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To: Members of the Massachusetts House of Representatives
From: Chief Michael Newbury, President – Fire Chiefs Association of Massachusetts
Re: Qualified Immunity – Police “Reform” Legislation
Date: July 16, 2020

The Fire Chiefs Association of Massachusetts is compelled to call your attention to what we feel is as an unintended consequence of one provision in legislation currently under consideration. The abolition of “qualified immunity” will adversely affect all governmental workers, not just police officers. Even the various modified language provisions reportedly under consideration will create a difficult future for Fire Chiefs to navigate. It will take years before this state’s highest courts interpret this new language, and in the meantime all Chiefs and other municipal personnel will be exposed to frivolous lawsuits.

To the best of our knowledge, Fire Chiefs across the Commonwealth have never abused qualified immunity. In our research, there has only been one reported case involving a violation of this state’s Civil Rights Act that a Fire Department employee was protected by qualified immunity. That instance involved an order to test probationary firefighters for drugs. In this case the Massachusetts Supreme Judicial Court ruled that the City Manager and Fire Chief were entitled to qualified immunity from a lawsuit on claims against them under Massachusetts Civil Rights Act and from invasion of privacy stemming from subjecting probationary firefighters to compulsory urinalysis at random time, since at the time it was not clearly established that such testing was unlawful. *Duarte v. Healy*, 405 Mass.43, 537 N.E.2d 1230 (1989).

The Supreme Court, in creating qualified immunity, was trying to cut down on the number of frivolous suits. Abolishing qualified immunity will invite lawsuits alleging that many forms of discipline, and other day to day and emergency decisions made by Fire Chiefs, are violations of any number of unspecified “rights”. Fire Chiefs should not have to worry that they will be sued every time they impose discipline, not only by the offending firefighters but members of the public that claim much later that the punishment should have been more severe. If the legislature makes all Fire Chiefs hesitant to impose discipline, or fearful that their imposition will be second-guessed many years later, this will clearly undermine the exercise of their management rights. Additionally, the cost of defending these frivolous suits will be devastating to Cities and Towns that are already facing mounting deficits due to factors related to the current pandemic.

I would ask you to take a long and hard look at how any legislation involving the abolition of “qualified immunity” will adversely affect governmental entities and workers as a whole, and not simply the narrow target this legislation seems to be aimed at. The Fire Chiefs’ Association of Massachusetts feels this type of broad-brush legislation will have dire

consequences with Fire Service operations and affect our ability to do our job effectively, which is to protect life and property across the Commonwealth.

We look forward to discussing this matter further one-on-one or through the public hearing process an issue of this magnitude requires and deserves.

Respectfully,

Michael C. Newbury

A handwritten signature in black ink, appearing to read "M. Newbury", with a stylized flourish at the end.

President
Fire Chiefs Association of Massachusetts