

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 2084CV01035

AMERICAN CIVIL LIBERTIES UNION OF)
MASSACHUSETTS, INC.,)
)
Plaintiff,)
v.)
)
BRISTOL COUNTY SHERIFF'S OFFICE,)
)
Defendant.)

DECLARATION OF DANIEL L. MCFADDEN, ESQ.

I, Daniel L. McFadden, state as follows:

1. I am an attorney licensed in the Commonwealth of Massachusetts. I am counsel of record for the Plaintiff in the action captioned above.
2. Attached hereto as Exhibit A is a true and accurate copy of the Report of the Senate Committee on Post Audit and Oversight Entitled "Report of the Senate Committee on Post Audit and Oversight Concerning a Visit to the Bristol County House of Corrections by a Member of the Massachusetts State Senate on May 2, 2020," dated December 18, 2020, as retrieved on December 29, 2020 from <https://malegislature.gov/Bills/191/S2980>.
3. Attached hereto as Exhibit B is a true and accurate copy of a posting on Twitter.com by the account @SheriffHodgson dated December 21, 2020, and the images attached to that posting, as retrieved on December 29, 2020 from <https://twitter.com/SheriffHodgson>.

I swear the forgoing is true under pains and penalties of perjury.

Dated: December 29, 2020

A handwritten signature in blue ink, appearing to be 'DLM', written over a horizontal line.

Daniel L. McFadden

Exhibit A

SENATE.....No. 2980

The Commonwealth of Massachusetts

Report

of the

**SENATE COMMITTEE ON
POST AUDIT AND OVERSIGHT**

entitled

**REPORT OF THE SENATE COMMITTEE ON POST AUDIT AND
OVERSIGHT CONCERNING A VISIT TO THE BRISTOL COUNTY
HOUSE OF CORRECTIONS BY A MEMBER OF THE MASSACHUSETTS
STATE SENATE ON MAY 2, 2020**

(under the provisions of Section 63 of Chapter 3
of the General Laws, as most recently amended by
Chapter 557 of the Acts of 1986)

December 18, 2020



The Commonwealth of Massachusetts

MASSACHUSETTS SENATE

SENATOR JOHN F. KEENAN

Norfolk and Plymouth District

STATE HOUSE, ROOM 413F

BOSTON, MA 02133-1053

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Chairman

SENATE COMMITTEE ON POST AUDIT
AND OVERSIGHT

Vice Chairman

JOINT COMMITTEE ON MENTAL HEALTH, SUBSTANCE
USE AND RECOVERY

December 18, 2020

Mr. Michael D. Hurley, Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Clerk Hurley:

Pursuant to M.G.L. Chapter 3, Section 63, the Senate Committee on Post Audit and Oversight respectfully submits to the full Senate the following report: **Report of the Senate Committee on Post Audit and Oversight Concerning A Visit to the Bristol County House of Corrections By a Member of the Massachusetts State Senate on May 2, 2020.**

This report is based on an investigation and research by the Senate Committee on Post Audit and Oversight.

The report presents an Executive Summary, the Committee's findings and conclusion, as well as a recommendation for the Bristol County Sheriff's Office and other correctional institutions, jails, and houses of correction to ensure compliance with the provisions of Section 36 of Chapter 127 of the General Laws. Also included is an adverse statement submitted by two members of the Committee, Senator Ryan C. Fattman and Senator Dean A. Tran.

Respectfully filed by the Senate Committee on Post Audit and Oversight,

A handwritten signature in blue ink that reads "John F. Keenan".

Senator John F. Keenan, Chair
Senator Paul R. Feeney, Vice Chair
Senator Anne M. Gobi
Senator James B. Eldridge
Senator Joanne M. Comerford
Senator Michael O. Moore

Members of the Massachusetts State Senate Committee on Post Audit and Oversight

Senator John F. Keenan, Chair

Senator Paul R. Feeney, Vice Chair

Senator Anne M. Gobi

Senator James B. Eldridge

Senator Joanne M. Comerford

Senator Michael O. Moore

Senator Ryan C. Fattman

Senator Dean A. Tran

Staff to the Committee

Abigail Kim, Legislative Director

Andrea Pessolano, Chief of Staff

Doreen Bargoot, Constituent Services Director

Morgan Simko, Communications Director

REPORT OF THE SENATE COMMITTEE ON POST AUDIT AND OVERSIGHT CONCERNING A VISIT TO THE BRISTOL COUNTY HOUSE OF CORRECTIONS BY A MEMBER OF THE MASSACHUSETTS STATE SENATE ON MAY 2, 2020

I. EXECUTIVE SUMMARY

On May 1, 2020, an incident occurred at the C. Carlos Carreiro Immigration Detention Center (Detention Center), housed within the Bristol County House of Correction and Jail (BCHC), between federal immigration detainees, Sheriff Thomas M. Hodgson, and other staff of the Bristol County Sheriff's Office (BCSO). On May 2, 2020, State Senator Sonia Chang-Díaz attempted entry into BCHC to observe conditions of the facility and the detainees. Under Section 36 of Chapter 127 of the General Laws, a Senator may enter an institution, jail or house of correction without receiving prior approval. She was denied entry. On May 8, 2020, the Senate Committee on Post Audit and Oversight (Committee) initiated their investigation into the events of May 1, 2020 and the subsequent denial of Senator Chang-Díaz's entry to BCHC on May 2, 2020.

As of the date of this report, the BCSO has not complied with a Document Request regarding the May 1 incident or responded to interrogatory questions requested by the Committee, limiting the Committee's knowledge of the events that took place on May 1, 2020, as well as the actions taken by the BCSO in the aftermath of the incident. Both the Office of Massachusetts Attorney General Maura Healey and the Department of Homeland Security's Office of the Inspector General initiated inquiries into the events of May 1, 2020. Attorney General Healey and her office reported on their findings and recommendations regarding that incident on December 15, 2020. This report focuses on the events of May 2, 2020, and whether the denial of entry to Senator Chang-Díaz was lawful.

After thorough review, the Committee found that **the BCSO violated applicable state law and their own policies and procedures when they denied Senator Chang-Díaz entry to BCHC.** Section 36 of Chapter 127 grants an absolute right to those officials listed in the statute to visit correctional institutions, jails and houses of correction without permission. Furthermore, the policies and procedures set out by the BCSO reinforce the rights afforded in statute.

The reasons given by the BCSO for denying entry to Senator Chang-Díaz were not based in established policies or procedures. Over the course of the investigation, BCSO employees gave several reasons for the denial of entry, none of which were found to change the Committee's finding that the actions of the BCSO in denying the request of Senator Chang-Díaz to visit BCHC were in violation of Section 36 of Chapter 127 of the General Laws.

The Committee's findings underscore the significance of Section 36 of Chapter 127. The ability to visit correctional facilities unannounced, and without limitation, is an important tool for

conducting oversight of Commonwealth correctional institutions, jails and houses of correction. This power has been of value since the statute's adoption in 1854 and remains crucial today, particularly as unprecedented operational adjustments are being implemented within correctional facilities to respond to the COVID-19 pandemic. The refusal of access to Senator Chang-Díaz denied the use of this critical tool to both the Senator and the Commonwealth, improperly limiting oversight of conduct, conditions and operations of the BCHC.

Compliance with BCSO's own policies and procedures would have prevented their violation of Section 36 of Chapter 127, and the Committee urges that appropriate action be taken to ensure such compliance in the future. Adherence to these policies and all applicable law is essential to proper operations and oversight.

II. INTRODUCTION

The Bristol County Sheriff's Office (BCSO), led by Sheriff Thomas M. Hodgson, oversees the Bristol County House of Correction and Jail (BCHC), the Bristol County Sheriff's Office Women's Center, the Ash Street Jail and Regional Lock-Up and the Civil Process Division. Since 2000, the BCSO has entered into a contract to hold detainees who are in deportation proceedings with the United States Immigrations and Customs Enforcement Agency (ICE) at the BCHC in North Dartmouth, Massachusetts. The facility housing federal detainees is referred to as the C. Carlos Carreiro Immigration Detention Center (Detention Center). The housing of federal detainees at a Bristol County Correctional Facility is governed by an Intergovernmental Service Agreement (IGSA) between ICE and the Bristol County Sheriff's Office and a Memorandum of Agreement (MOA).

On May 1, 2020, an incident occurred at the Detention Center involving federal immigration detainees, Sheriff Thomas M. Hodgson and other staff of the BCSO. The disturbance was caused after approximately 10 detainees housed in the Detention Center reported multiple symptoms of COVID-19. An altercation ensued when Sheriff Hodgson and corrections officers sought to remove the detainees to a separate medical wing for testing.^{1 2} On May 2, 2020, State Senator Sonia Chang-Díaz attempted entry into the BCHC to observe conditions of the facility and the detainees.³ She was denied entry.

It is the understanding of the Senate Committee on Post Audit and Oversight (Committee) that the Department of Homeland Security's Office of the Inspector General initiated an inquiry into the events of May 1, 2020. The Office of Massachusetts Attorney General Maura Healey additionally initiated an investigation into the events of May 1, 2020, and reported on her office's findings on December 15, 2020.⁴

The Committee has been asked to investigate whether the May 2, 2020 denial of entry to State Senator Sonia Chang-Díaz was lawful.

III. COMMITTEE JURISDICTION

The Committee is a specially constituted body whose powers, including the authority to undertake special investigations, to summon witnesses, take testimony and compel the

¹ Quincy Walters, Ally Jarmanning. "After brawl at Bristol County Jail Involving Sheriff, Advocates for Immigrant Detainees Call for Investigation," *WBUR* (May 2, 2020).

² Vernal Coleman. "'We are all scared.' Audio recording sheds light on Bristol County Jail Melee," *Boston Globe* (May 6, 2020).

³ "Should Lawmakers Get to Visit Jails During the Coronavirus Pandemic? Bristol County Sheriff, Lawmakers at Odds over Visitation Restrictions," *MassLive* (May 4, 2020).

⁴ Office of the Massachusetts Attorney General Civil Rights Division. INVESTIGATION INTO THE EVENTS OF MAY 1, 2020 AT THE C. CARLOS CARREIRO IMMIGRATION DETENTION CENTER, UNIT B, BRISTOL COUNTY SHERIFF'S OFFICE. (December 15, 2020).

production of books, papers, documents and other evidence of agencies of the Commonwealth, are set forth in Sections 63 and 64 of Chapter 3 of the General Laws.

IV. THE INVESTIGATION⁵

The Committee's investigation included preliminary telephone conversations with Sheriff Hodgson and Senator Chang-Díaz. On May 8, 2020 the Committee forwarded a Notice of Investigation to Sheriff Thomas M. Hodgson informing the BCSO that the Committee was initiating an investigation into the facts and circumstances of the May 1, 2020 and May 2, 2020 incidents.⁶

By letter dated May 15, 2020, Sheriff Hodgson acknowledged receipt of the Notice of Investigation.^{7 8}

The Committee sent a First Request for Documents to Sheriff Hodgson on May 18, 2020, to which the BCSO filed a response on June 19, 2020.^{9 10} This was followed by the Committee sending a First Set of Interrogatories to Senator Chang-Díaz on June 22, 2020, and a subsequent review of her responses,¹¹ and to Sheriff Hodgson, who declined to respond.¹² The Committee also reviewed press accounts of the incident of May 1, 2020, a press conference held on May 2,

⁵ Appendix of referenced documents are available from the Office of the Clerk of the Senate, by request.

⁶ Notice of Investigation (May 8, 2020). Appendix A.

⁷ Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15, 2020). Appendix B.

⁸ Letter from Sheriff Thomas Hodgson to John F. Keenan (May 26, 2020). Sheriff Hodgson further communicated to the Committee on May 26, 2020. The Sheriff requested that the Committee investigate Senator Chang-Díaz for arriving at and seeking access to the facilities of the BCSO on May 2, 2020. Regardless of the Sheriff's request, the Committee focused on the issue it was tasked with reviewing, on what was deemed appropriate and within the Committee's statutory scope – whether the actions taken by the BCSO when denying admission to Senator Chang-Díaz were lawful. The Committee finds no relevance to ascribing alleged motives to a statutorily-permitted visitor. Appendix C.

⁹ First Request for Documents (May 18, 2020). Appendix D.

¹⁰ Response of BCSO to First Request for Documents (June 19, 2020). Appendix E.

¹¹ Senator Chang-Díaz, Answers to Interrogatories (June 22, 2020). Appendix F.

¹² First Set of Interrogatories to Bristol County Sheriff (June 5, 2020). Sheriff Hodgson did not respond in a timely manner to the First Set of Interrogatories, i.e. by June 15, 2020. By letter dated June 15, 2020, Sheriff Hodgson was asked to advise when a response would be provided. To date, no response to the First Set of Interrogatories has been provided. Appendix G.

2020 at the BCSO, the visitation policies of the BCSO and other sheriff's departments in Massachusetts, as well as the IGSA and MOA between the BCSO and ICE.^{13 14 15 16 17}

V. THE INCIDENT

On May 2, 2020, Senator Chang-Díaz appeared at BCHC by motor vehicle and was met at the entrance gate by a uniformed member of the BCSO. Senator Chang-Díaz identified herself as a member of the Massachusetts legislature and requested to enter the premises. The uniformed member of the BCSO informed Senator Chang-Díaz that he would communicate with BCSO staff members about her request, and asked her to pull her vehicle into the BCSO parking lot just past the gate and wait for someone to arrive and speak with her.

A short time later, a BCSO vehicle approached Senator Chang-Díaz's vehicle. The driver of the BCSO vehicle identified himself as Captain Douglas. Captain Douglas asked Senator Chang-Díaz what she needed assistance with, to which she responded that she was a member of the Massachusetts legislature and wished to visit the jail. Captain Douglas asked Senator Chang-Díaz for identification documents and Senator Chang-Díaz presented a valid Massachusetts driver's license to Captain Douglas.¹⁸ Captain Douglas confirmed Senator Chang-Díaz's identity by way of a license check through the BCSO's communications office.¹⁹ Senator Chang-Díaz was informed that she would not be permitted to enter the premises.²⁰ She asserted again that she had the right to enter the facility as a member of the legislature. Captain Douglas then asked her to exit the property and park nearby, and stated that he would check with proper departmental personnel about her request.

¹³ Quincy Walters, Ally Jarmanning. "After brawl at Bristol County Jail Involving Sheriff, Advocates for Immigrant Detainees Call for Investigation," *WBUR* (May 2, 2020).

¹⁴ Vernal Coleman. "'We are all scared.' Audio recording sheds light on Bristol County Jail Melee," *Boston Globe* (May 6, 2020).

¹⁵ "Should Lawmakers Get to Visit Jails During the Coronavirus Pandemic? Bristol County Sheriff, Lawmakers at Odds over Visitation Restrictions," *MassLive* (May 4, 2020).

¹⁶ Media Advisory: Bristol County ICE Detainees Refuse COVID Testing, Trash Housing Unit. Press Release, Bristol County Sheriff's Office (May 1, 2020).

¹⁷ Intergovernmental Service Agreement between the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement Office of Detention and Removal and Bristol County Sheriff's Office (September 27, 2007), and Memorandum of Agreement (February 8, 2017) and Addendum to Extend Memorandum of Agreement (May 16, 2019). Appendix H.

¹⁸ Note, the Incident Report states that Captain Douglas asked for, "an ID or any credentials showing that she worked for the General Court Legislature," and that Senator Chang-Díaz produced a Massachusetts Driver's License. Captain Douglas reports that he asked again whether Senator Chang-Díaz "had any credentials on her in regards to being a General Courts Legislature [sic]," and reports that she responded, "NO SHE DIDN'T HAVE ANYTHING (sic)." Senator Chang-Díaz states in her Answers to Interrogatories, response to interrogatory 3.b. that Captain Douglas asked her, "simply, if I had any identification." In response, Senator Chang-Díaz produced a Massachusetts driver's license. Appendix E.

¹⁹ It appears only that Senator Chang-Díaz's identity was confirmed, not whether she was a member of the Massachusetts' legislature.

²⁰ It is uncontroverted that at this time Senator Chang-Díaz was denied entry, although there are differing reasons as to why she was denied entry. The reasons are discussed below.

Senator Chang-Díaz left the premises, drove across the street, and parked.

After approximately ten minutes, Senator Chang-Díaz returned in her vehicle to the entrance gate at the BCSO facility and was directed to an area to park. Captain Douglas again pulled up to Senator Chang-Díaz's vehicle, exited his vehicle, and stood outside Senator Chang-Díaz's driver-side door. Captain Douglas informed her that she would not be permitted on the grounds of the BCSO and asked her to leave. Senator Chang-Díaz left the premises as requested.²¹

The Committee finds that the uncontroverted facts are that Senator Chang-Díaz appeared at the BCSO, identified herself and had her identity confirmed as Sonia Chang-Díaz, sought entry to the premises and facilities as a member of the legislature and stated that she had the right to enter any facility as a member of the legislature under Chapter 127 at any time.

VI. THE BCSO VIOLATED APPLICABLE STATE LAW AND ITS OWN POLICIES AND PROCEDURES WHEN THEY DENIED SENATOR CHANG-DÍAZ ENTRY TO BCHC

A. Section 36 of Chapter 127 of the General Laws Governs Visitation of Correctional Facilities in Massachusetts

Visitation of correctional institutions in the Commonwealth, including jails and houses of corrections, is governed by Section 36 of Chapter 127 of the General Laws, which provides as follows:

No person except the governor, a member of the governor's council, a member of the general court, a justice of the supreme judicial, superior or district court, the attorney general, a district attorney, the commissioner, a deputy commissioner of correction, a member of the parole board, or a parole or probation officer may visit any of the correctional institutions of the commonwealth or any jail or house of correction in the commonwealth without the permission of the commissioner or of the superintendent of such institution of the keeper if such jail or house of correction. Every visitor who is required to obtain such permission shall also make and subscribe a statement under the penalties of perjury stating his true name and residence, whether or not he has been convicted of a felony, and, if visiting an inmate of such institution, his relationship by blood or marriage, if any, to such inmate, and if not so related, the purpose of the visit.

A plain reading of Section 36 of Chapter 127 itself leads to the conclusion that the legislature intended that certain officials, including members of the legislature, did not need special

²¹ Note, in the Incident Report, the Summary of Event section was described by Captain Douglas as, "Assist with Unruly female visitor". The Committee finds that nothing in that report, on video, or in the responses of Senator Chang-Díaz indicates or suggests that Senator Chang-Díaz was in any way "unruly." Appendix E.

permission or to go through any process to obtain a permit or otherwise enter a correctional institution, jail, or house of correction within the Commonwealth.²²

The policies and procedures of the BCSO that govern visitation at the BCHC are consistent with Section 36. The policy entitled Bristol County Sheriff's Office Inmate Visits 20.01.06 VISITOR IDENTIFICATION AND SCREENING PROCESS (B), read as follows:

The following officials shall be exempt from these procedures: The Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner of Correction, a Deputy or Associate Commissioner of Correction, a Sheriff, a County Commissioner, a member of the Parole Board or a Parole or Probation Officer. Any such official shall be required to sign their name, business address and the office which bring them to the facility within the exemption from normal sign-in requirements. The Sheriff or his designee may also authorize other persons to be exempt from these visitor identification and screening procedures.

This policy is similar to those in place at Houses of Correction across the Commonwealth.^{23 24}

²² "[A] statute must be interpreted according to the intent of the legislature ascertained from all its words construed by the ordinary and approved usage of the language" Commonwealth v. Stirlacci, 483 Mass.775 (2020), citing Seideman v. Newton, 452 Mass. 472, 477 (2008).

²³ Policies and procedures governing the operation of sheriff's offices may vary, due to the unique structure of the Commonwealth's correctional system. While Department of Corrections (DOC) facilities are overseen by the Executive Branch of the Commonwealth, Houses of Corrections (HOCs) are instead overseen by democratically-elected county sheriffs, whose powers and duties are outlined in Chapter 37 of the Massachusetts General Laws. Sheriff's offices are thus granted broad autonomy in their operations.

²⁴ The policies and procedures of the BCSO relative to visits by officials included in the exemption provision of Section 36 are similar to those in place at Houses of Correction across the Commonwealth. See,

Barnstable County Sheriff's Office 520.01 The following persons generally may not be asked to provide the statement generally required by 103 CMR 950.03(2): the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner, a Deputy or Associate Commissioner of Correction, Sheriff, County Commissioners, a member of the Parole Board, a Parole or Probation Officer, or others as designated by the Sheriff/facility administrator. Any such officer shall be required to sign his name, business address and the office which brings him within the exemption from the normal sign-in requirement.

Dukes County Sheriff's Office 950.03 Identification and Sign-In Requirement 2(g) The following persons will not be asked to provide the statement generally required above: the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Courts, the Attorney General, a District Attorney, the Commissioner of Correction, a Deputy or Associate Commissioner of Correction, a Sheriff, a member of the Dukes County Commissioners, a member of the Massachusetts Parole Board, or a Parole or Probation Officer, or others as designated by the Sheriff, Superintendent, or Assistant Superintendent. Any such officer will be required to sign his/her name, business address, and the office (title) which brings him/her within the exemption from the normal sign-in procedures.

Section 36 first appears in the General Laws in 1854.²⁵ At that time, the language was as follows:

No person *other than* the executive government of the Commonwealth, members of the legislature, or officers of justice, or other persons having business at the State Prison,

Hampden County Sheriff's Office 5.2.3 Visitation (b) The following persons generally may not be asked to provide the statement generally required by 103 CMR 950.03(2): the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner, a Deputy or Associate Commissioner of Correction, Sheriff, County Commissioners, a member of the Parole Board, a Parole or Probation Officer, or others as designated by the Sheriff/facility administrator. Any such officer shall be required to sign their name, business address and the office which brings them within the exemption from the normal sign in requirement.

Middlesex County Sheriff's Office 483.07 Visitor's Entry into the Facility.

10. Visiting Form – *Request to Visit Inmate* forms shall be available in the visitor registration area and must be filled out legibly and submitted to the officer prior to the visit. As a condition of entry, every visitor except the officials listed in 483.07.11 below shall be required to subscribe to a statement under penalties of perjury stating their true name and residence, whether or not he or she has been convicted of a felony and his or her relationship to the inmate.

11. The following persons shall not be required to subscribe to the statement above: the Governor, a member of the Governor's Council, a member of the General Court, a Justice of the Supreme Judicial, Superior or District Court, the Attorney General, a District Attorney, the Commissioner, a Deputy or Associate Commissioner of Correction, the Sheriff, a member of the Parole Board, a Parole or Probation Officer. Such persons shall be required to sign his or her name, business address and the office which qualifies him for this exemption on the *Official Visitor Sign-In Sheet*. In the event that such a visit occurs, the Shift Commander shall be immediately notified.

Norfolk County Sheriff's Office CSD 483 Visiting Policy and Procedure, Sheriff's Office Facility Visitation

1. The following persons generally may not be asked to make and subscribe under penalties of perjury stating their true name and residence, or whether they have been convicted of a felony prior to a facility visit:

- a) The Governor;
- b) a member of the Governor's Council;
- c) a member of the General Court.

2. Those listed shall be required to sign their name, state business address, and the office which brings them within the exemption from the normal admission requirements.

²⁵ Sect 1. No person other than the executive government of the Commonwealth, members of the legislature, or officers of justice, or other persons having business at the State Prison, shall be allowed to visit the same without a special permit from one of the inspectors or the warden of said prison.

Sect. 2. The warden shall cause a register to be kept of the names and residences of all persons so visiting, and of the authority by which they visit; and said register shall, at all times, be open to the inspectors.

Sect. 3. The warden may refuse admission to any person having a permit, when it may appear that such visit would be injurious to the best interests of the prison; but he shall report such refusal to the inspectors, at their monthly meeting next after such refusal.

Sect. 4. All acts and parts of acts inconsistent with this act, are hereby repealed.
(Approved by the Governor, April 13, 1854).

shall be allowed to visit the same without a special permit from one of the inspectors or the warden of said prison.(emphasis added)

Successive amendments in 1860, 1883, 1902, 1916, 1919, 1921, 1941, 1955, 1957 and 1962 reflect changes to terminology and additions to the list of government officials exempted from the requirement of entering the listed facilities with permission.

The first found reference to unannounced visits to a correctional facility is in 1875, when the Committee on Prisons reported on the prisons of the Commonwealth. It is several times explicitly stated that institutions were “visited by the Committee, unannounced” or “without any previous notice” in order to observe the conditions of the prisons and jails.²⁶ Section 36 permits this important oversight activity of unannounced visitation of correctional institutions, jails and houses of corrections by members of the legislature to continue.

It is clear that Section 36 of Chapter 127 and the policies and procedures of the BCSO allows certain officials, including members of the legislature, to enter a house of correction within the Commonwealth without special permission and without having to go through any process to obtain a permit or otherwise enter.²⁷

B. BCSO’s Asserted Reasons for Denying Senator Chang-Díaz’s Visitation Request

While it is clear Senator Chang-Díaz had a right as a member of the General Court to appear and visit the BCHC without permission, the BCSO offers several reasons for denying her that right. Each is reviewed below.

1. Senator Chang-Díaz’s identity could not be confirmed

In a letter dated May 15, 2020, Sheriff Hodgson asserted that Senator Chang-Díaz lacked “proper identification”, and in his letter dated May 26, 2020, asserted that she arrived, “unannounced and without proper identification...”²⁸ ²⁹ Captain Douglas also stated that he was advised by the BCSO attorney that, “unless Ms. Chang-Díaz has proper credentials than [sic] she is not allowed inside the Dartmouth House of Corrections.”³⁰

There is a factual inconsistency as to what occurred relative to the identification of Senator Chang-Díaz. The Incident Report states that she was asked whether she had “credentials on her in regards to being a General Courts Legislature [sic],” and that she said, “NO SHE DIDN’T

²⁶ Report on the Prisons of the Commonwealth. Senate No. 205. 1875.

²⁷ “[A] statute must be interpreted according to the intent of the legislature ascertained from all its words construed by the ordinary and approved usage of the language” Commonwealth v. Stirlacci, 483 Mass.775 (2020), citing Seideman v. Newton, 452 Mass. 472, 477 (2008).

²⁸ Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15,2020). Appendix B.

²⁹ Letter from Sheriff Thomas Hodgson to John F. Keenan (May 26, 2020). Appendix C.

³⁰ Incident Report 2020-000568. Appendix E.

HAVE ANYTHING.”³¹ As previously stated, Captain Douglas states that he was advised by the BCSO attorney that, “unless Ms. Chang-Díaz has proper credentials than [sic] she is not allowed inside the Dartmouth House of Corrections.” Senator Chang-Díaz states that she was only asked generally for identification, not for any specific form, so she produced her Massachusetts driver’s license. She had in her possession at the time her State House building pass, as well as business cards. She states that after she produced and the BCSO checked her license, she was not asked for any additional identification.

While there appears to be a dispute as to the facts relating to the identity of Senator Chang-Díaz, it is not material. Neither Section 36 of Chapter 127 nor the BCSO’s policies and procedures relative to visitation require an official, in this case a member of the General Court, to produce any particular form of identification. The latter only require that the official sign their name, and provide, in writing, the official’s business address and the office which brings the official to the facility, in this case the Massachusetts Senate.

When Senator Chang-Díaz appeared at the BCSO seeking to visit, she verbally met the requirements of the policy. Her identity was confirmed, and she stated she was a member of the legislature. Senator Chang-Díaz was not, however, afforded the opportunity to meet the requirements of the visitation policies, i.e. to sign her name, provide her business address, and put in writing that she was a Senator, a member of the General Court.³² Had she been afforded this opportunity, she would have been capable of meeting, and would have been willing to meet, the sole requirements of the BCSO’s visitation policies.

Even if it were agreed that something more than signing her name, business address, and listing her official office was required, and if Senator Chang-Díaz did not have her State House pass or Senate business cards with her, the BCSO could have easily confirmed that she was a State Senator and member of the General Court. The BCSO was able to check Senator Chang-Díaz’s Massachusetts driver’s license. It is likely that the BCSO could have confirmed her status as a member of the General Court just as easily through the internet.

2. Senator Chang-Díaz was not an attorney

In the Incident Report, Captain Douglas wrote that their initial reason for denial was because, “unless she was an attorney she wouldn’t be able to enter.” Senator Chang-Díaz was not seeking visitation as an attorney, but rather as a member of the General Court. Whether she was an attorney is not material, and not a requirement under Section 36.

3. Visitation is limited due to COVID-19

³¹ *ibid.*

³² Neither the Incident Report nor Senator Chang-Díaz indicate that she was asked to sign her name, business address and her office.

Captain Douglas also wrote in the Incident Report that “visits have been canceled for several weeks since the Covid-19 pandemic.” Further, by correspondence dated May 15, 2020, Sheriff Hodgson wrote that:

“[O]ur facility, and all other correctional facilities in Massachusetts are operating under strict COVID-19 protocols which require all non-essential visitation to be restricted so as to insure the safety of both inmates and staff. This authority is contained at G.L. c. 127, § 37, which give the superintendent authority to restrict any visitations that are injurious to the best interests of the institution.”³³

The Committee recognizes the importance of establishing new standards for visitation during an unprecedented health concern such as COVID-19, and acknowledges that BCSO began their implementation of visitation changes on March 13, 2020. On May 2, 2020 the BCSO was continuing to operate under “Temporary Procedural Changes”, which suspended in-person inmate visitation and required all staff, attorneys, clergy and approved vendors to enter the facility after completing a “Pre-Screening” to check for COVID-19 symptoms.^{34 35 36} The ability to implement these restrictions are consistent with powers granted to superintendents under Chapter 127.

Section 37 of Chapter 127 does give the superintendent of a correctional facility the power to refuse admission to a person “having a permit” to enter a facility, if in the superintendent’s opinion, such admission would be injurious to the best interests of the institution.³⁷ Other limitations on visitation are explicitly permitted in statute. For instance, visitation of an inmate by an attorney can be limited to such times and circumstances as may be established under rules

³³ Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15, 2020). Appendix B.

³⁴ Souza, Steven J. RE: Coronavirus Pre-screening at Security Reception. March 13, 2020. “In Accordance with the Sheriff’s Memo regarding Attorney and Clergy Visits being allowed. The following Pre-Screening will be done prior to allowing them to visit.

All Attorney and Clergy will be asked the following:

- Have you traveled abroad or been in contact with someone who has in the last fourteen (14) Days?
- Are you feeling sick with Fever or Flu like symptoms (cough and/or sore throat)
- Have you had a fever greater than 100.4?
- Do you have a cough or shortness of breath?
- Have you had any contact with anyone with known Coronavirus?”

Provided by the Massachusetts Sheriffs Association, in collaboration with Bristol County Sheriff’s Office. Appendix H.

³⁵ Hodgson, Thomas M. RE: Temporary Procedural Changes – Extended. April 27, 2020. “Unfortunately, our target date of April 30, 2020 to reinstate visits for our inmates, prisoners, and detainees is extended to May 15, 2020, due to the serious impacts of COVID-19 in Massachusetts. Appendix H.

³⁶ Souza, Steven J. RE: Updated Staff Coronavirus Pre-screening at Security Reception. March 27, 2020. “Effective today March 24, 2020 **ALL STAFF** (BCSO, CPS, ADCARE) in addition to any Attorney, Clergy or approved vendors will now be required to have a Pre-Screening done at Security Reception prior to being allowed into the facility.” Appendix H.

³⁷ G.L. c. 127, §37. “The superintendent of each correctional institution shall cause a record to be kept of the names and residences of all visitors, which record shall always be open to the commissioner, and may refuse admission to a person having a permit if in his opinion such admission would be injurious to the best interests of the institution, but such superintendent shall forthwith report such refusal to the commissioner.”

promulgated by the commissioner.³⁸ Similarly, members of the clergy seeking to visit an inmate must follow established rules.³⁹ Visitation of these individuals was duly limited by BCSO through the COVID-19 protocols in place on May 2, 2020. In addition, Section 36C of Chapter 127 permits reasonable limitation of in-person visits with inmates, defines an unreasonable limit, permits video communication within the facility between an inmate and a visitor, and, importantly for this analysis, permits the temporary suspension of visitation privileges.⁴⁰

While Sections 36A, 36B, 36C and 37 of Chapter 127 make it clear that in some instances, setting limitations on or denying visitation is within the power of the superintendent of a correctional facility, this general authority simply does not grant the superintendent authority to dispense with the statutory power of a member of the legislature under Section 36. Section 36 grants members of the Massachusetts legislature an absolute privilege to enter the premises of a correctional institution, jail, or house of correction.

Had the legislature intended in any way to limit the ability of the officials listed in Section 36 of Chapter 127 to visit a facility, or to grant a superintendent, sheriff or other person responsible for the operation of the facility the ability to limit visitation by such officials in any way, it would have explicitly provided so in statute. It did not. The granting of authority to a superintendent, sheriff, or other person cannot be implied when viewed in the context of the broader statutory framework and similar enactments relating to visitation of correctional facilities.⁴¹ The discretion granted to the superintendent in Section 37 must yield to the express statutory scheme in Section 36, as the general authority of the superintendent to limit entry of those “having a permit” cannot

³⁸G.L. c. 127, §36A. “The superintendent shall not abridge the right of an inmate of any correctional or penal institution in the commonwealth to confer with any attorney at law engaged or designated by him, and such attorney may visit such inmate at such times as may be established under rules promulgated by the commissioner.”

³⁹ G.L. c. 127, §36B. “The superintendent shall not abridge the right of an inmate of any correctional or penal institution in the commonwealth to confer with any accredited member of the clergy of said inmate’s choice. Said clergy may visit inmates at such times and under such conditions as may be established under rules promulgated by the commissioner.”

⁴⁰G.L. c. 127, §36C. “A correctional institution, jail or house of correction shall not: (i) prohibit, eliminate or unreasonably limit in-person visitation of inmates; or (ii) coerce, compel or otherwise pressure an inmate to forego or limit in-person visitation. For the purposes of this section, to unreasonably limit in-person visitation of inmates shall include, but not be limited to, providing an eligible inmate fewer than 2 opportunities for in-person visitation during any 7-day period.

A correctional institution, jail or house of correction may use video or other types of electronic devices for inmate communication with visitors; provided, that such communications shall be in addition to and shall not replace in-person visitation, as prescribed in this section.

Nothing in this section shall prohibit the temporary suspension of visitation privileges for good cause including, but not limited to, misbehavior or during a bonafide emergency.

⁴¹ See, Bellalta v. Zoning Bd. of Appeals of Brookline, 481 Mass. 372, 378 (2019). “We also consider a statute within the context of the broader statutory framework, including prior versions of the same statute and similar enactments.” See also, Souza v. Registrar of Motor Vehicles, 462 Mass. 227, 229–230 (2012), Commonwealth v. Galvin, 388 Mass. 326, 330 (1983), quoting Beeler v. Downey, 387 Mass. 609, 616 (1982), “[W]here the legislature has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present.”

be read to limit the broad authority of legislators to enter the premises without permit or other approval.

The plain language of Section 36 does not provide for any limitation on entry by legislators. There is no ambiguity in the language of Section 36 to suggest that there may be a situation in which a limit on legislator's authority to enter the facility without prior approval may be appropriate. Thus, under Section 36, neither a superintendent, sheriff, nor any employee of BCSO had the ability or authority to deny Senator Chang-Díaz's request to visit BCHC on the basis that they were operating under strict COVID-19 protocols and that allowing her to visit would put inmates and staff at risk, or otherwise be injurious to the institution.

Beyond lacking the statutory authority to deny the visit of Senator Chang-Díaz, it is clear that the BCSO could have made accommodations to admit her and still ensure the safety of inmates and staff. They could have afforded her the opportunity to comply with the COVID-19 pre-screening protocols, but they did not. Had she been afforded the opportunity, and complied with the protocols, then she would have posed no greater risk than an attorney or clergy who complied with the protocols. Further, on the same morning, at approximately the time as Senator Chang-Díaz appeared seeking to visit the BCHC, the BCSO was admitting members of the press for a press conference relating to the incident of May 1, 2020.^{42 43} Press admittance is similarly not addressed in the "Temporary Procedural Changes". If several members of the press could visit presumably without threatening the safety of inmates and staff, then so too could Senator Chang-Díaz have been safely admitted.⁴⁴

4. Section 36 of Chapter 127 does not apply to ICE facilities

In his May 15, 2020 letter, Sheriff Hodgson claims that Section 36 of Chapter 127 does not apply to, "ICE detention facilities which are under the control of the federal government", using this assertion as a reason for denying admission to Senator Chang-Díaz.⁴⁵ However, nothing in the agreements between the BCSO and ICE supports this position. Nothing in the existing practices of oversight into correctional facilities cedes control to ICE when a Detention Center is located

⁴² Email from Jonathan Darling, May 1, 2020 9:55PM. "Sheriff Hodgson will take questions at a press conference Saturday morning, May 2, at 11 a.m. at the ICE facility at the Bristol County Sheriff's Office correctional complex in Dartmouth (400 Faunce Corner Road, Dartmouth, MA 02747) where the incident occurred. The media will be allowed inside the facility to photograph and report on the damage caused. Credentialed media are welcome to attend. Contact me with any questions". Appendix E.

⁴³ Media Advisory: Bristol County ICE Detainees Refuse COVID Testing, Trash Housing Unit. Press Release, Bristol County Sheriff's Office (May 1, 2020).

⁴⁴ In his May 26, 2020 letter, Sheriff Hodgson questions the intent of Senator Chang-Díaz for visiting the BCHC, asserting that her action was a "premeditated and staged political stunt," and that she sought to visit "to advance her well-known anti-ICE agenda." It is important to note that Senator Chang-Díaz did not show up with press, but arrived by herself, unannounced. The Committee finds no relevance to ascribing alleged motives to a statutorily-permitted visitor. Appendix C.

⁴⁵ Letter from Sheriff Thomas Hodgson to John F. Keenan (May 15, 2020). Appendix B.

within a House of Correction, and the BCSO's own visitation policy explicitly provides that it governs visits to the Detention Center.

The MOA between the BCSO and ICE authorizes the BCSO to perform immigration functions, and is authorized under Section 287(g) of the Immigration and Nationality Act.⁴⁶ ⁴⁷ The IGSA between BCSO and ICE enables the BCSO to house federal detainees for immigration purposes for a reimbursable fee.⁴⁸

The MOA sets forth the terms and conditions pursuant to which BCSO personnel are nominated, trained, and approved by ICE to perform certain functions of an immigration officer within the BCSO's facilities. These functions include the power and authority to interrogate detainees, serve arrest warrants, administer oaths, prepare charging documents, transport detainees and process immigration violations for those who have been arrested for violating a Federal, State or local offense. BCSO personnel are treated as Federal employees only for the purposes of Federal Tort Claims and worker's compensation claims and only when performing a function on behalf of ICE as authorized by the MOA. The MOA additionally states that:

For purposes of this MOA, ICE officers will provide supervision of participating LEA (Law Enforcement Agency) Personnel only to immigration enforcement functions as authorized in this MOA. The LEA retains supervision of all other aspects of employment of and performance of duties by participating LEA personnel.⁴⁹ (clarification added)

The IGSA between ICE and BCSO outlines the services to be provided by, and reimbursed to, BCSO for the care of federal ICE detainees.

Article XV of the IGSA dictates what circumstances the federal government is held harmless:

The Service Provider shall save and hold harmless and indemnify federal government agencies to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the tenets of this Agreement, resulting from the negligent acts or omissions of the Service Provider, or any employee, or agent of the Service Provider. In so agreeing, the Service Provider does

⁴⁶ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g) to the Immigration and Nationality Act. Section 287(g) enables ICE to enter into agreements with state and local law enforcement agencies. The model employed by BCSO is the "Jail Enforcement Model", which authorizes local law enforcement agencies to perform immigration functions set forth by a Memorandum

⁴⁷ <https://www.ice.gov/287g>

⁴⁸ Intergovernmental Service Agreement between the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement Office of Detention and Removal and Bristol County Sheriff's Office (September 27, 2007), and Memorandum of Agreement (February 8, 2017) and Addendum to Extend Memorandum of Agreement (May 16, 2019)

⁴⁹ https://www.ice.gov/doclib/287gMOA/287gJEM_BristolCoMA_06-08-2020.pdf

not waive any defenses, immunities or limits of liability available to it under state or federal law.

It is clear that MOA and the IGSA between the BCSO and ICE addresses the hiring and training of the BCSO officers who perform certain immigration functions, but specifically leaves to the BCSO the supervision, and all other aspects of employment and performance of those BCSO employees. Further, the IGSA requires the BCSO to hold ICE harmless for any actions arising out the terms of the IGSA. At the time of the incident, the Detention Center was under the control of the BCSO. While the Detention Center is owned and operated by the BCSO and is subject to the MOA and an IGSA, nothing in the agreements cedes oversight and control of visitation to ICE.

Further, it is established by practice, and demonstrated by recent reports, that the Massachusetts Department of Public Health has certain oversight jurisdiction, and the Office of the State Auditor has certain audit jurisdiction, of the Detention Center.^{50 51} It is clear that state oversight responsibilities are not ceded to ICE.

Finally, while the Sheriff asserts that Section 36 does not apply to ICE facilities, BCSO's own "Inmate Visits" policy explicitly states it applies to the Detention Center.⁵² The policy provides that the purpose of the document is to "establish general procedures regarding the facilitation of inmate visits and the expected behavior and actions of inmates and their visitors throughout the visitation process." In this document, an inmate is defined as "any person who is incarcerated, ***detained***, or held within a Bristol County correctional facility, ***including the ICE Detention Center*** [emphasis added]." ⁵³ By the terms of the policy, it governs visitation of those detained in the Detention Center. Further, the policy sets forth what is required of those visiting inmates, including ICE detainees. For instance, adult visitors must complete an application and verify their identity by providing at least one current and valid government issued photo ID card, such as a driver's license; however, in Section 20.01.06 B. and as previously stated, the policy specifically provides that a member of the General Court is exempt from these procedures. The language of this policy essentially mirrors that of Section 36.

Nothing in the MOA, the IGSA, Section (287(g)) of the Immigration and Nationality Act or in the state practice of oversight of the BCSO facilities suggests any limitations to state laws

⁵⁰ The Massachusetts Department of Public Health (DPH) recently investigated sanitation and infection control at Bristol County House of Correction and considered the C. Carlos Carreiro Detention Center within the purview of its investigation. Its jurisdiction was not challenged. <https://www.mass.gov/doc/bristol-county-jail-and-house-of-correction-north-dartmouth-june-25-2020/download>

⁵¹ The Massachusetts Office of the State Auditor conducted a performance audit of BCSO in accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, including their service agreement with ICE. Its jurisdiction was not challenged. <https://www.mass.gov/audit/audit-of-the-bristol-county-sheriffs-office>

⁵² Bristol County Sheriff's Office 20.01.00 Inmate Visits, Purpose section, "The purpose of this document is to establish general procedures regarding the facilitation of inmate visits and the expected behavior and actions of inmates and their visitors throughout the visitation process." Appendix E.

⁵³ Ibid.

regarding visitation to the facilities of the BCSO, including the Detention Center. To the contrary, the BCSO's visitation policy explicitly provides that it applies to such visits. Sheriff Hodgson's assertion that Senator Chang-Díaz could not visit the Detention Center under authority of Section 36 is without merit.

VII. FINDINGS

A. The Committee makes the following findings:

1. Senator Chang-Díaz appeared at the BCSO, identified herself, had her personal identity confirmed, sought entry to the premises and facilities as a member of the legislature, and asserted that she had the right to enter the BCHC as a State Senator, a member of the General Court, under the Massachusetts General Laws.
2. The plain language of Section 36 of Chapter 127 demonstrates the clear and unambiguous intent of the legislature to grant the right of those officials listed in the statute to visit correctional institutions, jails and houses of correction, without permission and without limitation. The right is absolute.
3. The spontaneity of visits for oversight of correctional institutions, jails and houses of correction is an important use of Section 36.
4. The visitation policy of the BCSO is consistent with Section 36.
5. The BCSO's visitation policy provides that a person exempt under Section 36 is exempt from the BCSO's visitation policies and procedures, and that such persons do not require permission to enter the BCSO, and need only sign the person's name and provide, in writing, the person's business address and the office which brings the person to the facility in order to enter.
6. Senator Chang-Díaz was capable of, but not afforded the opportunity to, comply with the requirement of the BCSO's visitation policy, i.e. sign her name, and provide in writing her business address and the office she held.
7. There was no basis for the BCSO to deny Senator Chang-Díaz the opportunity to comply with the requirement of the BCSO's visitation policy.
8. The BCSO could have confirmed the office held by Senator Chang-Díaz, as well as her business address, but did not.
9. There was no basis for the BCSO to deny Senator Chang-Díaz's visitation request on the grounds that they could not confirm her identity.
10. There was no basis for the BCSO to deny Senator Chang-Díaz's visitation request on the basis that she was not an attorney.
11. As with attorneys and clergy, and with the press, accommodations could have been made to admit Senator Chang-Díaz and still ensure the safety of inmates and staff.
12. The assertion of the BCSO that they were operating under strict COVID-19 protocols and that allowing Senator Chang-Díaz to visit would put inmates and staff at risk, or

otherwise be injurious to the institution, is without merit, given members of the press were granted admission shortly after the Senator's denial.

13. Section 37 of Chapter 127 of the General Laws does not give the BCSO the authority to deny Senator Chang-Díaz's visitation request.
14. Nothing in the MOA, the IGSA, Section (287(g)) of the Immigration and Nationality Act or in the state practice of oversight of the BCSO facilities suggests any limitations on state laws regarding visitation to the facilities of the BCSO, including the Detention Center.
15. The BCSO's visitation policy explicitly provides that it applies to visits to the Detention Center where ICE detainees were housed.

VIII. RECOMMENDATION

The BCSO was in violation of both established Massachusetts General Law and its own visitation policies and procedures when they denied admission of Senator Chang-Díaz. The Committee urges the BCSO to ensure proper adherence to and interpretation of their own policies, procedures and all relevant general laws governing their operations and oversight.

The Committee recognizes that the desire of a correctional facility to request additional confirmation of the identity of a person seeking to visit under the exemption provisions of Section 36 is reasonable, i.e. requiring something other than the signature, business address, and the visitor's office, especially when unannounced and during a time of heightened security risk. The Committee believes, however, that requiring additional obligations of an official would be contrary to Section 36 of Chapter 127 and may prevent an official from carrying out their statutory right to oversight of correctional facilities.

A. The Committee makes the following recommendation:

1. In cases where the facility has any doubt as to the identity of a person seeking to visit a correctional facility under the exemption provisions of Section 36, it shall be the affirmative obligation of the facility to confirm the identity of the person in a timely manner by conducting a common internet search. The failure to confirm the identity of the person in such manner shall not result in denying the visitation, but rather prompt additional security during the time of the visitation to ensure the safety of the inmates and staff of the facility, as well as that of the person requesting visitation.

IX. CONCLUSION

Section 36 of Chapter 127 grants an absolute right to those officials listed in the statute to visit correctional institutions, jails and houses of correction without permission. The Committee found that the BCSO had no reasonable basis for the denial of entry to Senator Chang-Díaz. The Committee finds that the actions of the BCSO in denying the request of Senator Sonia-Chang

Díaz to visit the BCHC and Detention Center were in clear violation of both Section 36 of Chapter 127 of the General Laws and the policies and procedures established by the BCSO.

The ability to visit correctional facilities unannounced, and without limitation, allows officials to conduct oversight of correctional institutions, jails and houses of correction. This oversight is especially critical when unprecedented operational adjustments are being made within a facility, as they are currently to respond to the threat of COVID-19.

The improper denial of Senator Chang-Díaz refused both the Senator and the Commonwealth of the opportunity to perform oversight into the conduct, conditions and operations of the BCSO after a significant disturbance occurred within the BCHC, as detailed in the report released by Attorney General Healey. While no immediate avenues of recourse were available to Senator Chang-Díaz in the moments following her denial of entry, and while the Committee cannot know what she may have learned if her admission had been granted, the Committee believes it is imperative to prevent such violations of established laws and policies in the future.

The BCSO needs only to follow their own policies and procedures to prevent and respond to violations of Section 36 of Chapter 127. Because Section 36 does not prescribe penalties for its violation, and given the Commonwealth's unique correctional system, with state correctional facilities overseen by the Executive Office of Public Safety and Security and county correctional facilities under the supervision of elected sheriffs, the Committee is limited in its ability to recommend formal next steps or take formal action. The autonomy of county sheriffs under this system underscores the importance of the adherence by a sheriff's office to clearly defined statutes like Section 36, that outline the existing limitations of a sheriff's power and the absolute right to the oversight of facilities by those officials listed in Section 36. The Committee urges the BCSO to ensure proper compliance of their own policies and procedures and to the laws governing their operations and oversight.

Respectfully submitted,

Senator John F. Keenan, Chair

Senator Paul R. Feeney, Vice Chair

Senator Anne M. Gobi

Senator James B. Eldridge

Senator Joanne M. Comerford

Senator Michael O. Moore



The Commonwealth of Massachusetts

State Senate

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STATE SENATOR

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December 18, 2020

Honorable John F. Keenan, Chair
Senate Committee on Post Audit and Oversight
State House, Room 413-F
Boston, MA 02133

Chairman Keenan, Vice Chair Feeney, and Distinguished Members of the Committee:

We are respectfully submitting the following statement in accompaniment to our no votes on the **Report of the Senate Committee on Post Audit and Oversight Concerning a Visit to the Bristol County House of Corrections by a Member of the Massachusetts State Senate on May 2, 2020:**

“After a thorough review of the Committee’s report regarding the May 2, 2020 incident at the Bristol County House of Corrections, we agree with the report’s findings that Senator Sonia Chang-Diaz should have been allowed entry to the Bristol County House of Corrections, with a caveat:

An initial reading of Section 36 of Chapter 127 of the General Laws provides that, at any time, a member of the Massachusetts Legislature may enter a correctional facility. This law does not necessitate reason or purpose of said visit. However, we believe the circumstances of the Covid-19 pandemic engenders more nuanced considerations.

In light of this, a sense of reasoned respect and prudence of all elected officials involved, rising above the fray during this pandemic could have saved time and resources for this Committee.

This unfortunate situation is one filled with problematic, complex details that impact the

judgment at hand where a reasonable person can find blame all around. Under normal circumstances, a member of the legislature should have been allowed inside the facility by the rights given to the Legislature through Section 36 of Chapter 127 of the General Laws. But we also believe that judgment regarding the current global health crisis should have prevented this situation from the start. Given that the “Stay at Home Advisory” was in effect on May 2, a quick recall points out that this is 16 days prior to phase one of the reopening plan, all residents of the Commonwealth—elected or not—should have been out only for essential reasons. Perhaps this visit was essential, perhaps it was not. Perhaps there were political considerations all around. Irrespective, we feel strongly that ultimately this committee is designed to evaluate decisions, actions, and situations that impact the Commonwealth, and we believe there are a great number of issues worth investigating that would better serve the Commonwealth and the time and ability of this Committee and its members.”

Thank you for your work and the work of your staff on this report. Please don't hesitate to contact either of our offices should you have any questions or require any additional information.

Sincerely,



Senator Ryan C. Fattman
Worcester & Norfolk



Senator Dean A. Tran
Worcester & Middlesex


Exhibit B



Sheriff Thomas Hodgson @SheriffHodgson · Dec 21

...

The Senate Post Audit and Oversight investigation into why Sen. Chang-Diaz was not allowed to roam around the jail during a pandemic was a sham. Sen. Chang-Diaz and the Senate owe an apology to our corrections team and to the people of Mass. My response to last week's report:



THE COMMONWEALTH OF MASSACHUSETTS
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BRISTOL COUNTY SHERIFF

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THOMAS M. HODGSON
SHERIFF

Sheriff Thomas Hodgson's statement on Sen. Chang-Diaz and the Senate Committee on Post Audit report

Massachusetts General Law Chapter 127 Section 37: "The superintendent of each correctional institution shall cause a record to be kept of the names and residences of all visitors, which record shall always be open to the commissioner, and may refuse admission to a person having a permit if in his opinion such admission would be injurious to the best interests of the institution, but such superintendent shall forthwith report such refusal to the commissioner."

Massachusetts correctional facilities, including those run by Sheriffs and those by the Department of Corrections, are subject to unannounced visits from members of the state Legislature, who lawfully are allowed to enter and stroll around any jail or prison at any time.

It's the power they grant themselves as lawmakers without restriction or regard for the safety and security of our staff or inmates.

But the power is not absolute. As stated above, MGL Chapter 127, Section 37 specifically states that admission can be refused if it compromises the safety and security of the institution. It's common sense really. Lawmakers can and do visit correctional facilities at their will, but if there's an emergency or dangerous situation, they can be turned away for the safety of inmates, staff and the lawmaker themselves.

A dangerous situation such as a global pandemic. Or the morning after a violent encounter with criminal illegal aliens. The climate within a correctional facility is sensitive and subject to problems by politically motivated and uninformed actions by outsiders.

Sen. Sonia Chang-Diaz, who represents the Boston area, showed up at the Bristol County House of Corrections on the morning of May 2 (during a state-wide stay-at-home advisory limiting travel to essential business only) and demanded to be allowed inside the jail to walk around and talk to inmates and ICE detainees. No other legislator, including any from Bristol County, felt the need or urgency to visit.

Her request was rejected for the safety and security of the correctional institution, coupled with the fact that she failed to provide any documents proving she was a member of the General Court. Violation had

Post Audit and Oversight opened an investigation and spent the last nine months probing why Sen. Chang-Diaz was not allowed inside the jail.

If you had any doubts about whether launching this investigation was politically motivated, you may not be aware that the same committee has conducted roughly four audits since 2015 and didn't investigate a DOC disturbance earlier this year in which several officers were injured. Keep in mind that our response to the ICE detainees' violent uprising was having 24 of them restrained in flex cuffs within 90 seconds and lined up outside within five minutes. No officer or detainee was injured during the extraction. But this committee had to take nine months to investigate why a senator's ego was bruised.

Still not sold that this was a politically motivated stunt? Sen. Chang-Diaz was asked if she had any documents that proved she was a member of the General Court, and she replied that she did not, even though she allegedly had business cards and her State House ID in her vehicle. Her intention was never to go inside and check on the conditions or what have you. Her intention was to get denied, complain about it on Beacon Hill and on Twitter, and get some cheap headlines and media attention.

Mission accomplished, Sen. Chang-Diaz. Congratulations.

Small businesses, the lucky ones who have survived this pandemic, are suffering. Massachusetts residents are hurting. Many have died. Many are sick. Yet for the past nine months, your elected lawmakers have been spending their time and money on why Sen. Chang-Diaz was not allowed to roam around a jail in the middle of a pandemic.

How much time and money was spent on this sham investigation when the pandemic was crippling our Commonwealth? Wouldn't that time had been better spent digging down for solutions to lift our state back into prosperity?

The Bristol County Sheriff's Office has back-to-back 100% scores on its last two National Accreditation audits as we strive for excellence on every shift every day. Sen. Chang-Diaz and the Senate itself owe an apology to not only the corrections professionals at the Bristol County Sheriff's Office, but also to the people of the Commonwealth.

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THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE

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Sheriff Thomas Hodgson's statement on Sen. Chang-Diaz and the Senate Committee on Post Audit report

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Sen. Sonia Chang-Diaz, who represents the Boston area, showed up at the Bristol County House of Corrections on the morning of May 2 (during a state-wide stay-at-home advisory limiting travel to essential business only) and demanded to be allowed inside the jail to walk around and talk to inmates and ICE detainees. No other legislator, including any from Bristol County, felt the need or urgency to visit.

Her request was rejected for the safety and security of the correctional institution, coupled with the fact that she failed to provide any documents proving she was a member of the General Court. Visitation had been suspended at the Dartmouth jail for months prior in efforts to keep COVID-19 out of the facility. Allowing non-essential individuals, such as Sen. Chang-Diaz, to roam around to the jail presented and still presents significant risk to our inmates and staff, especially if she was COVID positive but

asymptomatic. And keep in mind that we don't have tour guides on our payroll waiting for some member of the Legislature to show up unannounced for a tour. By any measure, her expectation to have staff pulled from their assignment following a disturbance and during a COVID-19 lockdown for a tour indicates how little the senator knows about the complexities and dangers my staff deals with on a day-to-day basis.

Sen. Chang-Diaz then returned to Boston and arrogantly complained about the rejection to the Mass. Senate, which opened an investigation into why the entitled lawmaker was denied entry. Despite providing them with the section of the law at the top of this correspondence, the Senate Committee on Post Audit and Oversight opened an investigation and spent the last nine months probing why Sen. Chang-Diaz was not allowed inside the jail.

If you had any doubts about whether launching this investigation was politically motivated, you may not be aware that the same committee has conducted roughly four audits since 2015 and didn't investigate a DOC disturbance earlier this year in which several officers were injured. Keep in mind that our response to the ICE detainees' violent uprising was having 24 of them restrained in flex cuffs within 90 seconds and lined up outside within five minutes. No officer or detainee was injured during the extraction. But this committee had to take nine months to investigate why a senator's ego was bruised.

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Small businesses, the lucky ones who have survived this pandemic, are suffering. Massachusetts residents are hurting. Many have died. Many are sick. Yet for the past nine months, your elected lawmakers have been spending their time and money on why Sen. Chang-Diaz was not allowed to roam around a jail in the middle of a pandemic.

How much time and money was spent on this sham investigation when the pandemic was crippling our Commonwealth? Wouldn't that time had been better spent digging down for solutions to lift our state back into prosperity?

The Bristol County Sheriff's Office has back-to-back 100% scores on its last two National Accreditation audits as we strive for excellence on every shift every day. Sen. Chang-Diaz and the Senate itself owe an apology to not only the corrections professionals at the Bristol County Sheriff's Office, but also to the people of the Commonwealth.