Mental Health Watch Data

7. Uses of Force on Mental Health Watch: The number of Uses of Force on prisoners on Mental Health Watch separated by facility, whether such use was spontaneous or planned, and whether there was use of OC Spray.
8. Psychiatric hospitalization: The prisoners admitted for inpatient psychiatric level of care, or transferred to outside facility for psychiatric hospitalization

Census Data

9. Census at first of month in each Residential Treatment Unit.
10. Census at first of month in Intensive Stabilization and Observation Unit.

Staffing Data

11. Mental health staffing matrix for each facility by position, showing FTEs budgeted, filled and vacant.

140. **Other Mental Health Watch Data Subject to Review by the DQE**

- a. During any site visits conducted by the DQE, the DQE may conduct reviews of inmates' medical and mental health records, as requested in advance, supplemented with interviews of prisoners, to gather information on the following topics:
 1. *Clinical contacts on Mental Health Watch*
 - i. visits between prisoner and Qualified Mental Health Professional that occurred out of cell per day,

- ii. time spent by prisoner with Qualified Mental Health Professional per day,
 - 2. *Property and Privileges approved while on Mental Health Watch*
 - i. clothing,
 - ii. media unrelated to mental health,
 - iii. exercise and recreation,
 - iv. other out of cell activities.
141. **Quality Improvement Committee:** Within three months of the Effective Date, MDOC will begin to develop and implement a Quality Improvement Committee that will:
- a. review and analyze the data collected pursuant to Paragraph 139(a);
 - b. identify trends and interventions;
 - c. make recommendations for further investigation of identified trends and for corrective actions, including system changes; and,
 - d. monitor implementation of approved recommendations and corrective actions.
 - e. Based on these monthly assessments, MDOC will recommend and implement changes to policies and procedures as needed.
 - f. All monthly reports will be provided to the DQE and the United States, along with a list of any recommendations and corrective actions identified by the Quality Improvement Committee.
142. **Self-Injurious Behavior (SIB) Review Committee:** MDOC will continue to operate a Self-Injurious Behavior Review Committee that will meet twice per month, be led by a member of mental health clinical staff, and include mental health staff, MDOC Health Services Division staff, and related clinical disciplines as appropriate.
143. The Self-Injurious Behavior Review Committee will review and discuss the Quality Improvement Committee's data regarding Self-Injurious Behavior, conduct an in-depth analysis of the prisoners who have engaged in the most Self-Injurious Behavior over the past month, and conduct timely and adequate multi-disciplinary reviews for all instances of Self-Injurious Behavior that require an outside hospital trip.
144. The minutes of these reviews will be provided to all treating staff and senior MDOC staff. MDOC will take action to correct any systemic problems identified during these reviews.
145. **Morbidity-Mortality Reviews:** MDOC will conduct timely and adequate multidisciplinary morbidity-mortality reviews for all prisoner deaths by suicide and all serious suicide attempts (*i.e.*, suicide attempts requiring medical hospital admission).
146. The Morbidity and Mortality Review Committee will include one or more members of MDOC Health Services Division staff, the medical department, the mental health department, and related clinical disciplines as appropriate. The Morbidity and Mortality Review Committee will:

- a. ensure the following are completed, consistent with National Commission of Correctional Health Care standards, for all prisoner deaths by suicide and serious suicide attempts:
 1. a *clinical mortality/morbidity review* (an assessment of the clinical care provided and the circumstances leading up to the death or serious suicide attempt) is conducted within 30 days;
 2. an *administrative review* (an assessment of the correctional and emergency response actions surrounding a prisoner's death or serious suicide attempt) is conducted in conjunction with correctional staff;
 3. a *psychological autopsy* (a written reconstruction of an individual's life with an emphasis on factors that led up to and may have contributed to the death or serious suicide attempt) is performed on all deaths by suicide or serious suicide attempts within 30 days;
 4. treating staff are informed of the recommendations formulated in all reviews;
 5. a log is maintained that includes:
 - i. prisoner name or identification number;
 - ii. age at time of death or serious suicide attempt;
 - iii. date of death or serious suicide attempt;
 - iv. date of clinical mortality review;
 - v. date of administrative review;
 - vi. cause of death (*e.g.*, hanging, respiratory failure) or type of serious suicide attempt (*e.g.*, hanging, overdose);
 - vii. manner of death, if applicable (*e.g.*, natural, suicide, homicide, accident);
 - viii. date recommendations formulated in review(s) shared with staff;
and
 - ix. date of psychological autopsy, if applicable.
 - b. recommend changes to medical, mental health and security policies and procedures and ensure MDOC takes action to address systemic problems if identified during the reviews;
 - c. develop a written plan, with a timetable, for corrective actions; and
 - d. ensure a final mortality review report is completed within 60 days of a suicide or serious suicide attempt.
147. **Reportable incidents:** Within 24 hours, MDOC will notify the United States and the DQE of suicides and all serious suicide attempts (*i.e.*, suicide attempts requiring medical hospital admission). The notification will include the following information:

- a. Incident report, name, housing unit location, brief summary or description, mental health classification, security classification, date of birth, date of incarceration, and date of incident.

IV. DESIGNATED QUALIFIED EXPERT

148. The Parties agree that Reena Kapoor will be the Designated Qualified Expert (“DQE”) retained by MDOC to assess and report whether the provisions of the Agreement have been implemented and to provide technical assistance to help MDOC comply with its obligations under the Agreement. Nothing in this Agreement prevents the DQE from seeking assistance from subject matter experts, subject to MDOC and the United States’ approval. As set forth in Paragraph 150, the DQE will be responsible for paying for the services of any such subject matter experts out of the DQE’s budget. The DQE is ultimately responsible for any compliance assessments made under this Agreement.

149. The DQE will serve for a period of four years from the Agreement’s Effective Date until the termination of this Agreement or sooner if MDOC demonstrates compliance prior to the termination of the Agreement. In evaluating the DQE, the Parties will consider the DQE’s performance under this Agreement, including whether the DQE is completing their work in a cost-effective manner and on budget, and is working effectively with the Parties to facilitate MDOC’s efforts to comply with the Agreement’s terms, including by providing technical assistance to MDOC. The DQE may be removed for good cause by agreement of the Parties.

150. MDOC will pay the DQE an amount per year to be agreed upon by the Parties for performing all of the DQE’s duties under this Agreement. The DQE will pay for the services of any subject matter experts utilized by the DQE in accordance with Paragraph 148 above out of the DQE’s budget.

151. The DQE will only have the duties, responsibilities, and authority conferred by this Agreement.

152. The DQE will conduct reviews to determine compliance with the material requirements of this Agreement (See Paragraphs 160-163). These reviews will be conducted in a reasonable and reliable manner based on accepted means and methods. The DQE will provide the Parties with the underlying analysis, data, methods, and sources of information relied upon in the reviews.

153. To the extent that the DQE believes it will be helpful to assess MDOC’s compliance with the terms of this Agreement, the DQE may, prior to completing the draft DQE reports referenced in Paragraph 161, solicit written input from Stakeholders regarding MDOC’s practices involving individuals in mental health crisis, provided that, in doing so, the DQE solicits written input not only from Stakeholders involved with prisoner advocacy, but also Stakeholders involved with the direct care, supervision, and treatment of individuals in mental health crisis. The DQE may not, as part of this process, share confidential information with Stakeholders, including but not limited to information obtained during the performance of the DQE’s responsibilities under the Agreement.

154. Neither MDOC nor the United States, or any of their staff or agents, will have any supervisory authority over the DQE’s activities, reports, findings, or recommendations to implement the Agreement.

155. The DQE will be permitted to freely and privately engage in communications with MDOC and the United States regarding this Agreement.

156. In the event the DQE is no longer able to perform their functions, is removed, or is not extended, within 60 days thereof, the Parties will jointly select a replacement DQE, acceptable to both.

157. Should a Party to this Agreement determine that the DQE has exceeded their authority or failed to satisfactorily perform the duties required by the Agreement, the Parties will discuss appropriate remedies, including replacement of the DQE, and/or any individual members, agents, employees, or independent contractors of the DQE.

158. Subject to legitimate safety and security requirements that may be imposed by MDOC for the safe and secure operation of its facilities, the DQE and the United States will have full access to those persons, employees, facilities, buildings, programs and services during any site visits or inspections necessary to assess MDOC's progress and implementation efforts according to the terms of this Agreement. To the extent the United States chooses to participate in a site visit or inspection arranged for by the DQE, the same access will be given to the United States. The United States and/or the DQE will provide reasonable advance notice of any visit or inspection. During any such site visits or inspections, upon reasonable advance notice, the DQE and/or the United States will have access to those documents, data, records, and materials that are in the possession, custody or control of MDOC, including individual medical records and other departmental records maintained by MDOC or its contracted medical provider, that are necessary to assess MDOC's progress and implementation of this Agreement. Advance notice of any visit or inspection will not be required if the DQE or the United States has a reasonable belief that a prisoner faces a risk of immediate and serious harm; however, the DQE or the United States will provide MDOC with oral and written notice of the basis for the belief that a prisoner faces a risk of immediate and serious harm as soon as reasonably possible. Access is not intended, and will not be construed, as a waiver, in litigation with third parties, of any applicable statutory or common law privilege associated with information disclosed to the DQE or the United States under this paragraph.

159. MDOC will provide to the DQE and the United States a confidential, bi-annual Status Report detailing progress at MDOC, until the Agreement is terminated, the first of which will be submitted within 180 days of the Effective Date. Status Reports will make specific reference to the Agreement's substantive provisions being implemented. The Status Reports will include action steps, responsible persons, due dates, current status, description of (as appropriate) where pertinent information is located (e.g., DAP note, meeting minutes, Mental Health Watch sheet, etc.), DQE recommendations, and date complete. Subsequent Status Reports will be submitted one month before the DQE's draft report. MDOC, however, retains the discretion to achieve compliance with the Agreement by any legal means available to it and may choose to utilize methods other than those identified or recommended in any reports.

DQE Reports

160. Within 60 days of the Effective Date, the DQE will conduct a baseline site visit of MDOC to become familiar with MDOC and this Agreement.

161. Within 90 days of the Effective Date, the DQE will provide their preliminary observations and recommendations in a Baseline DQE Report dealing exclusively with MDOC's compliance with the Agreement (which will follow the same draft and comment process as set forth below in this paragraph. MDOC, however, retains the discretion to achieve compliance by any legal means available to it and may choose to utilize methods other than those that may be recommended by the DQE. The DQE will conduct an on-site inspection and issue a DQE Report for MDOC six

months after the Baseline DQE Report, and then every six months thereafter, dealing exclusively with MDOC's compliance with the Agreement. A draft of the six-month DQE Report will be provided to MDOC and the United States for comment at least 31 days prior to its issuance, together with any comments from Stakeholders. MDOC and the United States will provide comments, if any, to the DQE within 21 calendar days of receipt of the draft DQE Report. The DQE will consider the responses of MDOC and the United States and make appropriate changes, if any, before issuing the final Report in 10 calendar days thereafter. Draft reports and comments will be confidential.

162. The DQE Reports will describe the steps taken by MDOC to implement this Agreement and evaluate the extent to which MDOC has progressed toward compliance with each substantive provision of the Agreement. In evaluating MDOC's progress toward compliance, the DQE will take into consideration the time frames required for compliance with each provision as set forth in this Agreement. Each DQE Report will:

- a. Evaluate the status of progress toward compliance for each relevant provision of the Agreement using the following standards: (1) Substantial Compliance; (2) Partial Compliance; (3) Non-compliance; and (4) Compliance Not Yet Due. "Substantial Compliance" indicates that MDOC has achieved material compliance with the components of the relevant provision of the Agreement. "Partial Compliance" indicates that MDOC has achieved material compliance with some of the components of the relevant provision of the Agreement, but that significant work remains. "Non-compliance" indicates that MDOC has not met the components of the relevant provision of the Agreement if the time frame required for compliance with said provision, as set forth in the Agreement, has elapsed. "Compliance Not Yet Due" indicates that MDOC is working toward compliance with said provision where the time frame for compliance with said provision, as set forth in the Agreement, has not yet elapsed. "Material Compliance" requires that, for each provision, MDOC has developed and implemented a policy incorporating the requirement, trained relevant personnel on the policy, and relevant personnel are complying with the requirement in actual practice. The DQE will review a sufficient number of pertinent documents and interview a sufficient number of staff and prisoners to accurately assess current conditions;
- b. Describe the steps taken by the DQE to analyze conditions and assess compliance with the Agreement, including documents reviewed and individuals interviewed, and the factual basis for each of the DQE's findings;
- c. Incorporate data from the Monthly Quality Assurance Reports (Paragraph 139), and when applicable attach the data relied upon;
- d. Contain the DQE's independent verification of representations from MDOC regarding progress toward compliance, and examination of supporting documentation; and
- e. Provide recommendations for each of the provisions in the Agreement outlining proposed actions for at least the next six months for MDOC to complete toward achieving compliance with the particular provision. MDOC, however, retains the discretion to achieve compliance by any legal means available to it and may choose to utilize methods other than those that may be recommended by the DQE. The DQE will not be empowered to direct MDOC to take, or refrain from taking, any specific action to achieve compliance with the Agreement.

163. These DQE Reports will be submitted to the Parties and will be written with due regard for the privacy interests of individuals and will not include any information that could jeopardize the institutional security of MDOC, or safety of MDOC staff, vendor staff, or prisoners. All such final reports will be posted on MDOC's website and on the United States Department of Justice's Civil Rights Division's website.

164. Nothing in this Section prohibits the DQE from issuing interim letters or reports to the United States or MDOC should they deem it necessary.

165. If, at any time during the term of this Agreement, the Parties agree that any substantive section (*i.e.* any small capitalized section tabbed on the far left of the Agreement, such as "THERAPEUTIC RESPONSE TO PRISONERS IN MENTAL HEALTH CRISIS," "SUPERVISION FOR PRISONERS IN MENTAL HEALTH CRISIS," etc.) has reached Substantial Compliance, that section will cease to be subject to active review by the DQE.

166. In completing their responsibilities, the DQE may testify regarding any matter relating to the implementation, enforcement, or dissolution of the Agreement, including, but not limited to, the DQE's observations and findings regarding MDOC's compliance with the Agreement.

167. The DQE and any staff or consultants retained by the DQE will not: (a) be liable for any claim, lawsuit, or demand arising out of their activities under this Agreement (this paragraph does not apply to any proceeding for payment under contracts into which they have entered in connection with their work under the Agreement); (b) be subject to formal discovery in any litigation involving the services or provisions reviewed in this Agreement, including, but not limited to, deposition(s), request(s) for documents, and request(s) for admissions, interrogatories, or other disclosure; (c) testify as an expert or in any other capacity in any other non-Department of Justice litigation or proceeding with regard to any act or omission of MDOC or any of MDOC's agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that they may have learned of as a result of their performance under this Agreement, nor serve as a non-testifying expert regarding any matter or subject that they may have learned of as a result of their performance under this Agreement.

168. The DQE will not enter into any additional contract with MDOC or the United States on a matter related to this Agreement while serving as the DQE. If the DQE ceases to be the DQE under this Agreement for any reason, the former DQE may not enter into any contract with MDOC or the United States on a matter related to this Agreement without the written consent of the other Party while this Agreement remains in effect. MDOC and the United States will not otherwise employ, retain, or be affiliated with the DQE while this Agreement is in effect, unless the other Party gives its written consent to waive this prohibition.

V. IMPLEMENTATION

169. Within 30 days of the Effective Date, MDOC will designate an Agreement Coordinator to coordinate compliance with this Agreement and to serve as a point of contact for the Parties and the DQE.

170. Within six months of the Effective Date, MDOC will conduct regular quarterly meetings with prison staff to gather feedback from staff on events, accomplishments, and setbacks regarding implementation of this Agreement during the previous quarter.

VI. DISPUTE RESOLUTION AND ENFORCEMENT

171. If the United States believes that MDOC is not in substantial compliance with any substantive provision of this Agreement by the applicable time frame set forth in the Agreement, the United States will provide MDOC with the specific reasons, referencing the specific provision or provisions in writing. Minor or isolated delays in compliance are allowed.

172. MDOC will have the opportunity to consult its own expert(s) with respect to the United States' allegations that MDOC is not in substantial compliance with such provision or provisions of the Agreement. MDOC will provide the United States with a written response to the notification within thirty (30) calendar days of its receipt. MDOC's response will contain a description of the steps it took to investigate the issues addressed in the United States' notice, the results of the investigation, and, where MDOC proposes corrective action, a specific plan for addressing the described issues. If no corrective action is proposed by reason of funding constraints (including the unavailability of appropriated funds), legal considerations, or for other reasons, MDOC's response will specifically state those reasons and any statutes, regulations, expert opinion or technical bases upon which it is relying in reaching such conclusion.

173. MDOC or the United States may request a meeting to discuss and attempt to resolve any matter addressed in the written submissions in Paragraphs 171-172. MDOC and the United States will meet within fourteen (14) business days of the receipt of the request to meet, unless a later meeting is agreed to by both Parties.

174. Prior to pursuing any form of judicial action, the United States will give MDOC written notice of its intent to initiate such proceedings and the Parties will engage in good faith discussions to resolve any dispute regarding alleged non-compliance with the Agreement. If MDOC and the United States are not successful in their efforts to resolve the matter, the United States may pursue a breach of contract claim in the appropriate Massachusetts state court or institute a civil action in the appropriate United States District Court. The United States may also take any other enforcement action authorized by law. Nothing herein will be construed as a waiver by MDOC of any and all defenses, both legal and factual, that may be raised by MDOC in any civil action or enforcement action commenced by the United States.

175. In case of an emergency posing an immediate threat to the health or safety of any prisoner or staff member at MDOC, the United States may omit the notice and cure requirements herein and seek enforcement of the Agreement. Prior to the United States seeking enforcement, however, the United States will provide MDOC with oral and written notice, as soon as reasonably possible, as to what any alleged immediate threat may be and the reason for the United States' conclusion.

VII. TERMINATION

176. Except where otherwise agreed to under a specific provision of this Agreement, MDOC will implement all provisions of this Agreement within three years of the Effective Date.

177. This Agreement will terminate in four years of the Effective Date, or earlier, if the Parties agree that MDOC has attained substantial compliance with all provisions of this Agreement and maintained that compliance for a period of one year.

178. MDOC may seek termination of any substantive section (*i.e.* any small capitalized section tabbed on the far left of the Agreement, such as "THERAPEUTIC RESPONSE TO PRISONERS IN MENTAL HEALTH CRISIS," "SUPERVISION FOR PRISONERS IN MENTAL HEALTH CRISIS," etc.) by

providing written notice to the United States. The burden will be on MDOC to demonstrate that it has attained and maintained its substantial compliance as to that section for at least one year.

179. The burden will be on MDOC to demonstrate that it has maintained substantial compliance with each of the provisions of this Agreement. Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure by MDOC to maintain substantial compliance. At the same time, temporary compliance during a period of sustained non-compliance will not constitute substantial compliance.

180. Should any provision of this Agreement be declared or determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions will not be affected. The Parties will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid, illegal, or unenforceable.

181. The Parties agree to work collaboratively to achieve the purpose of this Agreement. In the event of any dispute over the language, requirements or construction of this Agreement, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution.

182. This Agreement will constitute the entire integrated agreement of the Parties.

183. Any time limits for performance imposed by this Agreement may be extended by the mutual consent of the Parties. Any modification of this Agreement requires the written consent of all Parties.

184. This Agreement is binding on the Parties.

185. MDOC will provide a copy of this Agreement to any person upon request.

VIII. GENERAL PROVISIONS

186. If necessary, MDOC will endeavor to enter into Memoranda of Understanding with all appropriate State, County, or City agencies to enable MDOC to comply with the provisions of this Agreement.

187. The United States and MDOC will each bear the cost of their own fees and expenses incurred in connection with this Agreement.

188. In sharing or providing any information, documents, data, etc. with the DQE and/or the United States in connection with this Agreement, MDOC will take all steps required by law to protect the confidentiality and privacy of all individuals involved.

189. The Agreement is binding on all successors, assignees, employees, agents, contractors, and all others working for or on behalf of MDOC to implement the terms of this Agreement.

190. The Parties agree that, as of the Effective Date of this Agreement, litigation is not reasonably foreseeable concerning the matters described in this Agreement. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in this Agreement, the Party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any Party of any other obligations imposed by this Agreement, including the document creation and retention requirements described herein.

191. MDOC will not retaliate against any person because that person has filed or may file a complaint, provided assistance or information, or participated in any other manner in the United States' investigation or the DQE's activities related to this Agreement. The United States and DQE will report any such allegations of retaliation to MDOC for any further action as deemed necessary in accordance with MDOC policies.

192. Failure by any Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver, including of its right to enforce other deadlines and provisions of this Agreement.

193. The Parties will promptly notify each other of any court or administrative challenge to this Agreement or any portion thereof.

194. The Parties represent and acknowledge that this Agreement is the result of extensive, thorough, and good faith negotiations. The Parties further represent and acknowledge that the terms of this Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of making a full and final compromise and settlement of the allegations set forth in the CRIPA Notice dated November 17, 2020. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on behalf of a Party is duly authorized to enter into this Agreement and to bind that Party to the terms and conditions of this Agreement.

195. This Agreement may be executed in counterparts, each of which will be deemed an original, and the counterparts will together constitute one and the same Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart.

196. The performance of this Agreement will begin immediately upon the Effective Date.

197. MDOC will maintain sufficient records and data as set forth in this Agreement to document that the requirements of this Agreement are being properly implemented and will make such records available to the DQE and the United States for inspection and copying on a reasonable basis. Such action is not intended, and will not be construed, as a waiver, in litigation with third parties, of any applicable statutory or common law privilege associated with such information. Other than to carry out the express functions as set forth herein, both the United States and the DQE, and any staff or consultants retained by the DQE, will hold such information in strict confidence to the greatest extent possible.

198. The Parties acknowledge that Exigent Circumstances could arise that may impact the ability of MDOC to comply with one or more provisions of this Agreement at any given time. Whenever an act otherwise required by this Agreement is excused or delayed on account of Exigent Circumstances, the MDOC will attempt to resolve the Exigent Circumstances as soon as possible, and the act will be performed whenever possible after the Exigent Circumstances cease to exist. The MDOC will document any instances where Exigent Circumstances have impacted MDOC's ability to comply with any provision of this Agreement.


199. "Notice" under this Agreement will be provided by email to signatory counsel for the Parties, or their successors.

FOR THE UNITED STATES:

RACHAEL S. ROLLINS
United States Attorney

JENNIFER A. SERAFYN
Chief, Civil Rights Unit


GREGORY DORCHAK


MICHELLE L. LEUNG
Assistant United States Attorneys
United States Attorney's Office
District of Massachusetts




KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

STEVEN H. ROSENBAUM
Chief, Special Litigation Section

LAURA L. COWALL
Deputy Chief, Special Litigation Section


KYLE F. SMIDDIE


ALYSSA WRIGHT
Trial Attorneys
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530




FOR THE MASSACHUSETTS DEPARTMENT
OF CORRECTION:



CAROL A. MICI
Commissioner of Correction
Massachusetts Department of Correction
50 Maple Street, Suite 3
Milford, Massachusetts 01757-3698
[REDACTED]



SULEYKEN D. WALKER
General Counsel
[REDACTED]
Executive Office of Public Safety and Security
One Ashburton Place, Suite 2133
[REDACTED]



NANCY ANKERS WHITE
General Counsel and
Special Assistant Attorney General
[REDACTED]
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, Massachusetts 02110
[REDACTED]



SHERYL F. GRANT
Senior Litigation Counsel
[REDACTED]
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, Massachusetts 02110
[REDACTED]



MARY ERO-BARTEVYAN
Counsel
[REDACTED]
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, Massachusetts 02110
[REDACTED]