

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

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Chairman
Committee on Ethics

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Aaron Michelwitz, Chairman Ways and Means
State House Room 243
Boston, Massachusetts 02133

Claire Cronin, Chairwoman of the Judiciary
State House, Room 136
Boston, Massachusetts 02133

Dear Chairman Michelwitz and Chairwoman Cronin:

Due to recent events the integrity and significance of the justice system have been challenged nationwide. Not only have current events brought more awareness to civil rights and the equality of our nation, they have illuminated the problems with our country and its criminal justice system. It is times like these where we look for ways to resolve difficult issues. I am writing this letter to address three prevalent points, as it relates to S2802. These points include the way we can improve transparency through inquests, retaining qualified immunity, and holding administrators/chiefs and supervisors accountable for the conduct of their officers.

I believe that an expansion of the inquests to serious alleged police misconduct is a tool that can restore trust in the police in our minority communities. Inquests are a quasi-public proceeding that allows the victim's family to be present on the serious cases. An inquest is an independent investigation conducted by a district court judge, in which the transcripts and a final report would be open to the public after a district attorney decision to prosecute or not prosecute the matter. The expansion proposed in HD5133 is language I hope you would consider in any bill this House takes up this session. The inquest process would only be used when there is reasonable suspicion that a law or regulation was violated by a police officer and there was serious bodily injury. This simple amendment to MGL 38 section 8 would answer many questions to the next of kin and victims of alleged police misconduct.

Qualified immunity is a well settled legal principle that protects persons from making simply negligent discretionary decisions while in the performance of their duties. I believe in our society there is no profession in which there are more split second, stressful decisions made than by police officers. There are thousands of scenarios that many people who have lived a privileged life may never experience, in which a police officer encounters on a monthly or weekly basis. Imagine entering into a darkened apartment with a woman screaming, and a man armed with a leg from a broken table. The situation requires a split-second decision, and that one decision can easily be criticized months after and even years after. That "Monday Morning Quarterbacking" places a police officer in an unfair position, unless he/she has blatantly violated the rights of another with a disregard for the law or regulation. The

removal of qualified immunity under S2802, poses serious risk to police officers' finances, poses a risk that will deter good police officers from remaining in their profession, and likely will result in less educated and less responsible police officers in the future. I believe the unique nature of being a police officer requires the police to have qualified immunity. Every decision a police officer makes in incredibly violent and stressful situations does not need to be scrutinized to a degree where they will be civilly liable for an honest mistake. The current system of qualified immunity allows for the egregious misconduct to be punished. I would suggest that we retain the qualified immunity and provide for up to triple damages for victims of civil rights violations by police if they are able to prove the current standard.

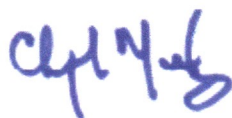
The last point I'd like to illuminate that pertains to recent issues is the transferring of police officers. I believe we need to have every internal affair's file of every police officer follow the officer through his law enforcement career. This file should contain every allegation against the officer, every investigatory report into the allegation, the findings of the investigation, and the discipline of every allegation. Every police chief shall swear under oath that the file is complete before such officer is transferred, hired, and or employed by another law enforcement agency. This type of process will assure that police officers with troubling history will not be moved from department to department. It will no longer be a "buyer beware", rather a "seller be accountable" consequence. Unfortunately, police officers can be transferred in an attempt to hide or cover up a mistake. If a police officer commits an improper or unjust act or makes an unlawful decision it can easily be covered up by simply relocating the officer to another department or agency. A hypothetical in Layman's terms would be a troublesome police officer who is offered to resign, or leave may apply to another department, with the blessing of the local police chief or supervisor. Requiring a chief to swear under oath as to the internal affairs file will hold him accountable as well as the troublesome police officer.

I would be more than happy to further discuss the reasons for these proposals. I know this matter is complicated with hundreds of collateral consequences. However, I believe these are simple solutions which will hold all law enforcement to be more accountable, without massive expense or an overburdened bureaucracy.

These of course are just three of many, but I'd like to believe these are three propositions that I am most familiar with and I believe provide simple fixes to the current statutory scheme. I appreciate the time you have taken to read my thoughts. As always, I am available to answer any questions surrounding any of these issues. My cell number is (508) 542-0533.

With every best wish, I remain.

Cordially,



Christopher Markey