NAACP
NEW ENGLAND AREA CONFERENCE

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July 17, 2020

Rep. Aaron Michlewitz
Chair, House Committee on Ways and Means
And
Rep. Claire D. Cronin
Chair, Joint Committee on the Judiciary

Written Testimony Regarding S.2800
From the NAACP, New England Area Conference

The NAACP, New England Area Conference (NEAC), is the governing and coordinating entity of the NAACP for Branches, College Chapters, High School Chapters, Youth Councils and Prison Branches in the states of RI, MA, NH, ME and VT. NEAC represents all Branches in Massachusetts, which Branches are:

Berkshire County Branch	Amherst Branch
Springfield Branch	Worchester Branch
South Middlesex Branch	Merrimack Valley Branch
Mystic Valley Branch	Cambridge Branch
Boston Branch	Blue Hills Area Branch
Brockton Area Branch	New Bedford Branch
Cape Cod Branch	Martha's Vineyard Branch

The NAACP, New England Area Conference (NEAC), has undergone a deliberative process to address urgent policing issues our communities are facing. The process included significant discussion by NEAC members, which resulted in recommendations to the Executive Committee. With some tweaking and minor changes, the recommendations were adopted.

The adopted policing policies provide guidelines for NEAC and our Branches to address. Some relate solely to municipalities and counties and those will be addressed by Branches. Some relate solely to state issues and statutes, which are being addressed by NEAC. Thirdly, some relate to state, municipal and county governmental entities and statutes. These will be addressed by NEAC, in concert with Branches.

NEAC acknowledges that there are yet broader issues relating to how governmental entities should be **re-imagined** to provide safety and protection to communities and the enforcement of laws. This review requires a different and somewhat longer process, which should include more research and analysis. The NEAC criminal justice committee has been asked to begin that process.

NEAC offered suggestions to the Massachusetts Senate as it developed S.2800. In the estimation of NEAC, S.2800 is not perfect and it leaves much to be desired in providing policing reform measures to better insure that policing is much more accountable to the citizens of Massachusetts, which law enforcement officers have been engaged to protect and serve. To insure a greater measure of fairness, equal protection and justice for all Massachusetts citizens, NEAC ask that the House of Representatives approve a policing reform bill which **adopts all of the provisions submitted by the Black and Latino Legislative Caucus and which otherwise adopts or enhances the provisions of S.2800, so that systemic racism is reduced and the opportunity for one system of "justice," and not continuing a dual system of "justice," is afforded all Massachusetts citizens.**

NEAC recognizes that significant discussion has been directed to the reform of the qualified immunity doctrine provided for in S.2800. Accordingly, NEAC highlights the necessity to reform the qualified immunity doctrine, at least as provided for in S.2800, even though NEAC submits that further reform will assure greater accountability of law enforcement officers to Massachusetts citizens.

Massachusetts civil rights law is undermined by the judicial doctrine of qualified immunity. It shields law enforcement officers from liability if the right that was alleged to have been violated by the law enforcement officer was not "clearly established." This means that if a person has been allegedly harmed by a law enforcement officer, but the exact same harm has not already been the subject of litigation or specifically prohibited by law, the officer will be let off the hook.

In some cases, courts have acknowledged that the police violated a constitutional right, but still failed to hold the officer liable because of qualified immunity. Law enforcement officers should be held accountable for serious misconduct. The House of Representatives should join the Senate and restore civil rights accountability by reforming qualified immunity under the MCRA.

Examples

In all of these cases, the officer was not held liable because of qualified immunity:

- When a police officer's search for drugs in a woman's apartment turned up dry, he took her to the hospital and made a doctor *search her vagina*, where he also did not find drugs. Rodriques v. Furtado, 575 N.E.2d 1124 (Mass. 1991)
- A state trooper responded to a call for help from a distressed driver. When the trooper arrived on scene, the driver was out of his car "yelling and jumping up and down." The driver began walking towards the officer with a pen in his hand, the trooper yelled at him to stop, and when he didn't, the trooper pepper-sprayed the man and shot him twice. The man died later at the hospital. Justiniano v. Walker, No. 15-cv-11587-DLC, 2018 WL 4696741 (D. Mass. Sept. 30, 2018), *appeal docketed*, No. 20-1063 (1st Cir. Jan. 15, 2020)
- A girl detained in a Brockton DYS facility was subjected to repeated, suspicionless strip searches. Doe ex rel. Doe v. Preston, 472 F. Supp. 2d 16 (D. Mass. 2007)
- A State Trooper with a history of inappropriate conduct, including a 6 month suspension, stopped and illegally strip-searched a woman on the side of the road while making suggestive comments. Clancy v. McCabe, 805 N.E.2d 484 (Mass. 2004)
- Male cadets at the Mass. Maritime Academy repeatedly sexually harassed and assaulted two female cadets. School officials knew about it and did nothing to stop it. White v. Gurnon, 855

N.E.2d 1124 (Mass. App. Ct. 2006)

- Boston police strip-searched a man in public because he was with people known to the police as drug users and had "bulges in his clothing." The police found no drugs. Evariste v. City of Boston, No. 18-12597-FDS, 2020 WL 1332835 (D. Mass. Mar. 23, 2020)
- A police officer responding to a call from a woman experiencing a manic episode forced the woman to the ground and tased and handcuffed her. Gray v. Cummings, 917 F.3d 1 (1st Cir. 2019)
- Prison guards at MCI-Norfolk repeatedly assigned a man who could not climb stairs to a cell on the second or third floor. When he refused to go to his assigned cell because he could not climb the stairs, guards punished him by putting him in solitary confinement. Shedlock v. Department of Correction, 818 N.E.2d 1022 (Mass. 2004)

Thank you for the opportunity to provide testimony for this critical issue of fairness, justice and equality of opportunity envisioned for all American citizens.

Submitted by

Juan M. Cofield

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President