ATTACHMENT G

July 28, 2022

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Sections 26, 71, 72, 177, 188 and 191 of House Bill No. 5050, “An Act Making Appropriations for the Fiscal Year 2023 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

These sections require the DOC and Sheriffs to provide voice communication services at

no cost to inmates placing outgoing calls from their facilities or to any parties receiving the calls. The sections also prohibit all state and county correctional facilities from charging more than 3% over the facility’s purchase price for commissary items. They further require commissary offerings to include gender-affirming items and culturally appropriate items for all communities in custody.

The very same week in which the Legislature enacted these provisions into law, the Legislature ignored the voices of crime victims and sent the dangerousness bill I filed earlier this session, H.4290, to study. That order is effectively a complete rejection of the bill. Then, the House and Senate Chairs of the Judiciary Committee dismissed as a political stunt the courage of these brave victims in appearing in person at the State House to share their stories. Providing free phone calls, a benefit our state government provides to no one else, to inmates while dismissing the pleas of victims of crime is contrary to the traditions of, and frankly beneath the dignity of, the Massachusetts Legislature.

The amendments I propose below would insert the most important provisions from the dangerousness bill into the General Appropriations Act. We have heard reports that the Legislature may be interested in passing a compromise bill and have tailored this proposal to focus on the most pressing provisions of this bill. These key provisions follow the spirit of my original bill by providing stronger protections to those who have been victimized by violence and abuse. They would also cure several significant drafting problems in the enacted sections providing free phone calls to inmates.

Throughout my Administration, I have partnered with the Legislature in re-imagining the Commonwealth’s approach to criminal justice. The criminal justice reform bills that were enacted in 2018, Chapters 69 and 72 of the Acts of 2018, and the police certification and standards bill which created the Peace Officer Standards and Training Commission, Chapter 253 of the Acts of 2020, are the most recent examples of that impulse to reform. In this very budget, I am proud that the Legislature enacted the sections we proposed in our House 2 budget to eliminate the imposition of supervision fees on parolees and probationers. I am hopeful, therefore, that on further consideration the Legislature will adopt the key provisions from my earlier filed dangerousness bill I am proposing below and not simply return to me the enacted sections providing free phone calls to prisoners.

Accordingly, I hereby recommend that the bill be amended by striking out Section 26 and inserting in place thereof the following section:-

SECTION 26. Section 2ZZZZZ of said chapter 29 is hereby repealed.

And further amend the bill by striking out Sections 71 and 72 and inserting in place thereof the following 2 sections:-

SECTION 71. Said chapter 127 is hereby further amended by inserting after section 87 the following section:-

Section 87A. (a) For the purposes of this section, the terms “state correctional facilities”, “state prison” and “county correctional facility” shall have the same meanings as in section 1 of chapter 125.

(b) The department of correction and sheriffs shall provide persons committed to state correctional facilities, state prisons and county correctional facilities, including jails and houses of correction, with voice communication services, including phone calls, free of charge to the person initiating and the person receiving the communication; provided, however, that voice communication services shall be maximized to the extent operationally feasible and nothing in this section shall further limit or restrict access to voice communication services as the services were offered and available at such facilities on July 1, 2022; and provided further, that nothing in this section shall prohibit in-person contact visits.

(c) The department of correction and sheriffs may supplement voice communication services with other communication services, including, but not limited to, video and electronic communication services; provided, however, that other communication services shall not replace voice communication services; and provided further, that other communication services shall be provided free of charge to the person initiating and the person receiving the communication.

SECTION 72. Said chapter 127 is hereby further amended by adding the following section:-

Section 170. (a) For the purposes of this section, the terms “county correctional facility”, “state correctional facility” and “state prison” shall have the same meanings as in section 1 of chapter 125.

(b) State correctional facilities, state prisons, and county correctional facilities shall not charge more than 3 per cent over the contracted-for cost for commissary items; provided, however, that entities contracting with such facilities may charge for commissary items at their contracted rate. The department of correction and county sheriffs shall maximize discounts procured from bulk purchasing of commissary items or other contracting opportunities that reduce the cost of such items and shall not receive commissions, revenue or other financial incentives in any contract with a seller, supplier or vendor of commissary items. Commissary items offered shall include gender affirming items, consistent with section 32A, and culturally appropriate items for all communities in custody

And further amend the bill by inserting after section 103 the following 5 sections:

SECTION 103A. Chapter 268 of the General Laws, as so appearing, is hereby amended by inserting after section 13E the following section:-

Section 13F. Whoever unlawfully removes, destroys, damages, or interferes with the proper functioning of a geolocation monitoring device, breath-testing instrument, or other mechanism intended to facilitate recognizance or compliance with conditions of pretrial release, probation or parole, shall be punished by imprisonment in the state prison for not more than 10 years or imprisonment in a house of correction for not more than 2 and ½ years. In any proceeding under section 57, 58, 58A, or 58B of chapter 276, the fact of a person’s prior conviction pursuant to this section shall be prima facie evidence that there is no financial condition or other condition of release that will reasonably assure the presence of the person so convicted.

SECTION 103B. Section 58A of said chapter 276, as so appearing, is hereby amended by striking subsection (1) and inserting in place thereof the following subsection:- (1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions when a person has been charged with any of the following offenses:

(A) a felony that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another;

(B) the offenses of burglary or arson;

(C) a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 3B, 3C, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

(D) a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A;

(E) a sex offense involving a child as defined in section 178C of chapter 6;

(F) a violation of section 13B of chapter 268;

(G) a violation of section 13, 13 ½, 13B, 13B ½, 13 B ¾, 13F, 13M, 15D, 18B, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 25, 26B, 26C, 37, 43A, 50 or 51 of chapter 265 or a violation of section 13D of said chapter 265 in which the public employee is a police officer;

(H) a violation of section 4A, 4B, 16, 29A, 29B, 29C, 77, 94 or 105 of chapter 272;

(I) a violation of section 24G of chapter 90 which occurs under the influence of alcohol or drugs, or a violation of section 8B of chapter 90B; or a third or subsequent violation of section 24 of chapter 90 or section 8 of chapter 90B;

(J) an offense under chapter 94C for which the maximum term of imprisonment is more than 10 years;

(K) any violation of sections 102 or 102A, or a malicious violation of section 127 of chapter 266;

(L) a violation of section 131N of chapter 140 or subsection (a), (b), (c), (d), (h), (j) or (m) of section 10 or section 11C of chapter 269;

(M) a violation of section 10A, 10E, or 10G of chapter 269;

(N) threats to kill, rape, or cause serious bodily injury; or

(O) conspiracy or solicitation to commit any of the above enumerated offenses.

SECTION 103C. Said section 58A of said chapter 276, as so appearing, is hereby further amended by striking out, in lines 102 to 108, the second sentence of subsection (3) and inserting in place thereof the following two sentences:- A person detained under this subsection shall be detained until the disposition of the case; provided that the person shall be entitled to a speedy trial and shall be brought to trial as soon as reasonably possible and in any case within the time limit mandated pursuant to Massachusetts Rules of Criminal Procedure Rule 36 (b); and further provided that the person’s case shall be given priority over other cases, as required by Massachusetts Rules of Criminal Procedure Rule 36(a)(1). Nothing in this section shall be construed as modifying or limiting the requirements and provisions of Massachusetts Rules of Criminal Procedure Rule 36.

SECTION 103D. Said section 58A of said chapter 276, as so appearing, is hereby further amended by striking out, in lines 113-to 124, the first four sentences of subsection (4) and inserting in place thereof the following five sentences:-

(4) When a person is charged with an offense listed in subsection (1) and upon a motion by the commonwealth, the judge shall hold a hearing to determine whether conditions of release will reasonably assure the safety of any other person or the community.

If the commonwealth moves for a hearing at the time of arraignment, the hearing shall be held immediately upon the person's first appearance before the court unless that person, or the attorney for the commonwealth, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed seven days, and a continuance on motion of the attorney for the commonwealth may not exceed three business days. During a continuance, the individual shall be detained upon a showing that there existed probable cause to arrest the person.

If the attorney for the commonwealth files a motion seeking to detain the person under this section at any time after the time of arraignment or the person’s first appearance before the court, the court shall order that the hearing shall occur as soon as possible and within the time periods and as otherwise set forth in this section.

SECTION 103E. Said chapter 276 is hereby further amended by inserting after section 58B the following section:-

Section 58C. No person who has attained the age of 18 years and who has been charged with any act that would constitute abuse, as defined in section 1 of chapter 209A, or a violation of sections 13M or 15D of chapter 265, or any offense enumerated in subsection 1 of section 58A that involves an identified victim shall be admitted to bail before the alleged victim is notified of the person’s imminent release; provided, however, that the person charged shall not be held more than 6 hours in order to permit prior notice to the alleged victim.

When a person so charged is to be released from the custody of a police department, such notice shall be provided by the police department. When a person so charged is to be released from a courthouse, such notice shall be provided by the commonwealth. When a person so charged is to be released from a jail or correctional facility, such notice shall be provided by the superintendent or superintendent’s designee. The person or agency responsible for providing notice shall undertake to provide notice promptly.

And further amend the bill by striking out Section 177 and inserting in place thereof the following section:-

SECTION 177. (a) Notwithstanding any general or special law to the contrary, no voice communication services contract in force on the effective date of this act shall be affected by section 71; provided, that voice communication services shall be free of charge to the person initiating and the person receiving the communication on or after January 1, 2023; provided further, that other communication services offered pursuant to said section 71, including, but not limited to, video and electronic communication services shall be offered free of charge to the person initiating and the person receiving the communication on or after January 1, 2023.

(b) Notwithstanding any general or special law to the contrary, upon the expiration of any contract for voice communication services the department of corrections and the sheriffs shall seek to maximize purchasing power and consolidate contracts to the extent feasible; provided, that not later than July 1, 2023, the department of correction and the sheriffs shall report to the house and senate committees on ways and means and the joint committee on the judiciary on the status of any communication services contracts and plans to consolidate contracts to maximize purchasing power for voice communication services.

(c) Notwithstanding any general or special law to the contrary any financial incentive received in connection with a voice communication services or other communication services contract, including, but not limited to a commission, shall be utilized for the purposes set forth in subsection (d).

(d) Any service, benefit or program for incarcerated people to which commissary commissions were specifically designated in fiscal year 2022 including, but not limited to, the Inmate Benefit Fund, The Law Library and the Central Program Account in the state prison system, shall be funded by the department of correction and the sheriffs at not less than the level of funding in fiscal year 2022.

And further amend the bill by striking out Section 188 and inserting in place thereof the following section:-

SECTION 188. Section 26 shall take effect on June 30, 2024.

And further amend the bill by striking out Section 191 and inserting in place thereof the following section:-

SECTION 191. Section 72 shall take effect 1 year after the effective date of this act.

Respectfully submitted,

Charles D. Baker

Governor