



DATE: July 17, 2020

TO: State Representative Aaron Michlewitz, Chair
House Ways and Means Committee
State Representative Claire Cronin, Co-Chair
Joint Committee on the Judiciary

FROM: James Durkin, Legislative Director
AFSCME Council 93

RE: SB2820 – *An Act to Reform Police Standards and Shift Resources to Build a More Fair and Just Commonwealth that Values Black Lives and Communities of Color,*

Mark Bernard
Executive Director

Charles C. Owen, Jr.
President

Chris “Tiger” Stockbridge
Vice President

Nancy Silva
Recording Secretary

Gerry Mills
Treasurer

Jack Wagner
Sgt. at Arms

On behalf of the more than 35,000 public-sector workers represented by AFSCME Council 93 in Massachusetts, I write to share our union’s perspective on SB2820, as well as our recommended amendments to the legislation.

AFSCME Council 93 is part of a national union with a long and storied history of being at the forefront of the civil rights struggle, and we are committed to supporting the advancement of long-overdue and substantive changes in law and policy aimed at ending the systemic racism, violence and oppression of African Americans and communities of color. We are also a union that proudly represents thousands of law enforcement and corrections professionals here in Massachusetts and throughout New England.

While it is our duty to represent and fight for these brave and dedicated men and women, we do so not just out of a professional responsibility, but also with a profound respect and appreciation for each one of them and the extraordinarily difficult work they do every single day.

Knowing that the overwhelming majority of these police and corrections officers are good and decent people who also want to see and be part of solutions to this crisis, we are confident that we can achieve significant and permanent progress without sacrificing their union rights or their ability to adequately protect our communities and themselves. With this in mind, we respectfully request consideration of the following as the house of representatives prepares to act on SB2820.

QUALIFIED IMMUNITY

As you are well-aware, the senate bill seeks to eliminate qualified immunity protections – not just for the people who work in law enforcement, but for all public sector workers.

During the senate’s debate on this legislation and in subsequent consultation with attorneys at Council 93 and attorneys and researchers at AFSCME International in Washington, DC, it has become clear to us that the senate’s approach to dealing with this particular issue is both too far-reaching in scope and too rushed. The qualified immunity language passed by the senate, would subject all public sector workers to lawsuits targeting their personal assets. This includes nurses and other direct care workers in state human services facilities and group homes; teachers, paraprofessionals, cafeteria workers and custodians in our public schools; 911 dispatchers; public health professionals and much more.

While the senate bill is aimed at providing individuals with the right to file suit, our long experience with anti-union, anti-public employee organizations has taught us that there are a number of well-funded organizations and individuals who would seek to abuse this law and seek to push and finance lawsuits against rank and file public employees working across the spectrum of public services in fields that are completely unrelated to the law enforcement system.

Regardless of the merits and outcome of any potential lawsuits, this provision would at a bare minimum, force public employees to expend thousands of dollars in legal fees to defend their personal assets – even if they are ultimately found not to be liable. As such, we call for striking this provision. Should the house decide to adopt any part of this provision, we urge that the adoption be accompanied by a mandate requiring public employers to indemnify these workers to protect them for all costs associated with litigation and all awarded damages.

As for calls by some to narrow the scope of this provision to specifically limit it to police officers, we oppose that approach as well. During senate debate on an amendment to further study the matter, a number of important points and questions were raised that were specifically related to the impact this provision would have on law enforcement professionals, including concerns for their personal safety. Those questions and points warrant further discussion and answers, which cannot be effectively accomplished in just a few hours of debate. As such, we strongly urge the house to give this provision the time and due consideration it deserves and ask that any legislation placed before the house for a vote go no further than the thoughtful study language in amendment #137 to SB2800, which rightly received strong bi-partisan support during senate debate.

POLICE OFFICER STANDARDS AND ACCREDITATION COMMITTEE (POSAC)

AFSCME Council 93 supports efforts to develop a statewide process for accrediting police officers however, we urge the house to proceed cautiously in this endeavor as well. Our recommendations for this section of the senate bill includes increased representation for rank and file law enforcement officers and the inclusion of a county corrections officer from Suffolk County. The senate language establishing POSAC specifically cites deputy sheriffs in defining a law enforcement officer. AFSCME Council 93 represents approximately 500 Suffolk County Corrections Officers, who are also deputy sheriffs. However, the senate bill does not include a county level representative on POSAC, thereby making these deputy sheriffs the only individuals held accountable by POSAC, who do not have a voice on the committee.

Furthermore, while we understand the need for citizen representation on this committee we strongly recommend that any training for these citizen representatives include the same training that officers receive in the academy regarding use of force. To fully understand and determine whether or not an officer's use of force was proper and justified, these citizens must have a strong understanding and knowledge of how these officers were trained to use this force. We suggest examining the model currently used in Suffolk County. In Suffolk County, all members of the internal team responsible for investigating claims of excessive use of force are required to undergo the same academy training as our corrections officers, which gives them a thorough understanding of the policies and procedures regarding the use of force and thereby equips them with the knowledge to make informed decisions – decisions that will have a lasting impact on the lives of officers and their families.

Finally, we call for a fair and equitable appeal mechanism for officers who disagree with any disciplinary action imposed by the committee. Like all public employees, law enforcement officers are entitled to due process, especially in matters that could possibly end their careers in law enforcement. Given that management has strong representation in the composition of POSAC in the senate bill, it is important that officers have access to an appeal process before an independent and neutral party such as the arbitration process included in most collective bargaining agreements.

STATE UNIVERSITY AND COLLEGE POLICE OFFICERS

One final important matter that needs to be addressed in the senate bill is the need for clarifying or corrective language regarding police officers on our public higher education campuses. This matter was first brought to our attention by Salem State University Police Chief Gene Labonte, who also serves as President of the Association of Chiefs of Police of the State Universities (ACOP). If the proposed formation of POSAC becomes law and this matter is not corrected, many of the dedicated law enforcement professionals working to protect students, faculty and staff on our public higher education campuses may find themselves in a position where they are not properly licensed to carry out their duties and exercise their powers as police officers.

Furthermore, failure to correct this matter may jeopardize long-standing and highly-effective mutual aid agreements that these campus police departments have executed with surrounding municipalities.

The proposed corrective amendments – relative to Section 3 of SB2820 – as well as a proposed new section were prepared by ACOP and are attached to this testimony. These amendments represent what we believe to be the best approach to making these important corrective and clarifying language changes.

It is important to note that these suggested amendments are solely focused on ensuring that these police officers are part of any new standards and certifications that may apply to all other police officers in the commonwealth and to ensure they are properly licensed and certified to do their jobs. They are in no way an attempt to separate or ‘carve out’ the officers from any new certification process that may become law.

Our union has been working with State Representative Paul Tucker to include these important changes in any bill that may be released to the full body for a vote and we know that Representative Tucker and other representatives have brought this matter to the attention of committee staff. Should you or a member of your staff wish to discuss these suggested amendments further or believe there is a better approach to what should be a mutual goal to clarify language in this section, please do not hesitate to contact me at any time at 978-866-2283.

In closing, we thank you for your consideration and for providing us with an opportunity to provide input in advance of house action. We stand ready to work with you to achieve meaningful and lasting change.

Proposed Corrective/Clarifying Language to Section 3 of SB2820

- Line 84-85: After “(iv) University of Massachusetts police officers, and candidates for such appointment” add “police officers at state universities appointed pursuant to section 22 of chapter 15A, and candidates for such appointment”

Rationale for amendment: Adds state university police in the bill, along with the other police department mentioned. State university police are distinct from UMASS police and private university police and operate under their own authorizing statutes. See, e.g., G.L. c. 73, § 18 (specifically referring to police officers of state universities).

- Line 85: After “(v),” delete “campus” and replace with “special state”

Rationale for amendment: this is to remain consistent with other statutes, which refer to “special state police officers,” not “campus police officers.”

- Line 148: After “system police force,” add “police officers at state universities appointed pursuant to section 22 of chapter 15A, and candidates for such appointment”

Rationale for amendment: Same as line 84-85, above.

- Line 150: After “(viii) serve as a,” delete “campus”

Rationale: Same as line 85, above.

- Line 473: After “representative of a,” delete “campus” and add “college or university,” so that the description reads, “college or university police organization”

Rationale for amendment: Same as line 85, above.

- Line 1185: Delete “campus police officer who holds authority as,” so that the description reads, “a special state police officer”

Rationale for amendment: Same as line 85, above.

- Line 1516: Add a new provision after the last sentence: “Notwithstanding the above, no officer who is considered certified as of the adoption of this law, or whose certification has expired as set out below shall be required to complete or repeat a full basic police academy program.”

Rationale for amendment: clarifies that already completed training is sufficient for certification, and that an officer will not have to complete basic training again to regain or continue certification.

- Add a new section at the end of the bill:

“Notwithstanding any other provision of this law or any general or special law to the contrary, the appointing authorities of the law enforcement agencies listed in this chapter may continue to appoint as special police officers or reserve deputies members of their own agencies or other law enforcement agencies, as required, for the purposes of mutual aid and assistance, participation in regional task forces, reserve or seasonal work, performance of details, and like purposes.”

Rationale for amendment: preserves longstanding municipal and inter-local mutual aid arrangements; continues to allow for part-time and ad hoc appointments.