



BOSTON POLICE PATROLMEN'S ASSOCIATION, INC.

295 FREEPORT STREET ★ BOSTON, MA 02122-3513 ★ T/617.989.2772 ★ F/617.989.2779 ★ www.bppa.org

Lawrence A. Calderone
President

Richard A. Withington
Vice President

James B. Moccia
Secretary

Sarah J. Briggs
Treasurer

James B. Kenneally
Legislative Director

July 17, 2020

Hon. Aaron M. Michelwitz
Chair
House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

Hon. Claire Cronin
Chair
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Re: *Testimony of the Boston Police Patrolmen's Association on S.2820*

Dear Chairs Michelwitz and Cronin:

On behalf of the men and women who comprise the Boston Police Patrolmen's Association ("BPPA"), I write to express our concerns relative to S.2820. The BPPA (as part of the Massachusetts Law Enforcement Policy Group) has been in active discussions with the Massachusetts Black and Latino Legislative Caucus and is in agreement with the cessation of chokeholds; establishing a uniform duty to intervene and clear prohibition of excessive force; standardized training of procedures and protocols; and the promotion of diversity in policing. But we oppose portions of S.2820 that would improperly infringe on our member's rights and endanger public safety.

We oppose section 6 of S.2820 (adding sec. 220-225 to c. 6 - regarding the Police Officer Standards and Accreditation Committee "POSAC") in that the POSAC as drafted would deny police officers due process for discipline, and subject police officers to revocation hearings conducted by a POSAC that is not properly vetted or considered. If there is going to be a committee that has the power to revoke an officer's license, that officer, like other public employees, such as teachers, should be able to exhaust his/her appeals first with his/her employer. Then, any committee will have a full record before it makes an important decision such as revocation. This is also why the makeup of the Committee must be fairly and properly constituted with a majority of peers. Just as in other professions (e.g., teachers, lawyers, doctors), police officers should be judged mainly by other officers who understand their work and law enforcement in general. ¹

¹ Testimony on behalf of the BPPA regarding §10 of S.2820 (relating to qualified immunity) will be filed separately by attorney Leonard Kesten.

Lack of Due Process

As written, S.2820 would compel the POSAC to institute proceedings to revoke an officer's certification upon a "sustained complaint of misconduct" in certain circumstances, which is defined as a "finding by an appointing authority or the committee, after the exhaustion of all rights to appeal within the appointing authority or the committee..." This language is problematic, as it would deny an officer the right to appeal a finding of misconduct through the due process provided to her through arbitration (or for some employees, Civil Service).² Prior to this stage of appeal, findings of misconduct by departments are not subject to review by a neutral third party. Arbitration or Civil Service provides a review to ensure that the finding of misconduct was proper. All public employees in unions in Massachusetts enjoy the right to such due process, and it would be unfair and inequitable for police officers to have less.

Allowing full due process prior to any action by the POSAC is in no way inconsistent with the POSAC's mission. An officer terminated for serious misconduct is not working while appealing her case through arbitration, and is unable to find employment with another department. Thus, there is no harm to the public interest caused by the POSAC waiting to institute proceedings until after the officer has exhausted her appeals with her employer. Arbitration is a rich and developed area of the law, and should not be discarded.

In addition, the POSAC would benefit greatly by having a fully developed record of a proceeding before a neutral third party. This record would be developed by the officer, her union, and her employer. As such, waiting to receive a fully developed record would allow the POSAC to avoid having to conduct investigations and hearings "from scratch," saving time and, importantly, vast resources. We believe that the Senate's estimate of the cost of S.2820 is grossly underestimated. The creation of a new state agency which will not only develop and institute police standards but will also conduct investigations and hearings into claims of police misconduct will be a large undertaking, necessitating the creation of a new state bureaucracy, costing the Commonwealth and its taxpayers tens of millions of dollars.

The Composition of the POSAC is improper

We also urge the House to provide for a proper and fair composition of any POSAC. The composition of the POSAC in S.2820 is inconsistent with any other professional oversight board. The boards overseeing doctors, nurses, teachers, pharmacists, etc., are all composed primarily of individuals in the same profession. Such boards normally have a

² Sec. 225(c) does allow an officer to request a one year suspension of a POSAC proceeding to exhaust her employer appeals. Unfortunately, an employer would be incentivized to delay the consideration of an arbitration in order to "wait out" one year, rather than completing the process. As noted below, public interest is not harmed in waiting until the completion of the employee's appeals with the employer, so the House should reject any statutory time limit to complete arbitration or Civil Service.

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small minority of members from the general public (this is also true of POSA boards in other states). But the POSAC created by S.2820 would have 15 members, only 6 of whom are law enforcement officers. And the six are almost all police chiefs. We believe that any POSAC be comprised of a majority of law enforcement officers and experts in the field. For non-law enforcement officers, we would suggest a retired superior court justice, experts in the use of force and firearm analysis and discharges, and a criminal justice academic. And we urge that not only police chiefs be included, but that the voices of rank and file police officers and police union officials be included as members. Having a committee that includes rank and file officers will increase the Committee's experiential knowledge, and will grant the Committee legitimacy in the eyes of officers and the public.

Finally, we are troubled that Sec. 225(d) (line 491 of S.2820) does not define the composition of the members of the POSAC who would sit to hear revocation hearings. Officers have a right to consistent application of the law, and thus to a consistent "tribunal."

Thank you for your consideration of our concerns.

Sincerely,


Lawrence Calderone
President