As your constituent, I write to you today to express my strong opposition to many parts of the recently passed S.2820. I hope that you will join me in prioritizing support for the establishment of a standards and accreditation committee, which includes increased transparency and reporting, as well as strong actions focused on the promotion of diversity and restrictions on excessive force. These goals are attainable and are needed now.

I am, however, concerned at the expansion of this legislation, targeting fundamental protections such as due process and qualified immunity. This bill in its present form is troubling in many ways and will make an already dangerous and difficult job even more dangerous for the men and women in law enforcement who serve our communities every day with honor and courage. Below are just a few areas, among many others, that concern me and warrant your rejection of these components of this bill:

(1) Due Process for all police officers: Fair and equitable process under the law demands the same rights of appeal afforded to all citizens and fellow public servants. Due process should not be viewed as an arduous impediment, but favored as a bedrock principle of fundamental fairness, procedure and accountability.

(2) Qualified Immunity: Qualified Immunity does not protect problem police officers. Qualified Immunity is extended to all public employees who act reasonably and in compliance with the rules and regulations of their respective departments, not just police officers. Qualified Immunity protects all public employees, as well as their municipalities, from frivolously lawsuits. This bill removes important liability protections essential for all public servants. Removing qualified immunity protections in this way will open officers, and other public employees to personal liabilities, causing significant financial burdens. This will impede future recruitment in all public fields: police officers, teachers, nurses, fire fighters, corrections officers, etc., as they are all directly affected by qualified immunity protections.

(3) POSA Committee: The composition of the POSA Committee must include more rank-and-file police officers and experts in the law enforcement field. If you're going to regulate law enforcement, up to and including termination, you must understand law enforcement. The same way doctors oversee doctors, lawyers oversee lawyers, teachers oversee teachers, experts in law enforcement should oversee practitioners in law enforcement.

In closing, I remind you that those who protect and serve communities across Massachusetts are some of the most sophisticated and educated law enforcement officials in the nation. I again implore you to amend and correct S.2820 so as to treat the men and women in law enforcement with the respect and dignity they deserve.

Thank you,

Carol Fabiano/redrose6543@yahoo.com

Town of Georgetown
POLICE DEPARTMENT

DONALD C. CUDMORE
CHIEF OF POLICE

47 CENTRAL ST. • GEORGETOWN, MA. 01833 • TEL: 978-352-5700 • FAX: 978-352-5709 • WWW.GEORGETOWNMA.GOV

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

Re: Concerns to Senate 2820 as Amended

Please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just Commonwealth that values Black lives and communities of color.

As a thirty-five (35) year law enforcement veteran and police executive I strongly stand against S2820 as presented. The senate version of the bill as written seriously undermines public safety by limiting a police officer's ability to do their job effectively. Isolated situations that occur in other parts of our great country should not discount the important work of the Commonwealth's dedicated officers. My hope is your colleagues will consider our position as working professionals in law enforcement today.

I fully support Massachusetts Chief of Police written testimony signed by Chief Brian A. Kyes, President, Major City Chiefs and Chief Jeff W. Farnworth, President, Mass Chiefs of Police.

Thank you for your consideration in this important matter.

Respectfully Submitted,

Donald C. Cudmore

Donald C. Cudmore
Chief of Police

Honorable Aaron Michlewitz
Committee on Ways and Means
State House Room 243
Boston, MA 02133

Honorable Claire Cronin
Committee on Judiciary
State House Room 136
Boston, MA 02133

Dear Chairman Michlewitz and Chairwoman Cronin,

I appreciate the opportunity to finally be able provide public input on amended Senate Bill 2820, *"An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair, and Just Commonwealth that Values Black Lives and Communities of Color"*, which was sent to the House two days ago. Law Enforcement Officers in the Commonwealth are always striving to provide the best service. We had been hoping for a transparent process in which all stake holders would be at the table in order to accomplish meaningful reform and to provide real life input on the job, rather than legislate from youtube video clips, which never tell the full story.

I would like to identity some of the issues outlined in S2820.

1. The most important issue is Qualified Immunity. I do not believe the Senate appreciates the impact and level of uncertainty and confusion they create with their attempt at "modifying" or essentially eliminating the well established legal doctrine, which has exist for 53 years and been litigated in thousands of cases involving a wide range of public employees. Members of the Senate cite Shirley Mello Rodriques vs. Joseph Furtado as the worst case regarding Qualified Immunity in Massachusetts. In this case, which occurred in 1986, a police officer APPLIED for a SEARCH WARRANT through the DISCTRICT COURT to search a female's vagina. The COURT found PROPBABLE CAUSE and ISSUED the search warrant. The officer executed the COURT ORDER per the COURTS instructions bringing the suspect to the hospital and having a qualified medical professional conduct the search AS ORDERED BY THE COURT. Senators in their remarks demanded these are the reasons we need to change to change qualified immunity for police officers. The case law that came out of this incident did just that, requiring that only a judge can issue a warrant for a search this invasive in Massachusetts. Could you seriously imagine making this change that the Senate has passed in S2820 and allowing for a police officer to be personally sued for applying for and executing a search warrant in the manner that the court ordered?
2. The concept of the Police Officer Standards and Accreditation Committee (POSAC) is a concept that you will find a lot of support from all stake holders. This system must be set up properly and have a fair balance to decertify officers who are not worthy to wear the badge, and maintain due process for the officer. Both the Governor's Bill and Senate Bill do not contain a process that strikes this balance. The members should be comprised of law enforcement officials not members who clearly have a bias of our profession, this defeats the purpose of what you are trying to accomplish. The standards for disqualifications should be spelled out and be clear. We need to look at how other States are set up.

Our entire profession looks forward to the House Process on this bill and the ability to have everyone represented at the table to make meaningful responsible reforms. Thank you.

Respectfully,

William Trelegan

Burlington Police Department, Police Officer
Burlington Police Patrolmen's Association, President
Work: 781-505-4906
Email: wtrelegan@bpd.org

TO: Massachusetts State Representatives

CONCERNING: Police Reform Bill S2820

Thank you in advance for taking the time to review my letter and providing an opportunity to be publicly heard on the pending Police Reform Bill. My name is Carl Supernor and I'm a Captain on the Worcester Police Department with 25 years of service. Prior to my law Enforcement career, I spent 4 years in the United States Marine Corps serving this Country. During my 29 years of public servitude, I have never been so upset, frustrated, and disappointed with the knee jerk reaction and the unwarranted rush to reform the police. This reaction is based on a false narrative in Massachusetts that is unsupported by evidence.

You all have a profound responsibility to ask yourselves a simple question, is there an identified need to reform policing in the Commonwealth and if so, is there supporting evidence and facts that are driving your decision?

What's being purported is, all police institutions are systemically racist and commit acts of police brutality on minority communities. Being objective as I can, I did what I would expect all of you to do, look for evidence and facts of that claim and see if it's at all true. I can tell you based on my intimate knowledge of policing in Worcester and based on State and National research, there isn't any evidence to support this narrative. I ask you to do the same, slow down, do the research, review all the data, create committees and study groups to find the true answers before we make sweeping police reform. It is your sworn duty and responsibility to seek out the truth and not to move forward until you have the answers. If you don't, the damage that's already been done and that will continue to happen, will be permanent and irreversible. The unlawful killing of George Floyd did not create a public emergency here in Massachusetts, but the lack of accountability and responsibility by the Governor and The Senate are creating a real public safety crisis by acting on their emotions and not the facts.

I do not support this Bill, there is so much wrong with it that I don't dare try to line item each and every issue. Only after serious deliberation and debate, with all concerned parties involved, will we have a chance to get this right. In closing, I ask you all to provide evidence based research PUBLICLY to support whatever decisions you make, thank you for your time and your public service.

Carl Supernor

774-696-0246

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Office of the Chief of Police

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Scott Nix
Chief of Police

July 17, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov
From: Scott Nix, Chief of Police
RE: Concerns as to Senate SB2820

Dear Chairwoman Cronin and Chairman Michlewitz:

First, I want to thank you for listening to my concerns on behalf of myself as well as my officers who are dejected and feel under attack for actions that are not representative of our department. I am a big believer in treating everyone with respect with my career is based, in part, on the principle of respect. As Chief, I strive to lead a department that truly understands it is paramount to treat everyone with respect while serving our residents in a professional manner.

I hope to outline my concerns in a manner that helps you understand the importance to myself and the law enforcement profession. Hence, I humbly request you consider amending Senate SB2820. Please accept the following for your consideration:

1. **Section 6 (line 272):** Establishing a law enforcement standards program such as POST (Peace Officer Standards and Training) is something I absolutely support. What I believe to be confusing is the current title offered by Senate Legislation, POSAC (Police Officer Standards Accreditation and Accreditation Committee). Accreditation, in my mind, is a completely separate process relative to a department's application of standards, not individual officers' certification. Amending the title to reflect POST would be most appropriate and consistent with the vast majority of other states.

2. **Section 6 (line 282):** There appears to be some confusion in the believe relative to the number of members. If indeed there are 15 positions to be filled, I would respectfully request the Massachusetts Chiefs of Police Association (MCOPA) be allowed to appoint 2 members as voted by the MCOPA Executive Committee.

3. **Section (line 321):** This particular section if overly broad with no specifications of what would define what alleged misconduct is; which could, as worded, be everything from violation of law to rude complaints. As well, it is unclear what would trigger such an investigation. Clear guidelines need to be drafted providing clear, concise and consistent expectations.

4. **Section 10(c) (line 570):** Modification of Qualified Immunity is the most concerning of all sections. I absolutely believe police officers should be held accountable, especially in circumstances such as the death of George Floyd. That system is currently in place here in Massachusetts. As established in Pearson v. Callahan, 555 U.S. 223 (2009),

"Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shied officials from harassment, distraction, and liability when they perform their duties reasonably." Daily, officers make critical, split second decisions with the best intentions. Officers need to know they are supported in making those decisions. I would respectfully request the Qualified Immunity, as currently in place, be allowed to remain intact which already promotes a process for holding an officer accountable for egregious behavior.

5. **Section 39 (line1101-1116):** We have worked extremely hard at establishing relationships with both students, parents and staff within both of our school districts. To potentially have so much progress erased by the Senate Legislation would be detrimental to established relationship; promoting a divide between our youth and police. Yes, there is a protective factor with having officers in the schools but our main effort is relationship building; not enforcement. There was a tragic murder in our high school where a student lost his life at the hands of another student. There were so many signs of the pending act that had gone unreported. Had we had a School Resource Officer assigned to the high school as we have now building those relationship, one can only speculate information may have been developed to save the young mans life. I strongly urge you to eliminate current wording surrounding School Resource Officers. If necessary, maybe it would be prudent to outline expectations of interactions that better foster a relationship building approach.

6. **Section 55 (line 1272):** Choke holds nor any type of restraint involving the neck have never been taught, trained or is a condoned use of force. The only time such a tactic would be allowed in Massachusetts would be if an officer was fighting for his/her life which I believe should remain viable in that situation. Please provide the use of such a tactic when an officer is in immediate jeopardy of imminent death of serious bodily harm.

Thank you for taking the time to review my concerns; it is very much appreciated. I wish you well as you navigate how it is best to proceed.

Respectfully,

Scott Nix
Chief of Police

July 16, 2020

Subject: Support for Police Reform Standards “Reform, Shift & Build Act” S2820

Dear Judiciary Members,

As a Framingham resident and fellow local government official, I share your commitment for high quality public service, enjoy working collaboratively to solve complex problems, and know many police officers that are genuinely devoted to protecting and serving the public good. As an important state leader, you have the unique ability to make changes that will challenge and finally help dismantle racism and police abuse. I implore you to act immediately by voting to support the recently approved senate Bill 2820 that will take a first step at police reform measures.

Of utmost importance is police reform because George Floyd, Breonna Taylor, Ahmaud Arbery, Danroy Henry, Eurie Stamps, Rodney King are not anomalies but are a direct result of a system that intentionally operates without accountability. Racial profiling, over-reaction, intimidation, pervasive brutality, excessive force, unsatisfactory police work, complete and total terrorization from the police towards Black people and other populations such as mentally ill, disabled, immigrants, and other minorities is unacceptable and should not be tolerated. Police have used violence and force as a first response in minor encounters with Black people and not as a last resort as some may claim.

Please do not water down this bill any further because this should have been done 30 years ago after Rodney King. Police and lawmakers have had many years to get this right. We have had 50 years of reports with recommendations, but they have been ignored and police unions, police chiefs, and elected officials have falsely claimed they did something. I urge you to vote to support any and all police reform measures such a S. Bill 2820 as a first step and to pursue other reform measures to change the policing system.

Some necessary instrumental measures:

- **Abolish Qualified Immunity**. No more legal protections for Police. Officers that violate their public responsibility by using excessive force need to be held accountable. Police are not above the law and should be held to a higher standard, not a lower standard. Other professionals are held personally and financial responsible for their actions. They absolutely should think twice about their actions and especially using physical force.
- **Dismantle Collective Bargaining.** Police unions need to be reined in and the power must be taken away. Union contracts need to be meticulously reviewed to eliminate barriers that shield any misconduct complaints and disciplinary process cannot be with the Union. Disciplinary actions should not be subject to arbitration. Complaints filed by other officers witnessing misconduct must be encouraged. Local officials should not be negotiating with unions on matters related to misconduct, disciplinary actions, or management responsibilities, especially when they do not provide transparent information on what they do. In most jobs other employees know who the bad employees are, and the absurd blue code of silence must end. Reporting must be made easier without fear of retribution. When atrocities go viral, officers are placed on paid leave, which is not an appropriate punishment because the rest of the world calls that Paid-Time-Off. Unions have gone too far and should be solely about wages and worker exploitations.
- **Police Department Transparency.** The public and local officials need to know exactly what police are doing. So much of what they do is unknown, they need to keep detailed

records of calls, responses, charges, outcomes, mandatory detailed reporting, expenses, overtime. Local officials have no idea what police departments are really doing. If they are truly preventing and protecting us from imminent danger let us see that proof.

- **Higher Standards** for screening, qualifications, ethical conduct, education, licensing, certifications for hiring and a decertification process for violations and failure to maintain standards. Emphasize problem solving, conflict negotiation, and leadership skills rather than brute force.
- **Require immediate comprehensive independent investigations and special prosecutor review by an external department** for all officer-related misconduct citations, disciplinary actions, injuries, and deaths, especially of unarmed suspects.
- **Require demographic data collection** such as the race of all individuals pulled over, brought in, the specific charges, arrested and full details on use of force and details of attempts to deescalate.
- **Disarm and Demilitarize.** Taxpayer money should not be going to expensive equipment used to terrorize Black people and other community members. They need to be trained and skilled at de-escalation tactics. Use of force should be prohibited and only used in specific statutory instances to save an innocent life. De-escalation should be mandatory, and all other options need to be exhausted. Most calls do not require weaponry.
- **Prohibit any structural Police Department minimum quotas such as minimum charges and arrest.** This encourages officers to seek out obscure meaningless petty offenses in effort to score and leads to racial profiling and distrust.

These requests are reasonable and comparable for other government officials and industries. Teachers, nurses, emergency room personnel, and psychiatrists are not allowed to respond violently and aggressively to similarly stressful situations. Police that are against these reasonable changes are an immediate red flag. Refusal and unwillingness to improve and oppose accountability is an indicator of a perpetrator that has hidden behind a system that does not hold them accountable. Poor and mediocre performance does not serve the public.

You can seize this moment while there is political will to change history for future generations. I urge you to act quickly by voting on Senate Bill 2820 and taking additional transformative actions immediately. The Police have had years of input without public input. All elected officials and decision makers have a patriotic duty to stand squarely against this system of white dominance.

George Floyd's death at the hands of the police responding to a call about a fake $20 produced several officers to enthusiastically respond. Outraged, and conquering our fear over the coronavirus, we have stepped into crowds to protest during a pandemic. The political will and wherewithal to make change is now. We cannot wait for small incremental changes because innocent people are, have been, and will continue to suffer and die at the hands of police.

Have you ever wondered what you would have done during the Holocaust, American slavery, or other acts of heinous genocide and abuse? Whatever you do right now is exactly how you would have acted, and silence is compliance. Are you going to step up and do everything within your authority to stand up against racism?

Sincerely,

Abby McCabe
abbymccabe82@gmail.com

To: House Ways and Means Judiciary Committee
From: Beverly Williams
103 Ocean Street,
Dorchester MA 02124
617 438-4595

Dear Committee Members

I am a life-long resident of Boston, wife, mother of two adult black sons, a retired educator from the Boston Public Schools and currently co chair of The Greater Boston Interfaith Organization.

My lived experiences in Boston, especially Roxbury and Dorchester, has given me front seat observation and first hand knowledge of what goes on in my community regards policing. I will NEVER EVER forget what happened during the Charles Stuart episodes when he shot his pregnant wife in the stomach and alleged a black man did it. White detectives came out in unprecedented numbers and destroyed a black community in hunt of this black man. Stuart killed himself when the truth came out he was the guilty one, but the spirit and trust of the black community was also killed.

Even today, we have the same type of aggressive behavior in places across MA. The scathing reports and citation from the Department of Justice around the gross misconduct of the Springfield Police Dept.'s Narcotics Bureau sheds light on this.

I don't want to get caught up in "every police officer is not a bad cop"; I am reasonable enough to know that. I don't want your attention to be distracted from the fact that much work is needed around police reform in terms of:

- Standards/training and accountability. Certification/decertification of police is necessary in any police reform package.
- Creating racial equity through civil service access reform is long overdue.
- Clear Statutory limits on police use of force.
- Qualified Immunity reform (even today people are calling to reopen "D.J." Henry case because he never got justice. He was one of our own MA residents and cases like that have even happened here in our state although the killing by police happened in NY. And was protected by QI.
- Commission for ongoing work around dismantling structural racism and racist procedures and policies.

Any police omnibus bill should have those 5 things in it, but it would be a disgrace to the black community if you stopped there. S**enate Bill S2820** is a good bill worthy of guiding you to put out a strong police reform bill.

My community has been shortchanged for many years. There is too much policing, and, too many blacks involved with the criminal "justice" system. It is now time to reduce risks and invest in the most vulnerable communities. **Senate Bill 2820** includes the Justice Reinvestment Workforce Development Fund that put resources into the community and would make competitive grants to drive economic opportunities in communities most impacted. I hope there is enough imagination and will in the house to make meaningful police reform based on these suggestions.

-Beverly Williams

AGAWAM POLICE DEPARTMENT

ERIC P. GILLIS
Chief of Police

July 17, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

Please accept the following testimony with regard to **SB2820** – An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

Over the recent months and weeks, I, like you and most other Americans, have followed the news at the national, statewide, and local level. As a taxpayer, a husband, a father of two, a Chief of Police, the President of the Western Massachusetts Chiefs of Police Association, and the Sergeant at Arms of the Massachusetts Chiefs of Police Association, I have been utterly stunned by the attacks on law and order, and law enforcement officers at all levels. It is from those multiple viewpoints that I offer my testimony to you today.

As a dedicated and committed police leader, I can assure you that my colleagues and I will continue to embrace all of the challenges that lay ahead for our profession. We will continue to instill strong values into our respective agencies at all levels of rank, hold ourselves and the members of our agencies accountable for our actions, and work through these difficult times to build cohesive relationships with the broader communities we serve. Like most others in my professional capacity, I would like to be a part of the conversation as we travel this road of change in policing. To that end, there are a number of concerns that I have regarding the Bill that was passed earlier this week by the senate, and I will address those concerns in similar fashion to the bullet points that you have received from the Massachusetts Chiefs of Police Association and the Massachusetts Major City Chiefs of Police:

- **SECTION 4 (line 230):** Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States*." To mandate that police officers alone are in need of this training to the exclusion of all other public employees sends the message to the public and all police officers, that the police are racist and in need of mandated education regarding the "*history of slavery, lynching, racist institutions and racism in the United States*." This is incredibly inaccurate and an affront to the men and women of this profession.

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- **SECTION 6 (line 272)**: In terms of the establishment of a POST (Peace Officer Standards and Training) Program, the various police chief's organizations here in our state wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* per se but has everything to do with *Certification* – and by implication "De-certification". In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies* (CALEA). By utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

- **SECTION 6 (line 282):** The Senate Bill states that POSAC shall be comprised of "14 members", however as outlined there are actually 15 positions. The MCOPA is strongly advocating for two (2) seats on the POSAC to be appointed by the MCOPA Executive Committee.

- **SECTION 6 (line 321)** : It appears from the language of the POSAC provision that the committee shall have the power to conduct what is referred to as "*independent investigations and adjudications of complaints of officer misconduct*" without any qualifying language as to how that would be implemented in terms of what type of alleged misconduct (law violations, use of force, injury, rude complaints, etc.) and when and under what circumstances will adjudications be subject to review resulting in an proposed oversight system that could go down the slippery slope of becoming arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

- **SECTION 10(c) (line 570):** Section 10 of "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" (the Act) is problematic, not only for law enforcement in the Commonwealth, but all public employees. In particular, Section 10 calls for a re-write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). The MCRA is similar to the provisions of 42 U.S.C. § 1983 (setting for a federal cause of action for a deprivation of statutory or constitutional rights by one acting under color of law), except however, that the provisions of the MCRA as it exists today, does not require that the action be taken under color of state law, as section 1983 does. See G.L. c. 12, § 11H. Most notably, Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, who *inter alia* deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States

or the Commonwealth of Massachusetts. By doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

The qualified immunity principles developed under section 1983 apply equally to claims under the MCRA. See Duarte v. Healy, 405 Mass. 43, 46-48, 537 N.E.2d 1230 (1989). "The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not 'clearly established.'" Laubinger v. Department of Rev., 41 Mass. App. Ct. 598, 603, 672 N.E.2d 554 (1996), citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); see Breault v. Chairman of the Bd. of Fire Commrs. of Springfield, 401 Mass. 26, 31-32, 513 N.E.2d 1277 (1987), *cert. denied sub nom.* Forastiere v. Breault, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 237 (1988); Duarte v. Healy, supra at 47-48, 537 N.E.2d 1230.

In enacting the Massachusetts Civil Rights Act, the Legislature intended to adopt the standard of immunity for public officials developed under section 1983, that is, public officials who exercised discretionary functions are entitled to qualified immunity from liability for damages. Howcroft v. City of Peabody, 747 N.E.2d 729, Mass. App. 2001. Public officials are not liable under the Massachusetts Civil Rights Act for their discretionary acts unless they have violated a right under federal or state constitutional or statutory law that was "clearly established" at the time. Rodriguez v. Furtado, 410 Mass. 878, 575 N.E.2d 1124 (1991); Duarte v. Healy, 405 Mass. 43, 537 N.E.2d 1230 (1989).

Section 1983 do not only implicate law enforcement personnel. The jurisprudence in this realm has also involved departments of social services, school boards and committees, fire personnel, a various other public employees. That being said, if the intent of the Senate is to bring the MCRA more in line with section 1983, anyone implicated by section 1983, will likewise be continued to be implicated by the provisions of the MCRA. Notably, the provisions of the MCRA are far broader, which should be even more cause for concern for those so implicated.

Section 10 of the Act further sets for a new standard for the so-called defense of "qualified immunity." Section 10(c) states that

> "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law"

This definition represents a departure from the federal standard for qualified immunity, although the exact extent to which is departs from the federal standard is up for debate, at least until the SJC provides clarification on it. The federal doctrine of qualified immunity shields public officials of all types from liability under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable

person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Stated differently, in order to conclude that the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987). It protects all but the plainly incompetent and those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335 (1986). As a result, the standard sought to be created under Section 10 of the Act would provide public employees with substantially less protection than that afforded under the federal standard. "Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Furthermore, although the Senate's version of "qualified immunity" would only apply to state-based claims under the MCRA, what Section 10 proposes is fairly similar to that proposed by the 9th Circuit Court of Appeals in various decisions. In those instances where the 9th Circuit sought to lower the standard applicable to qualified immunity, the U.S. Supreme Court has squarely reversed the 9th Circuit, going so far as scolding it for its attempts to do so. See Kisela v. Hughes, 138 S.Ct. 1148 (2018); City of Escondido v. Emmons, 139 S.Ct. 500 (2019).

Although legal scholars and practitioners have a grasp as to the meaning of qualified immunity as it exists today, uncertainty will abound if this standard is re-written, upending nearly fifty years of jurisprudence. Uncertainty in the law can only guarantee an influx in litigation as plaintiffs seek to test the new waters as the new standard is expounded upon by the courts. Furthermore, many officers will leave the profession out of concern that their family's financial future may be jeopardized just by virtue of the fact that they went to work and did their jobs. Communities will soon recognize that recruitment of future qualified officers to replace those that have left the profession over these concerns, will be virtually impossible as well.

- **SECTION 39 (line 1025)**: The provision to inform both the appointing authority and the local legislative body of the acquisition of any equipment and/or property that serves to enhance public safety makes perfect sense. That said, to have a public hearing available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is very dangerous.

- **SECTION 49 (line 1101-1115):** This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers – including their own agency – when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. Did the Senate quickly forget about what occurred in Parkland, Florida on February 14, 2018? The

learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. Public Safety 101.

- **SECTION 50 (line 1116)**: There seems to be a slight nuance to the amended language to Section 37P of Chapter 71 replacing "*in consultation with*" to "*at the request of.*" Many police departments have had school resource officer programs in this state for 25 years or longer. The only reason why officers are assigned to the schools are because they have been "requested" to be there by the school superintendents - period. The reality is that many school districts even reimburse the police budgets for the salaries of these officers who serve as mentors for these young middle and high school students. If the Senate is being told that police chiefs are arbitrarily assigning officers to schools without first receiving a specific request from the school superintendents they are being misled. The 2018 Criminal Justice Reform Act has very specific language that outlines the qualifications of an SRO, the joint performance evaluations that are to be conducted each year, the training that they shall have and the language specific MOUs that must exist between the Schools and the Police Department.

- **SECTION 52 (lines 1138-1251**: There are several recommended changes to data collection and analysis as it pertains to motor stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive system of data collection, benchmarking, review, analyses and potential consequences. While we continue to welcome data that is both accurate and reliable, the issue pertaining to the classification of an operator's race has still yet to be resolved. Before any data from calendar year 2020 has yet to be collected by the RMV and subsequently analyzed by a College/University selected by the Secretary of EOPSS, these provisions now look to complicate the matter even further before a determination has actually been made as to whether any problem of racial or gender profiling actually exists here in our state. This language appears to be what did not make its way into the Hands Free Law which as you know was heavily debated for several months based strictly on the data collection component.

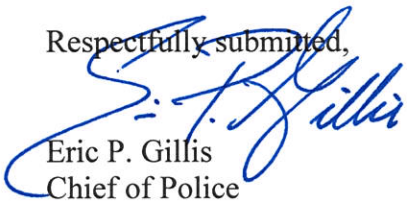
- **SECTION 55 (line 1272)**: To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. [...]." What should also be included is a commonsensical, reasonable and rational provision that states "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life

and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

I appreciate the opportunity provide you with my concerns and recommendations, and hope that you will carefully consider what I and other law enforcement professionals across the Commonwealth have had to say about these efforts of reform. Like all other police leaders, I stand ready to assist you in any way that I can if you deem such assistance necessary.

Please know that I will continue to serve this community and Commonwealth, and remain just as committed to the preservation of life and liberty for all as the day I embarked on this career path. I thank you for your diligent efforts in drafting this far-reaching legislation, and look forward to a cooperative relationship in service to our fellow citizens.

Respectfully submitted,



Eric P. Gillis
Chief of Police

07/16/2020

The Honorable Claire Cronin
Massachusetts House of Representatives
Chair, Joint Committee on the Judiciary
24 Beacon St.
Room 136
Boston, MA 02133

The Honorable Aaron Michlewitz
Massachusetts House of Representatives
Chair, House Ways & Means Committee
24 Beacon Street
Room 243
Boston, MA 02133

Dear Chairs Cronin and Michlewitz,

My name is James Creed and I am a resident of Bridgewater, Massachusetts and a proud law enforcement officer of 15 years. Presently, I serve as a Lieutenant with the Plymouth County Sheriff's Department and I am assigned to the K9 Unit. I am writing you today to inform you that I am strongly opposed to several proposals contained in S.2820 (An act to reform police standards and shift resources to build a more equitable, fair, and just commonwealth that values Black lives and communities of color).

Specifically, I vehemently oppose enacting any legislation that will diminish an officer's ability to safely and effectively do their job. This includes placing limitations on self-defense tactics in situations where deadly force is warranted. I am also against prohibiting law enforcement officers from using less lethal ammunition, tear gas, and K9s as a means of self-defense against violent agitators that disrupt peaceful protests. As an experienced law enforcement officer, I can confidently state that the above-mentioned tools are essential for maintaining law & order and for keeping police officers safe. Without them, we would be required to close the distance and go hands on with suspects (even when vastly outnumbered). This would result in serious injuries and deaths for both law enforcement officers and civilians alike.

It has come to my attention that a number of your colleagues have cited the events that unfolded in Brockton on the night of Tuesday June 2, 2020 as a reason for their desire to place restrictions on currently approved crowd control tactics. That evening, I was sent to Brockton to ensure the safety of a large peaceful protest at West Junior High School. Several hours after that protest ended, I responded to Brockton PD Headquarters to help disperse an increasingly raucous crowd that had been deemed an unlawful assembly due to the behavior of a sizable contingent of violent agitators.

I can personally attest that we were being bombarded by softball-sized boulders, frozen water bottles, and fireworks long before the use of tear gas was authorized. I find it sad how quickly many of your colleagues seem to have forgotten that Sgt. Michael Chesna was killed by an assailant who threw a rock just two short years ago. Even after tear gas was deployed, we had difficulty dispersing the crowd and directing them away from Brockton PD Headquarters. As we moved the crowd past the MBTA Bridge on Centre Street, we had cars and motorcycles intentionally driven at us. As we attempted to advance up to Dunkin Donuts, it was vandalized, doused with accelerant, and set on fire.

Consequently, once the fire was extinguished, Chief Gomes ordered a line of officers and K9s (of which I was a member) to move forward. (It is important to note that all K9s present were muzzled and that up until that moment they were purposely kept behind the front line of officers in an attempt to ease tensions and de-escalate the crowd.)

As we began to form a line in front of Dunkin Donuts, a moped deliberately drove towards us from our left flank and I narrowly avoided being struck. Subsequently, I watched helplessly as it collided with my friend (Sgt. Frank Pacheco Raynham PD K9) before it took off and attempted to drive through our line several more times. Thankfully, Sgt. Pacheco received only minor injuries from that collision.

Despite facing repeated violent attacks that easily could have resulted in officers being seriously injured or killed, we maintained our composure and ultimately restored order without seriously injuring anyone present. In my professional opinion, that outcome is directly attributed to the use of less lethal weapons (pepper ball guns, tear gas) and the mere presence of trained police K9s.

Lastly, I am not in favor of any legislation that curtails qualified immunity and opens the door for frivolous lawsuits. Police Officers acting in good faith cannot be expected to make split second decisions knowing that they could lose their ability to provide for their families in doing so.

In closing, I want to make it clear that I am not against this bill in its entirety. I am a strong advocate of Critical Incident Stress Management and Peer Support Programs. I welcome improvements to law enforcement training and increased police oversight. Furthermore, I am fully in favor of prohibiting law enforcement officers from utilizing “chokeholds” as a means to subdue suspects (outside of lethal force scenarios) and I am for instituting policies that establish an affirmative duty for police officers to intervene when they witness an excessive use of force.

Thank you for your continued support of law enforcement. I would be happy to meet with you or your colleagues to discuss my concerns. I look forward to your response.

Sincerely,

James M. Creed

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Jane Doe Inc.
The Massachusetts Coalition
Against Sexual Assault and
Domestic Violence

745 Atlantic Avenue 8th Floor Suite 800
Boston, MA 02111

617-248-0922
JaneDoe.org

July 17, 2020

Chairman Aaron Michlewitz
House Committee on Ways and Means
State House Room 243
Boston, MA 02133

Chairwoman Claire D. Cronin
House Committee on the Judiciary
State House Room 136
Boston, MA 02133

Re: Testimony in Support of Police Accountability -- Use of Force Standards, Qualified Immunity Reform, and Prohibitions on Face Surveillance

Dear Chairs Michlewitz and Cronin:

On behalf of Jane Doe Inc., and our 57 community-based member agencies that provide direct services to sexual and domestic violence survivors throughout Massachusetts, we are writing today **in support** of the many provisions in S.2820 designed to increase police accountability.

The highly publicized murder of George Floyd coupled with a legacy of murders of countless Black lives at the hands of police and civilians has compelled so many of us to engage in critical conversations and action about racism and systems of oppression, particularly those that exist in our policing system.

As part of a movement to end gender-based violence, JDI has been called to step into this conversation by confronting the impact of our historic reliance on the criminal justice system as a primary strategy for survivor safety and justice. Black leaders in the movement have long raised concerns regarding over-reliance on this system due to the harm it inflicts on communities of color. As we commit ourselves to do better in listening to survivors of color and strive for racial equity, we are called to stand with the Movement for Black Lives.

JDI has long held racial equity and social justice as key frameworks in our approach to our work to end sexual and domestic violence. Women and girls of color are disproportionately represented in the criminal justice system. Specifically, African American girls are 14% of the general population, but nationally represent 33.2% of girls who are detained. Of incarcerated cis- and transgender women of color, upwards of 80% have experienced some form of physical or sexual violence in their lifetime. This exposure to violence sets in motion the trauma-to-prison pipeline where Black women are often criminalized for survival behavior.

Between FY11 and F18 while the daily population of people in state and county correction facilities dropped 21% and the population of those in county run facilities fell by 16%, the total budget allocation for the MA Department of Correction and county departments rose nearly 25%. This discrepancy drove up the average cost of incarceration and paved the way for an increase in correctional spending. Amidst national and state calls to invest in

community resources and services over policing, we must ask ourselves how and why the Commonwealth has underfunded community-based resources and social services for those most vulnerable amongst us – survivors of trauma. Investing in the care of our community produces outcomes for all.

Omnibus Policing Reform Priorities and Concerns

To this end, we see the provisions of S. 2820 as one step towards reducing the harm of structural violence in Massachusetts. In particular, the following provisions must be included in an Omnibus Policing Reform bill to improve the safety and justice for all people in the Commonwealth.

1. **A complete ban on the most violent of police tactics.** JDI urges the House to include strong use of force standards including a complete ban on the most violent of police tactics—chokeholds, no-knock warrants and tear gas and other chemical weapons. These violent and harmful police tactics need to be prohibited to ensure the safety of all persons who encounter a police officer. We have witnessed time and again the use of chokeholds by police officers against Black men that ultimately lead death. This practice cannot continue. We have also seen the dangers of no-knock warrants through the murder of Breonna Taylor. SWAT teams with no-knock warrants disproportionately terrorize Black and Brown people. Lastly, tear gas and other chemical weapons have been shown to cause serious hormonal disruption, bodily injury and even death. The Commonwealth must not allow these dangerous practices that disproportionately target and harm Black people to continue.

2. **Strict limits on qualified immunity.** It is imperative the House answer the calls of the people to impose strict limits on qualified immunity to ensure that police can be held accountable when they violate people's right. Banning violent police tactics is meaningless if there is no way for people to hold the police accountable if they break the rules.

3. **Ban on the use of facial recognition technology.** We applaud the Senate for including a temporary moratorium on the use of facial recognition technology, however it would automatically expire on December 31, 2021 as written. JDI urges the House to support a ban on the use of dangerous facial recognition technology without a sunset provision. Specifically, we ask that you include **H.1538** in your omnibus bill. Face surveillance technologies have serious racial bias flaws built into their systems. Based on research, we know this technology is extremely poor at accurately recognizing the faces of women and people of color, misclassifying darker-skinned females at an extremely higher rate than lighter-skinned males. These dangerous failings of facial recognition technology serve to supercharge racist policing. Furthermore, all survivors of sexual and domestic violence, and particularly Black survivors, should feel safer accessing services without fear of being wrongfully identified or having their activity monitored.

This Omnibus Policing Reform legislation cannot and should not be seen as a comprehensive solution to the problem of structural racism and abuse of power within

policing systems. There are aspects of this legislation that serve to reduce harm and create a platform from which deeper efforts to transform our communities can continue. If the MA legislature wants to center racial equity during this legislative session, it must consider the this legislation –with a focus on the recommendations made with respect to the above enumerated components – alongside additional reforms that create the conditions necessary to allow Black and Brown residents of the Commonwealth to survive and thrive.

Please do not let this session end without passing additional legislation that comprehensively addresses the harm caused by incarceration and separation of families who are disproportionately Black and Brown. We stand with our partners in Families for Justice as Healing in lifting up the following:

We need to release people from jails and prisons who are most vulnerable to COVID19 by passing **H.4652,** provide no cost calls to incarcerated people by passing **S.1372**, strengthen visitation to our incarcerated community by passing **S.1379/H.2047**, and make sure the parole board has members with social work and mental health backgrounds by passing **S.4607**. We also support a harm reduction approach to substance use rather than more criminalization and punishment. Please pass **S.2717** to establish safe consumption sites in the Commonwealth.

We also need to increase access to driver's licenses in Massachusetts to prevent people from coming into contact with law enforcement, so please pass **S.2641**. Black and Brown communities in the Commonwealth have been hit hardest by COVID19, and we need real protections to keep people in their homes. Please pass **HD.5166** to prevent mass evictions. In the coming budget negotiations, please focus on shifting resources away from policing and incarceration and into Black and Brown communities.

We must heed the calls to action to engage in and dismantle structural racism. It is time to reduce harm in policing practices and shift resources into our communities in order to build a more equitable and just Commonwealth that explicitly values Black lives.

Sincerely,

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Policy Coordinator
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Testimony in support of EXPUNGEMENT in S.2820.

Dear Chair Michlewitz and Chair Cronin,

Good afternoon my name is Jefferson Alvarez and I'm 24 years old and I live in Lawrence. I'm from an organization named UTEC and I'm emailing on behalf of Teens Leading The Way. I'm here to tell my story, so thank you all for listening to me.

Before I begin, I want you all to know that there are many peers behind me that I work with from all around Massachusetts who have similar stories just like mine and it's an honor to speak on their behalf as well.

Nine years ago, during my freshman year of high school, I got into a fight. It was the middle of winter and I saw another student looking at me funny. I approached the student and we exchanged words. Something in my head clicked and we ended up trying to fight. Before a punch was thrown, school security guards pulled us apart and called the police. The police arrived, hand-cuffed me, and brought me outside to a police car. I felt like a criminal – like I had done something beyond terrible. The police ended up bringing me home, and I was summoned to court. At court, the judge told me to stay away from the victim, and I was removed from the high school and put into an alternative school.

At my new school, I kept getting into fights and I kept getting arrested. One fight led to me getting charged with an assault and battery with a dangerous weapon because I kicked another student with my shoe. Eventually I was expelled from school and committed to the Department of Youth Services where I started meeting other young people just like me and hearing their stories.

I realized that I hadn't done anything nearly as wrong as some of the others, and it made me think about life. Being in DYS taught me how to respect others, a lesson I hadn't learned yet.

After DYS, I started realizing that there were better ways to approach people and that fighting people was not an appropriate way to get respect.

Now I feel like I get more respect for talking it out than fighting. This led me to UTEC where I now I work on the café crew and my goal is to get my HiSet and begin paramedic training since I've work the last few years as life guard in Lawrence through the DCR.

This expungement bill will help **me directly** because I have many juvenile records, that even if sealed, could hold me back from my life goals. I really want to work with kids**,** but what if I

wanted to be a foster parent or what if I wanted to run a daycare? Sealing a record is helpful, but it's not enough.

Because of one mistake in my life, I began a long path that pulled me from school and got me deeper into the streets…. I'm 24 now and still fighting for my GED. I'm 21 now but I'm not who I was when I was 16. ……I'm full of madd love!

I will soon be able to seal my record, which means if this bill passes… I could expunge my juvenile record soon. I'm here to ask you to help me get back to the future that I left off chasing nine years ago.

Please include the expungement expansion language in your House bill. It won't only help me, it could help thousands of young people who are stuck in the same situation as me.

Thank you,

Jefferson

PROPOSED RE-DRAFT OF H2141
JUVENILE JUSTICE DATA TRANSPARENCY

SECTION 1. The purpose of these provisions is to ensure that the Commonwealth establishes systems to collect accurate, consistent, and comprehensive data on juveniles' contacts with officials in the law enforcement and juvenile justice systems in order to improve comprehensive state planning as required by Title 34 of the United States Code, section 1113.

SECTION 2. Section 89 of chapter 119 of the General Laws, as appearing in section 80 of chapter 69 of the acts of 2018, is hereby amended by inserting after the definition of "criminal justice agency" the following paragraph:-
"Gender identity and expression" shall be defined pursuant to subsection 59 of section 7 of chapter 4 of the General Laws

SECTION 3. Section 89 of said chapter 119, as so appearing, is hereby further amended by inserting after the definition of "racial or ethnic category" the following paragraph:-
'Sexual orientation", having an orientation for or being identified as having an orientation such as heterosexuality, bisexuality, or homosexuality.

SECTION 4: Chapter 18C of the General Laws is hereby amended by inserting the following section:[SF1]

Section 15: Collection and Reporting of Juvenile Justice Data

(a) The child advocate shall report annually by December 31st to the governor, the house and senate chairs of the joint committee on the judiciary, the house and senate chairs of the joint committee public safety and homeland security, the house and senate chairs of committee on children, families and persons with disabilities and the chief justice of the trial court on juvenile contacts with the justice system. The report, which shall be made public, shall include statistics on juvenile interactions with the justice system, as described in Section 90 of Chapter 119 of the General Laws.

(b) The child advocate shall request data from relevant Offices and Departments holding data necessary to complete the aforementioned report at least annually, and may request data be provided on a quarterly basis.

(c) The child advocate shall determine the format and form that the aforementioned data from Offices and Departments shall take, including any requirements that data should be available for manipulation or disaggregation, and the format that transmission of the data shall take, provided that at a minimum the child advocate shall request the data be provided in such a way as to allow analysis by demographic subgroups including, at a minimum, age, biological sex, gender identity and expression, racial and ethnicity category, sexual orientation, charge type and level, geographic location including county or court location, and any combination thereof. The child advocate may request, and all Offices and

Departments subject to this law shall provide, individual level data to facilitate analysis, provided that the child advocate shall be bound by any limitations on the use or release of information imposed by law upon the party furnishing such information as described in Section 12 of this chapter. The child advocate shall give due regard to the census of juveniles when setting forth the racial or ethnic categories in the instrument. The child advocate may provide guidance about the manner in which race and ethnicity information is designated and collected, with consideration of the juveniles' self-reporting of such categories.

SECTION 5. Section 12(a) of Chapter 18C of the General Laws is hereby amended by inserting the words "or any law protecting the confidentiality of juvenile justice records and information" after "20K of chapter 233"

SECTION 6. Chapter 119 of the General Laws, as appearing in section 80 of chapter 69 of the acts of 2018, is hereby amended by inserting after section 89 the following section:

Section 90. (a) The department of state police, municipal police departments, Massachusetts Bay Transportation Authority police, any police or law enforcement officer stationed at or affiliated with a local education authority, and any contractor, vendor or service-provider working with such police including any alternative lock-up programs, shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) referral to and/or use of diversion programming; and
(2) custodial arrests and issuance of court summons.

(b) Clerk magistrates shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) criminal complaint filed;
(2) finding of probable cause;
(3) diversion from further court proceedings, including referral to and/or use of diversion programming;
(4) complaint issued;
(5) appeal to judge of the finding by the clerk magistrate; and
(6) complaint issued after appeal.

(c) The district attorneys shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) decision not to proceed with prosecution, including but not limited to entering a nolle prosequi or moving to dismiss a case;

(2) diversion from further court proceedings, including referral to and/or use of diversion programming;
(3) indictment of youth as a youthful offender as defined in Section 52 of Chapter 119 of the General Laws;
(4) prosecution in juvenile court under section 74 of chapter 119 of the General Laws.

(d) The juvenile court department shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) arraignment as a delinquent;
(2) arraignment as a youthful offender;
(3) diversion from further court proceedings, including referral to and/or use of diversion programming pursuant to section 54A of chapter 119 of the General Laws;
(4) court hearing on dangerousness pursuant to section 58A of chapter 276 of the General Laws;
(5) transfer of case to adult criminal court under section 72A of chapter 119 of the General Laws;
(6) imposition of bail or order to hold without bail;
(6) imposition of pretrial release conditions, including pre-trial probation pursuant to section 87 of chapter 276 of the General Laws;
(7) bail revocation hearings;
(8) cases which are continued without a finding pursuant to section 18 of chapter 278 and to section 58 of chapter 119 of the General Laws;
(9) dismissal of charges;
(10) adjudication as a delinquent;
(11) adjudication as a youthful offender;
(12) imposition of an adult sentence pursuant to section 58 of chapter 119 of the General Laws;
(13) disposition, including but not limited to:
(i) sentence to probation, including any special conditions of probation such as fines, curfew, drug and alcohol testing or special programming;
(ii) commitment to the department of youth services pursuant to section 58 of chapter 119 of the General Laws;
(iii) commitment to the department of youth services pursuant to section 2 of chapter 279 of the General Laws that are suspended.
(14) juvenile brought before the court on criminal and non-criminal violations of probation;
(15) commitments to department of youth services following a probation violation; and

(16) revocation of a continuation without a finding pursuant to pursuant to section 18 of chapter 278 and to section 58 of chapter 119 of the General Laws;

(e) The office of the commissioner of probation shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the following contacts for each fiscal year, , provided on a quarterly basis if requested by the child advocate:

(1) referral to and/or use of diversion programming;
(2) supervision of pre-trial probation;
(3) supervision of continuances without a finding;
(4) supervision of youth on probation;
(5) referral to the court for a probation violation; and
(6) disposition of probation violation hearing

(f) The department of youth services and any contractor, vendor or service provider working with said department including alternative lock-up programs shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) pre-arraignment detention;
(2) pre-trial detention;
(3) commitment;
(4) placement type, including, but not limited to, security level;
(5) notice of revocation of grants of conditional liberty;
(6) hearing on grants of conditional liberty;
(7) revocation of grants of conditional liberty for violation of conditions of liberty; and
(8) voluntary extensions of commitments with the department of youth services.

(g) The superior court shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) arraignment for murder in the first degree and murder in the second degree; and
(2) convictions and dispositions for murder in the first degree and murder in the second degree.

(h) The department of correction and each sheriff's department shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C for each juvenile subjected to the

following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) pre-arraignment detention;
(2) pre-trial detention;
(3) post-disposition confinement of youthful offenders; and
(4) post-conviction confinement for murder.

(i) The parole board shall collect and provide the necessary information to comply with the data request from the child advocate pursuant to Section 15 of Chapter 18C, for each adult who was convicted of an offense committed when they were a juvenile subjected to the following contacts for each fiscal year, provided on a quarterly basis if requested by the child advocate:

(1) grant of parole;
(2) supervision of parole; and
(3) revocation of parole.

(j) The Executive Office of Public Safety and Security shall be responsible for assembling the data requested by the child advocate pursuant to Section 15 of Chapter 18C collected by the below offices and departments. The collected data shall be provided to the Office of the Child Advocate no later than 75 days after the end of the fiscal year or quarter if the child advocate requests data on a quarterly basis.

(1) The Commissioner of the Department of Correction;
(2) Sheriffs of each County;
(3) The Parole Board;
(4) The Department of the State Police;
(5) Municipal police departments;
(6) The Massachusetts Bay Transportation Authority Police;
(7) School based police from any local education authority;
(8) Alternative Lock-up Programs; and
(9) any other contractor, vendor or service provider working with school based or other police officers.

(k) The Attorney General shall be responsible for assembling data requested by the child advocate pursuant to Section 15 of Chapter 18C collected by District Attorney's Offices on an annual basis. The collected data shall be provided to the Office of the Child Advocate no later than 75 days after the end of the fiscal year or quarter if the child advocate requests data on a quarterly basis.

(l) The Court Administrator shall be responsible for assembling data requested by the child advocate pursuant to Section 15 of Chapter 18C collected by judicial officers and court personnel, including the Commissioner of Probation, and the Executive Director of Community Correction. The collected data shall be provided to the Office of the Child Advocate no later than 75 days after the end of the fiscal year or quarter if the child advocate requests data on a quarterly basis.

(m) The Department of Youth Services shall be responsible for assembling data requested by the child advocate pursuant to Section 15 of Chapter 18C collected by all department personnel, contractors or vendors working with the Department. The collected data for shall be provided to the Office of the Child Advocate no later than 75 days after the end of the fiscal year or quarter if the child advocate requests data on a quarterly basis.

(n) Notwithstanding any law to the contrary, the child advocate may request, and all Offices and Departments subject to this law shall provide upon request, individual level data to facilitate analysis by the Office of the Child Advocate, provided that the child advocate shall be bound by any limitations on the use or release of information imposed by law upon the party furnishing such information as described in Section 12 of Chapter 18C. Any individual data described or acquired under the provisions of this section shall be used only for statistical purposes and may not be disseminated if it contains data that reveals the identity of an individual who had contact with the juvenile justice system within the meaning of this chapter.

(o) If any Offices or Departments subject to this law are unable to fulfil the data request made by the child advocate, in whole or in part, they shall submit to the child advocate a report detailing what data could not be provided, stating clearly the reason data could not be provided, and stating clearly the efforts the Office or Department has made and will make to ensure data can be provided in the future. If the data cannot be provided due to budgetary constraints, the Office or Department shall provide a budget detailing the additional funding required to fulfil the data request. These reports on data availability shall be included in the annual juvenile justice data report of the child advocate pursuant to Section 15 of Chapter 18C and shall be a matter of public record.

Massachusetts Coalition for Juvenile Justice Reform

Action for Boston Community Development
ACLU of Massachusetts
Bethel Institute for Social Justice/Generation Excel
Black Lives Matter- Worcester
Boston Teachers Union
Bridge Over Troubled Waters
Center for Public Representation
Center for Teen Empowerment
Charles Hamilton Houston Institute, Harvard Law School
Children's Law Center of Massachusetts
Children's Mental Health Campaign
Citizens for Juvenile Justice
City Mission Society
The City School
Coalition for Effective Public Safety
Committee for Public Counsel Services
Criminal Justice Policy Coalition
Dorchester Youth Collaborative
Ending Mass Incarceration Together
Fair Sentencing of Youth
Friends of Children
GLBTQ Legal Advocates & Defenders
Greater Boston Legal Services, CORI & Re-entry Project
The Home for Little Wanderers
High Risk Youth Network
I Have a Future/Youth Jobs Coalition
InnerCity Weightlifting
Jobs Not Jails
Justice Resource Institute
Juvenile Rights Advocacy Program, Boston College Law School
Lawyers Committee for Civil Rights
League of Women Voters of Massachusetts
Louis D. Brown Peace Institute
Mass Mentoring Partnership
Massachusetts Bar Association
Massachusetts Commission on LGBTQ Youth
Massachusetts Society for the Prevention of Cruelty to Children
Mental Health Legal Advisors Committee
MissionSAFE
More Than Words
Mothers for Justice & Equality
My Life My Choice
Nat'l Alliance on Mental Illness – MA
North American Family Institute
Parents/Professional Advocacy League

Reforming Police Standards Testimony House Hearing on S.2820

July 17, 2020

Committee on the Judiciary
House Committee on Ways and Means
The State House
Boston, MA 02133

Dear Chair Cronin, Chair Michlewitz, Vice Chair Day, Vice Chair Garlick and House members of the Judiciary and the House Ways and Means Committees,

We have all spent the last few months concerned about the state of emergency created by COVID-19, and have seen a disproportionate health and economic harm falling Massachusetts' residents of color. The past few weeks' protests and uprisings standing up for the life and dignity of Black residents is a culmination of decades and decades of modern day racial oppression – both overt and subtle. The murders of George Floyd, Ahmaud Arbery and Breonna Taylor at the hands of active and retired law enforcement officers is the ultimate injustice on the hands of public officials sworn to "serve and protect". As advocates for youth justice we are also keenly aware that the killing of Black children – Cornelius Frederick, Jayson Negron, Kwame Jones and Tamir Rice – was protected by our legal systems.

It is a tremendous time to see a wave of understanding and commitment to address the racial injustices our society has sanctioned against its residents of color and to hold our law enforcement officers and agencies accountable to their duty to serve and protect. We extend our appreciation that Massachusetts' legislative leaders are committed to seeing an agenda towards racial equity, and with that we share our recommendations towards reaching that goal.

While a racially motivated killing is the ultimate harm, it is important to recognize that racial indignities permeate all stages of interactions with legal system agencies. Studies show that young people reporting police contact, particularly more intrusive contact, also display higher levels of anxiety, trauma and even post-traumatic stress

disorder associated with these experiences and it is evident that racism is fundamentally damaging not just Black adults, but Black youth.

Our coalition fully supports the priorities of the members of the Black and Latino caucus in advancing race equity and policing reform in our state. We respectfully submit this testimony strongly recommending that the House bill also include the following three priorities that would tackle the systemic and institutional racial inequities plaguing our legal system and that omnibus racial equity legislation hold our state systems, not just individual officers, accountable to a more just society and include three reforms that play a role towards that goal:

(1) Require transparency in juvenile justice decisions by race and ethnicity (as filed by Rep. Tyler in H.2141, with modifications)

(2) End the automatic prosecution of teenagers as adults (as filed by Rep. O'Day in H.3420)

(3) Expand expungement eligibility (as filed by Reps. Decker and Khan in H.1386 and as passed in S.2820 §§59-61)

Recommendation 1: Require transparency and accountability by reporting race/ethnicity data at each major decision point of the juvenile justice system.

Massachusetts has one of the worst racial disparities for youth incarceration in the country[1] despite more than a decade of reforms to reduce the pretrial detention of youth. Massachusetts also lacks the transparency on how our legal system responds to children and youth once they get arrested and how they move across each decision point. Additionally, LGBTQ youth – especially girls[2] – are overrepresented in juvenile justice systems, and they are predominantly youth of color[3], therefore transparency on racial inequities must also include the disparities built on the intersectionality of race, ethnicity, gender identity and sexual orientation. Legislation to shed light on the racial inequity in our juvenile justice system is a necessary first step to confronting the disparate treatment

[1] According to the Sentencing Project, Massachusetts' has the 6th worst Black-White disparity in youth incarceration, with Black youth 10 times more likely to be incarcerated than White youth. https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/

[2] Himmelstein, K. &. (2011). Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study. *Journal of Pediatrics*, 127(1), 48-56.

[3] Wilson, B., Jordan, S., Meyer , I., Flores, A., Stemple, L., & Herman, J. (2017). Disproportionality and Disparities among Sexual Minority Youth in Custody. *Journal on Youth and Adolescence*

of Black and Brown youth by our legal system. **We don't solve institutional racism by making the racial impact of our decisions invisible.** This legislation will gather key demographic data at major decision points – race and ethnicity, sexual orientation, gender identity/expression, and age – to better identify decision points leading to the over representation of certain populations in the juvenile justice system.

In 2017, the Department of Youth Service (DYS) and Probation partnered on a statistical analysis to answer one question: "Is the disproportionate incarceration of Black and Latinx youth compared to White youth explained by a difference in offending or a difference in the legal system's response to similar offenses?" The analysis found that Black youth were 91% more likely to be incarcerated for similar offenses than White youth, with the disparities rising to 2.5 times in some counties.[4]. Rather than dig deeper into that data and try to actually work to address the factors creating this disparity, the Juvenile Court rescinded a three-way data sharing agreement, prohibiting Probation Services from sharing data with DYS and dictating greater control on any future analysis that may reflect poorly on the decision of the state judges.

The legislature invested $75 million to revamp the judicial databases in the 2013 rollout of MassCourts. While that data system may need additional upgrades, we are certain that the capacity of that data system today is able to provide the information required by H.2141/S.1386: the number of arraignments by age and race, or detention and disposition decisions by gender and race. The Detention Utilization Study highlighted issues of data collection (rather than reporting) of ethnicity (Hispanic or non-Hispanic) which can be addressed administratively.

See Appendix A for a proposed modification to H.2141

Recommendation 2: End the automatic prosecution of Massachusetts' oldest teens as adults. Youth of color bear the harshest brunt of that failed policy resulting in double the recidivism rate of similar teens in the juvenile system and its worse collateral consequences

Massachusetts treats similar teenagers very differently with devastatingly different outcomes as they transition into adulthood. In 2013, Massachusetts ended the automatic prosecution of 17-year-olds as adults amid cries of panic that 17-year-olds are somehow different than other teenagers and high cost estimates of implementation. Not only were official state estimates 37% above actual costs, the juvenile justice system's caseload today is lower than ***before*** the introduction of 17-year-olds.[5]

> *"Each of the three states that led the national trend in raising the age—Connecticut, Illinois, Massachusetts—managed to contain costs, reduce*

[4] An excerpt of the Detention Utilization Study analysis of Black-White disparities can be found at https://www.cfjj.org/s/Detention-Utilization-Study-RED-Excerpt.pdf

[5] A detailed analysis of arrest, Juvenile Court and Department of Youth Services caseloads can be found at https://www.raisetheagema.org/court-capacity.

> *confinement, reallocate funds to more effective approaches that keep most young people in the community, and enhance public safety."* [6]

While we are advocating to address the racial disparities in the juvenile justice system, the racial disparities in the adult system are even worse. Only 25% of Massachusetts' transition age youth population is Black or Latinx, but 70% of youth incarcerated in state prisons and 57% of youth incarcerated in county jails are people of color. Black and Latinx youth are 3.2 and 1.7 times, respectively, as likely to be imprisoned in adult correctional facilities as their White peers. This racial disparity in adult system involvement further exacerbates the disparity in long-term outcomes.

Young people in the adult system have the worst outcomes of any age group in our legal system. **Recidivism among young people incarcerated in the adult corrections is *more than double* similar youth released from department of youth services commitment.** Teenagers and young adults incarcerated in Massachusetts' adult correctional facilities have a 55%[7] re-conviction rate, compared to a similar profile of teens who remained in the juvenile system whose re-conviction rate is 22%[8]. DYS has been successful in reducing its recidivism rate following almost four decades of reforms building in an emphasis on providing treatment and imposing policies whose primary goal is to ensure young people's healthy and positive development into adulthood.

Youth of color exiting the adult criminal legal system are not only saddled by a public criminal record limiting their educational and economic opportunities, the adult system's lack of focus and expertise on positive youth development, means that while youth are under state custody they are less likely to engage in rehabilitative programming, which is the cornerstone of the juvenile system.

The better outcomes of the juvenile justice system compared to the adult criminal legal system are tied to the former's responsiveness to older teenagers and a better understanding of how to capitalize on their developmental stage to promote better public safety and youth development outcomes. Attempts by the adult criminal justice system to create specialized carve-outs are their attempt to re-create positive aspects of the juvenile justice system. While commendable and a positive short-term step, they are and will only be available to a handful of youth leaving the vast majority of young people without access to these reforms. Most importantly, they do not incorporate the legal impact and practical considerations of juvenile system involvement. A young person in a young adult court session cannot legally be committed to DYS rather than an adult facility. A young person incarcerated in a young adult unit does not have the legal protections of an adjudication, compared to a conviction; nor are they connected to the range of tools, programming and

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[6] Justice Policy Institute, *Raising the Age: Shifting to a safer and more effective juvenile justice system*, 2017. http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf

[7] Council of State Governments Justice Center, "Justice Reinvestment in Massachusetts: Policy Framework," February 21, 2017. Available at https://csgjusticecenter.org/jr/massachusetts/publications/justice-reinvestment-in-massachusetts-policy-framework/

[8] Department of Youth Services, "Juvenile Recidivism Report For Youth Discharged During 2014" November 19, 2018. Available at https://www.mass.gov/files/documents/2018/12/17/recid2018.docx

interventions available within the juvenile justice systems to promote positive youth development.

This testimony will address three specific questions that keep coming up about this proposal:

- **Does Massachusetts' juvenile justice system have the capacity to handle older teens?**
- **Can the juvenile justice system handle serious crimes?**
- **Will parents of 18-year-olds be able to participate in their children's cases?**
- **Does raising the upper age of juvenile justice jurisdiction over a youth's 18th birthday violate federal law requiring separation of youth from adults in the legal system?**

Massachusetts' juvenile justice system has the capacity to handle the incremental entry of 18- to 20-year-olds.

In 2013, Massachusetts policy makers ended the practice of automatically prosecuting 17-year-olds as adults. Since then, juvenile crime has declined by 28%, and has seen faster declines in violent and property crime rates than the national average. With juvenile crime continuing to plummet, the system – including courts and DYS – **can handle all 18-year-olds TODAY**. Over the past decade, the juvenile system's caseloads have dropped significantly, creating ample capacity to absorb older teens into the system:

- The total number of juvenile arrests decreased by 70% since 2008.
- The total number of juvenile court cases (child welfare, CRA, delinquency and youthful offender cases) has steadily declined: Since the introduction of 17-year-olds into the juvenile court in FY14, there has been a 16% decrease in juvenile court filings through FY2018.
- Juvenile delinquency and youthful offender arraignments fell by 50% (FY13 to FY20)
- DYS detention admissions dropped by 73% and commitments dropped by 72%.

The juvenile system is already serving 18- to 20-year-olds. Over 80% of young people over the age of 18 that are committed to the Department of Youth Services are adjudicated as a Youthful Offender and committed until age 21. In 2017, DYS served 357 young people 18-years and older who were either committed to DYS until age 21 or through voluntary services provided by DYS through age 22.

The arrests of 18- to 20-year-olds during the same period (2008-2018) similarly dropped by 72%, indicating that even with full implementation, the caseloads at all stages of the juvenile system would still be lower than the caseloads of years prior to the first Raise the Age law. See Appendix B for a detailed caseload analysis.

Massachusetts' juvenile justice system has the specialized skills to handle 18- to 20-year-olds with serious and violent charges.

Approximately 10% of 18- to 20-year-olds are charged with a serious felony that leads to Superior Court charges. The juvenile system currently handles almost all of these cases, including the cases of young people under the age of 21 who are indicted on serious offenses.

Although the focus of the Juvenile Court is treatment and rehabilitation of youth, the court is empowered to impose more severe, adult sentences in "youthful offender" (YO) cases for children as young as 14. In those cases, the prosecutor has the discretion to indict a young person as a "Youthful Offender" or arraign them as a delinquent. An indictment requires that an offense: (1) resulted in or threatened to cause serious bodily injury; (2) involved a firearm; or (3) is a felony and the young person was previously committed to DYS for another offense. If the young person is adjudicated a Youthful Offender, then the judge has the discretion to sentence in three ways: (1) commitment to DYS until age 21; (2) a straight adult sentence; or (3) commitment to DYS until age 21 with a subsequent adult sentence. So even with the possibility of an adult sentence (due to the discretion of prosecutor and judge), the youth is still in Juvenile Court where they are eligible for juvenile and/or adult sentences.

By contrast, the district courts only handle misdemeanors and felonies punishable by imprisonment for no more than five years; the Superior Court has the jurisdiction over the remaining more serious felonies. Since the juvenile courts have jurisdiction over all offenses, with the exception of first and second degree murder cases, the juvenile courts and its practitioners have more experience dealing with serious offenses.

The juvenile system typically imposes more supervision and intensive programming while in confinement than the adult criminal justice system. Educational, counseling and independent living programs are difficult-to-impossible to access in adult correctional settings. Teens in the juvenile system may be required to receive evaluations and assessments and frequently must participate in services and programs designed to teach responsible behavior as part of their sentence.

This legislation does not change the current statute requiring the prosecution of young people who are charged with murder to be automatically tried as an adult in Superior Court and subject to adult sentences.

Parental involvement is a key component of the juvenile justice system.

Parental involvement does not end at age 18:

> *"Despite the fact that the "age of majority" is eighteen, this does not mean that all obligations between parents and children will end on the day a child turns eighteen. In fact, Massachusetts courts have stated that in this state, there is no fixed age when complete emancipation occurs, and that it does not automatically occur when the child turns eighteen. For example, in some cases, parents can be required to support their children beyond the child's eighteenth birthday. See, Turner v. McCune, 4 Mass.App.Ct. 864, 357 N.E.2d*

> *942 (1976) and Larson v. Larson, 30 Mass.App.Ct. 418, 469 N.E.2d 406 (1991). This may occur when the child lives with a parent and is principally dependent upon that parent for support."* [9]

The juvenile justice system already has charge of people over 18 and is one of many systems within the Commonwealth that involves the parents of people up to the age of 21 – and in some cases beyond that. In families with resources, parents are typically quite involved in providing guidance and help to their children through college and beyond. Families with children involved in the juvenile justice system are no less invested in their children and no less essential to their children's success. However, parental involvement is close to impossible in the adult criminal justice system which makes it very difficult for these older teens to benefit from family support. The Department of Youth Services already supervises youth up to age 22 and involves parents in their programming and discharge planning.

While there are older youth whose parents will not be involved in their case for any of a variety of reasons – whether the youth or the parent is unwilling or unable to have the parent involved – most older teens will opt-into having a parent or other interested adult guiding them through their case. The juvenile court has a precedent of overseeing similar children whose parents are not involved, particularly with youth in the care and custody of DCF who are disproportionately involved in the juvenile justice system. In those cases, the court can assign, though infrequently – and for youth 18 and older, the youth can choose – a case worker, an assigned guardian or other interested adult to help guide the youth. Cases generally are not delayed or stuck in those circumstances, especially as a child is older.

Youth who age out of foster care are more likely to be involved in the criminal justice system than similarly aged youth, yet when they turn 18, the adult courts do not take into consideration that in the preceding years the Commonwealth was their parent. Families are welcome but cases don't bog down as long as they are not critical to the disposition of the case. DCF kids – caseworker can sign, guardians can be appointed when needed, rare, legally old enough to decide for yourself interested.

Parental involvement past the 18th birthday is evident in other state systems. The most common setting for parental involvement of youth 18 and older is public education. More than 22,000 students in Massachusetts high schools are aged 18 to 20. That's more students than play high school football. When students turn 18, schools do not stop sending report cards home to parents or stop communicating with families about health, safety and behavior. This involvement is especially evident with special education students, who are also at much higher risk of school discipline and school-based arrest than their peers. When students have an Individualized Educational Plan, parents usually remain part of the IEP team even after the student turns 18.

[9] Children's Law Center of Massachusetts, "Emancipation and the Legal Rights of Minors in Massachusetts". https://www.masslegalhelp.org/children-and-families/emancipation

Clients in the child welfare system may receive Department of Children and Families services up to age 23. However, if they enter the adult criminal legal system, those services, especially those from child-serving agencies, can be severed. Adult legal system involvement becomes a serious impediment for these support systems to offer continuity and keep people connected to adult service providers and mentors.

Raising the age of Juvenile Jurisdiction will not violate federal core requirements under the Prison Rape Elimination Act (PREA) and the Juvenile Justice and Delinquency Prevention Act (JJDPA)

According to the Columbia University Justice Lab, which is assisting the state of Vermont in implementing its law raising the age, states that:

> *Neither the federal Juvenile Justice Delinquency Prevention Act nor the Prison Rape Elimination Act pose obstacles to states' proposals to raise the upper age of juvenile jurisdiction over age 18. By enacting laws that explicitly include youth over age 18 in the juvenile justice system, states can protect these youth from harm from older adults in the same way that they now protect youth under age 18.*[10]

Recommendation 3: Expand eligibility for expungement to rectify the collateral consequences of the over-policing and criminalization of communities of color

Expungement is an important tool to allow individuals to completely and fully re-integrate into society without the burden of a criminal record has no predictive value of future offending because either the records are old or because there was no conviction. **More importantly, expungement can be an important tool to rectify the documented systemic racism at every point of the criminal legal system.**

In 2018, Massachusetts passed legislation that created an opportunity to expunge juvenile and adult criminal records for folks whose offense was charged prior to their 21st birthday. While this is a tremendous step forward, the law created a significant limit: there can only be one charge on the record, and the Judiciary committee reported a limited bill expanding the eligibility to include multiple charges for one incident.

The Washington Post compiled a comprehensive list of peer-reviewed studies or reviews of municipal and state level data from across the US and found that overwhelmingly, racial disparities against Black individuals was documented at every stage of the legal system – from policing and profiling, court proceedings to sentencing and every stage in between:

[10] Columbia Justice Lab, "Raising the Upper Age of Juvenile Jurisdiction: Implications of Federal JJDPA and PREA Requirements," December 2019

> *"I've had more than one retired police officer tell me there is a running joke in law enforcement when it comes to racial profiling: It never happens . . . and it works."*

> *"A 2018 review of academic research found that at nearly all levels of the criminal justice system, "disparities in policing and punishment within the black population along the colour continuum are often comparable to or even exceed disparities between blacks and whites as a whole." That is, the darker the skin of a black person, the greater the disparity in arrests, charges, conviction rates and sentencing".*[11]

We ask the legislature to use the expungement legislation to rectify the over-policing and disparate treatment of people of color be expanding eligibility for expungement:

- The current law limits eligibility to the same number and type of offenses regardless of the case outcome of a conviction/adjudication or a favorable disposition. We ask the legislature amend the expungement statute to exclude non-convictions and non-adjudications from the eligibility restrictions based on number of charges or cases.

- Reduce the list of offenses NEVER eligible for expungement to those currently ineligible for sealing: sex-based offenses, homicide and offenses with life-long sentences. The list of offenses NEVER eligible for expungement is too broad and doesn't take into account young people's histories of trauma (with a significant number of children dually-involved with the Department of Children and Families and the legal system), nor the circumstances behind a certain offense (fear of violence in their communities or in their own homes). The current expungement law incorporated a process of checks where eligibility only allows a petitioner to make their case to a judge, after a prosecutor's review.

- Support creating opportunities for young people with more than one conviction to have a chance to prove their rehabilitation, whether through increasing the number of maximum convictions eligible for expungement or by the creation of a specialized rehabilitation certificate process for youth who successfully complete a rehabilitation program and have no subsequent offenses on their record. There is a strong incentive for the state to invest in reducing recidivism in high-risk young people, and many of these evidence-based programs work and those young people desist from future offending and become upstanding members of the community.

- States where there are minimal administrative barriers to sealing and/or expungement of juvenile records have significantly reduced re-arrest/recidivism rates and increased college graduation and incomes as these young people

[11] *There's overwhelming evidence that the criminal justice system is racist. Here's the proof.* Washington Post, June 10, 2020. https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/

transition to adulthood.[12] As the Courts seek funding for technological advances, we recommend that these improvements include an upgrade to MA Probation Service's system of record sealing to permit electronic filing of petitions to seal and automatic sealing after expiration of an applicable waiting period.

Thank you for considering our recommendations. If you have any questions or to follow up, please contact Sana Fadel from Citizens for Juvenile Justice at sanafadel@cfjj.org or 617.338.1050.

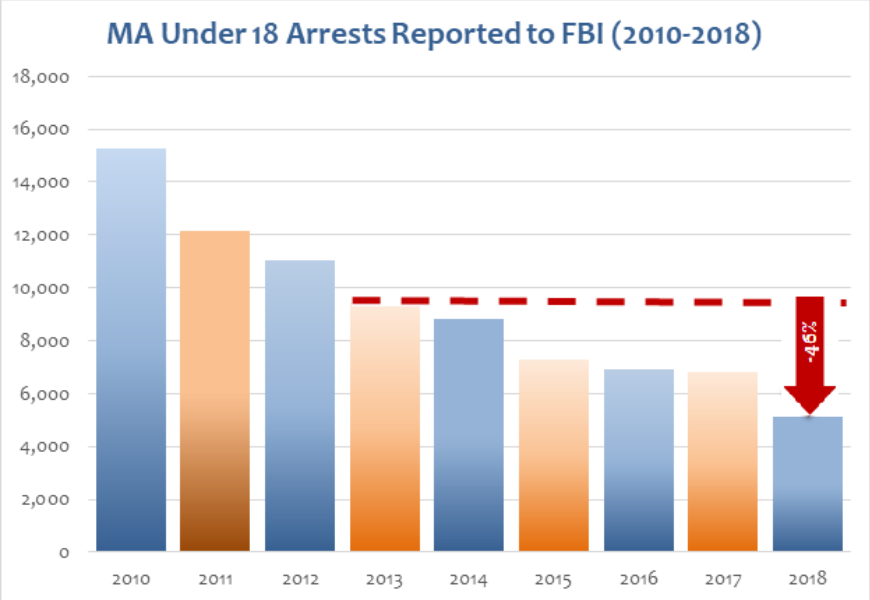
Respectfully,
Members of the Massachusetts Juvenile Justice Reform Coalition

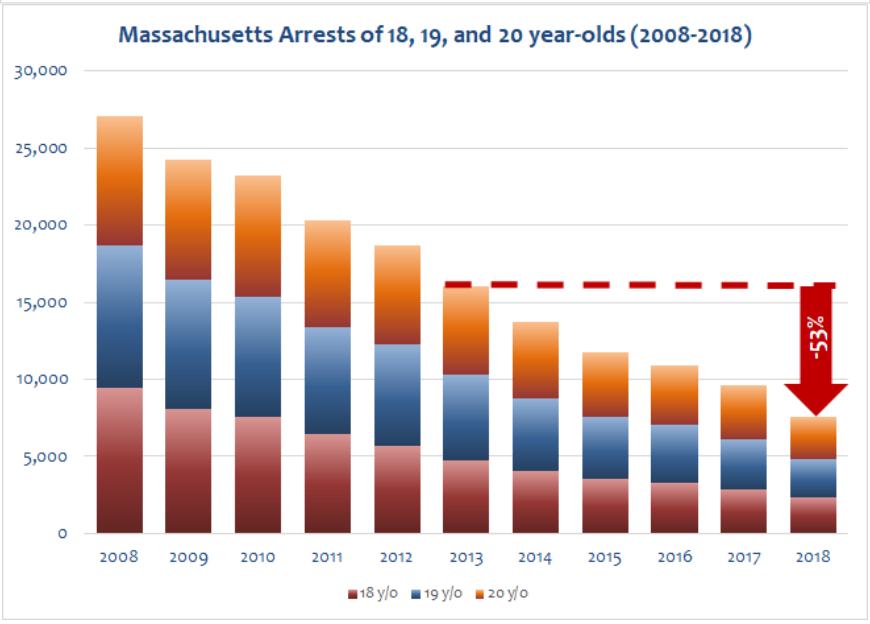
APPENDIX A. Proposed re-draft of H.2141 (separately attached)

[12] Daniel Litwok, *Have You Ever Been Convicted of a Crime? The Effects of Juvenile Expungement on Crime, Educational, and Labor Market Outcomes*. http://econ.msu.edu/seminars/docs/Expungement%20112014.pdf and Jeffrey Selbin, Justin McCrary, and Joshua Epstein, *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. Crim. L. &Criminology 1 (2018). https://scholarlycommons.law.northwestern.edu/jclc/vol108/iss1/1

APPENDIX B:
Summary of Key System Trends of Justice Involved Youth and Transition Age Youth in Massachusetts

ARRESTS[13] — There are fewer youth under age 21 getting arrested and coming to court: The decline in arrests of 18- to 20-year-olds (53%) closely mirrors the decline of arrests of children under age 18 (46%).

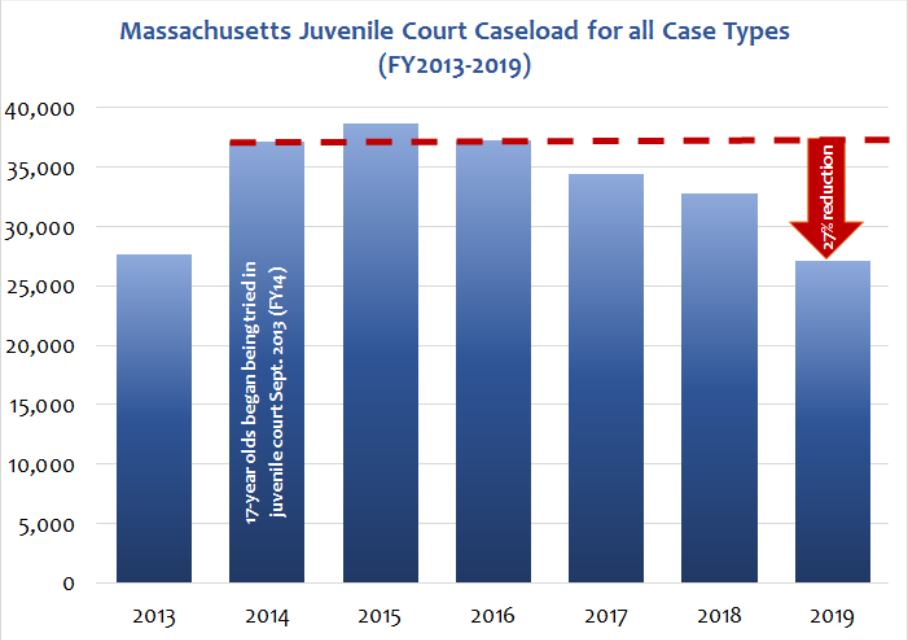




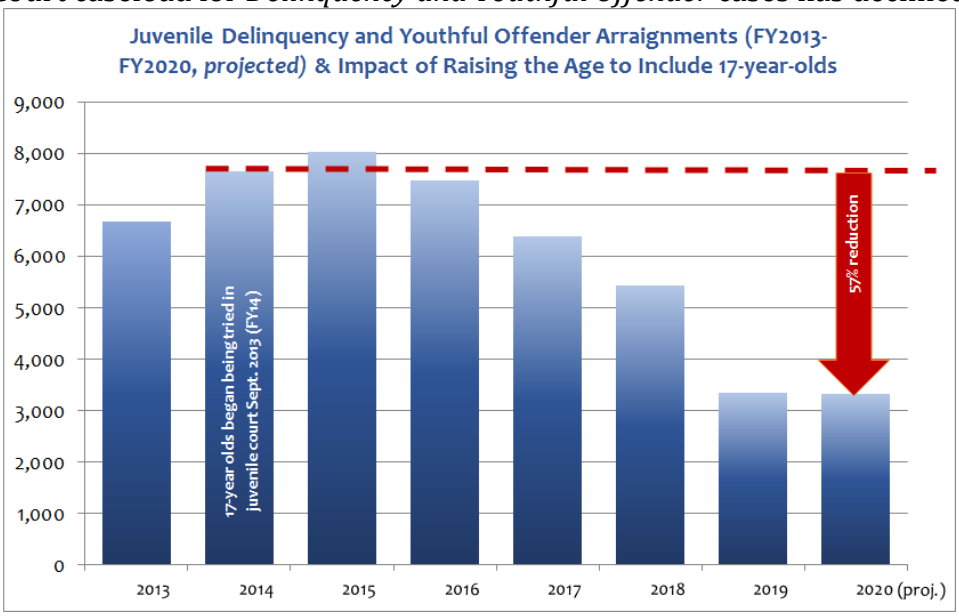
[13] *Federal Bureau of Investigation, Uniform Crime Reports; Kaplan, Jacob. Jacob Kaplan's Concatenated Files: Uniform Crime Reporting (UCR) Program Data: Arrests by Age, Sex, and Race, 1974-2018. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2020-02-27. ttps://doi.org/10.3886/E102263V9*

COURT INVOLVEMENT — The Juvenile Court's caseloads, for all case types, have declined steadily over the last 10 years. Since raising the age in 2013[14]:

Juvenile Court caseload for *ALL* case types (child welfare, Child Requiring Assistance, adoption, delinquency, etc.) has declined by 27%.

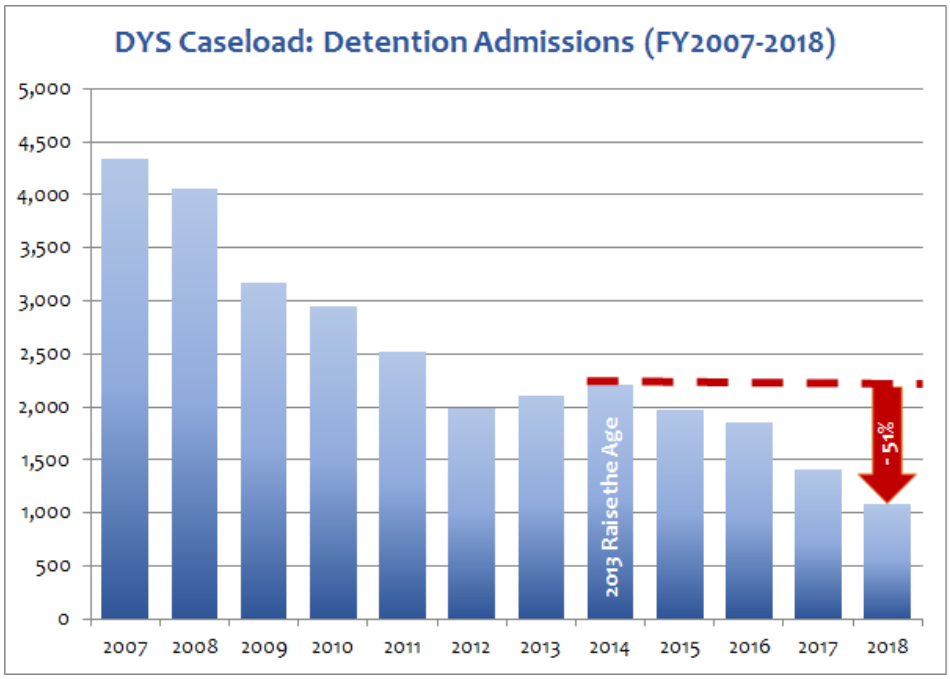


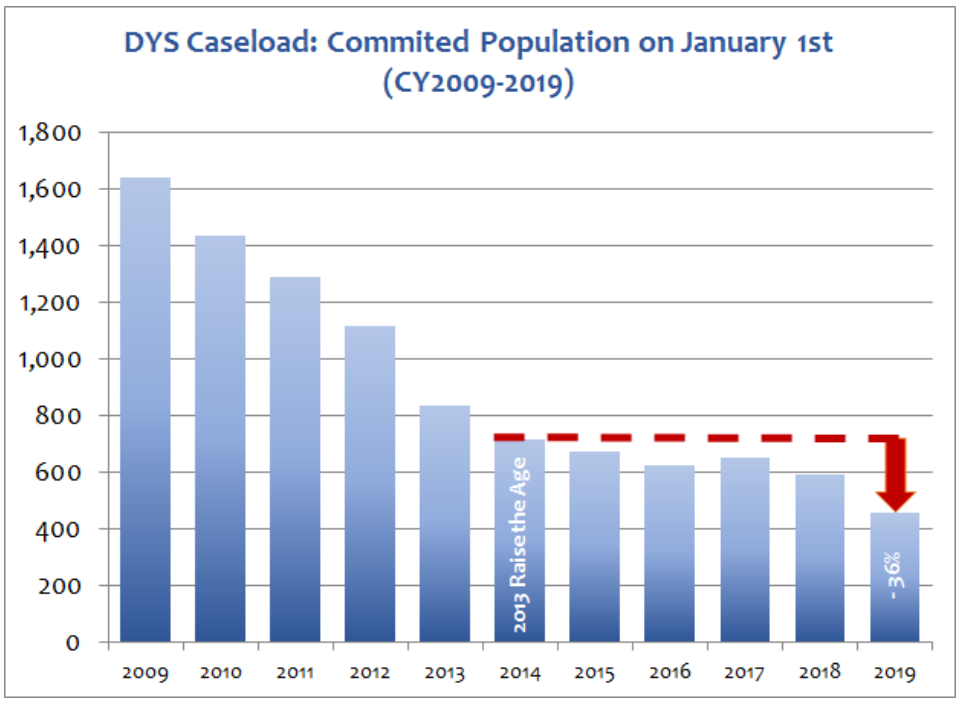
Juvenile Court caseload for *Delinquency and Youthful Offender* cases has declined by 57%.

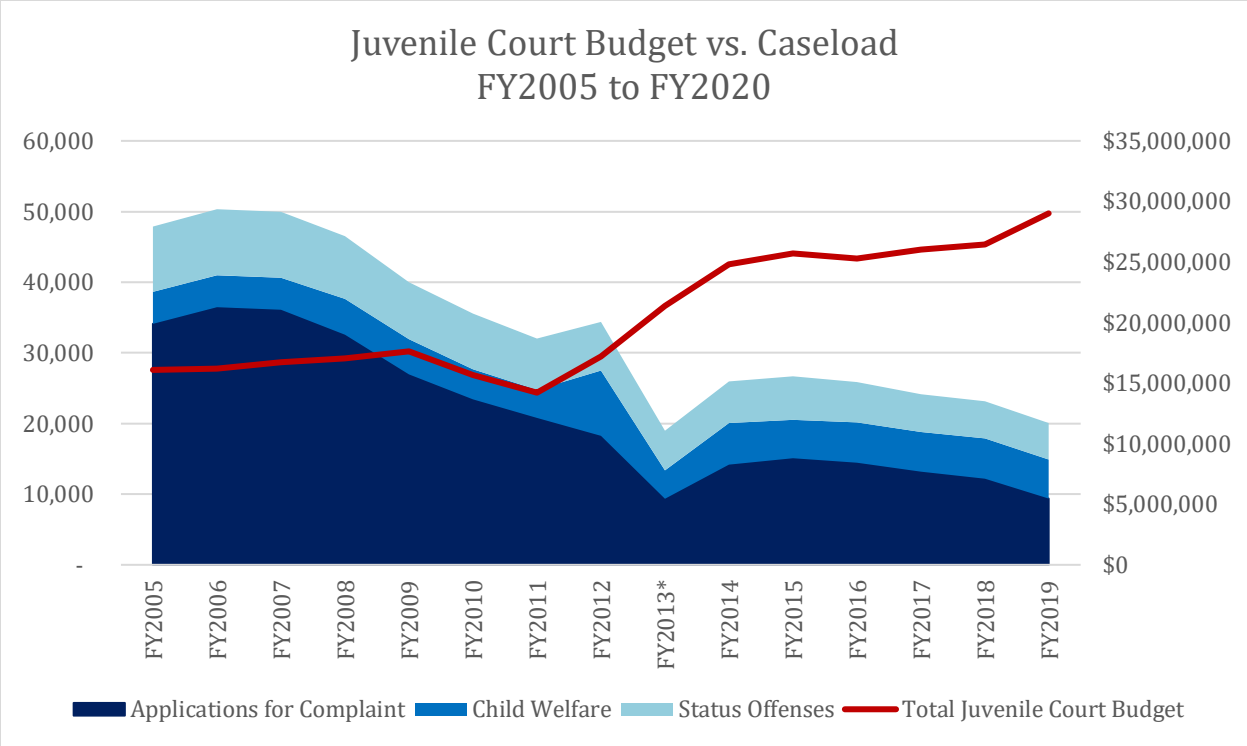


[14] Massachusetts Trial Court. *The Court releases case filing data, but have not released arraignment data since 2013, which is a more accurate reflection of the delinquency/youthful offender caseload.*

DEPARTMENT OF YOUTH SERVICES - DYS' caseload has steadily declined, even with the inclusion of 17-year-olds. Since the 2013 Raise the Age law:







**In FY2013, the Massachusetts Trial Courts changed the unit of reporting for juvenile delinquency and youthful offender cases was changed from charges to case filings.*

Sources:

Caseloads: Massachusetts Trial Courts, available at http://www.mass.gov/courts/court-info/court-management/case-stats

Budget: Massachusetts Budget and Policy Center; Executive Office for Administration and Finance; Massachusetts Office of the Comptroller CTHRU

July 17, 2020

Chair Aaron Michlewitz, House Committee on Ways and Means
Chair Clare Cronin, Joint Committee on the Judiciary
State House
Boston, MA 02133
Via email

Re: Testimony on S2820 – Reform Qualified Immunity and Use of Force; Establish Strong Certification/Decertification Program; Decriminalize Driving

Dear Chair Michlewitz and Chair Cronin:

In response to the horrific deaths of George Floyd, Ahmaud Arbery, Breonna Taylor and the countless other Black people who have been the targets of police violence and murder, a national and statewide movement has erupted, calling for an end to the structural racism that allows police brutality against Black residents to continue. In the midst of a global pandemic that has exposed and exacerbated racial health inequities, addressing structural racism in our state policies is more urgent than ever.

The legislature must answer this call by passing legislation to strengthen police accountability.

We write on behalf of the Task Force on Coronavirus & Equity, a coalition of nearly 100 organizations that are working together to identify and promote policy solutions to prevent and respond to health and economic inequities in the impact of the COVID-19 pandemic. We have seen all too clearly that communities that are already facing marginalization are being hardest hit by the virus and its economic repercussions, starkly exposing inequities across Massachusetts and the nation driven by racism, poverty, and xenophobia.

The structural racism in our structures of policing is the same structural racism that gives rise to racial health inequities and leads to the disproportionate impact of COVID-19 on communities of color.
We call on the Massachusetts House of Representatives, to include language contained in the following bills as part of a legislative package to strengthen police accountability:

- **An Act to Secure Civil Rights through the Courts of the Commonwealth** (H3277). This important bill, introduced by Representative Michael Day, would strengthen existing state law to hold enforcement officials accountable for violation of people's rights. If the legislation is passed, it would update the Massachusetts Civil Rights Act and place limits on the doctrine of qualified immunity—a judicially created loophole in the law that has made it virtually impossible for

police officers to be held responsible for any wrongdoing, no matter how egregious. Fixing the MCRA is critically important to ensure that any new use of force standards, as set out in *An Act Relative to Saving Black Lives*, can be enforced.

- **An Act Relative to Saving Black Lives and Transforming Public Safety** (HD5128/SD2968). Authored by Representative Liz Miranda and Senator Cindy Creem, this bill would establish baseline use of force standards that are missing from Massachusetts laws. It would require police to de-escalate and use minimal force, and would ban extremely violent tactics, such as chokeholds, rubber bullets, attack dogs, tear gas, and other chemical weapons. It would also create a "duty to intervene" when officers witness an abuse of force, ensure that police misconduct investigations and outcomes are public record, establish oversight from the Attorney General for data collection and reporting, and direct MDPH to promulgate regulations for healthcare providers to report officer-involved injuries and deaths.

- **An Act to Improve Police Officer Standards and Accountability and to Improve Training** (H4794), subject to recommended changes. Filed by Governor Baker, this bill would establish a Police Officer Standards and Accreditation Committee (POSAC). While an important first step in requiring police certification and ensuring higher standards for police training, additional measures must be added to the bill in order to guarantee real accountability. The Task Force on Coronavirus & Equity is joining the ACLU of Massachusetts in recommending substantial improvements to H4794, including:

    - Prevent retroactive certification of current officers with serious disciplinary records
    - Remove financial incentives for advanced training,
    - Expand the scope to include all law enforcement officers (i.e. corrections officers, probation officers, and parole officers),
    - Guarantee compliance with a strong enforcement mechanism,
    - Fix the balance of power on the revocation panel by including 4 non-law enforcement members, 2 law enforcement members and 1 representative from the officers' bargaining unit,
    - Increase transparency by creating a database, subject to the public records law, to be made available online,
    - Mandate revocation of certification for criminal convictions that carry a penalty of firearm revocation,
    - Allow greater discretion to hold police accountable for conduct that jeopardizes public trust,
    - Require that non-law enforcement appointments to the POSAC represent organizations or academic experts engaged in police accountability work or advocacy, and
    - Give POSAC authority to investigate and initiate decertification proceedings.

- **An Act Relative to Work and Family Mobility** (S2641/H3012). This bill, filed by Reps. Farley-Bouvier and Barber and Sen. Crighton will cut off a key pipeline to deportation and family

separation by ensuring that all state residents can apply for a standard Massachusetts driver's license, regardless of immigration status. By barring residents without status from accessing driver's licenses, the Commonwealth is creating barriers to their achieving full inclusion, economic stability, and dignity. Black lives are under attack, and that includes Black immigrant lives. Our immigrant community includes Black immigrants from Brazil, Haiti, Cape Verde, the Dominican Republic and Jamaica, to name a few. Each of these are among the top 15 home countries for undocumented immigrants in Massachusetts. Passing the Work and Family Mobility Act would dismantle part of the structural racism that immigrants face in our Commonwealth and ensure that all families' have the ability to access basic necessities such as health care, groceries, childcare and employment without fear.

We are counting on the legislature to take strong action now by including these provisions in legislation enacted before July 31st.

Sincerely,

Carlene Pavlos, **Massachusetts Public Health Association**
Anna Leslie, **Allston Brighton Health Collaborative**
Filipe Zamborlini, **Rosie's Place**
Enid Eckstein, **Jamaica Plain Progressives**
Mehreen N. Butt**, Planned Parenthood League of Massachusetts**
Cindy Rowe, **Jewish Alliance for Law and Social Action**
Heather McMann, **Groundwork Lawrence**
Rebekah Gewirtz, **National Association of Social Workers - MA Chapter**
Stephanie Ettinger de Cuba, **Children's HealthWatch - Boston Site**
Kelly Turley, **Massachusetts Coalition for the Homeless**
Marie-Frances Rivera, **Massachusetts Budget and Policy Center**
Sasha Goodfriend, **Mass NOW**

JUSTINE LAUREN RICHARDS

July 16, 2020

The Honorable Charlie Baker
Governor of the Commonwealth of Massachusetts
Massachusetts State House
24 Beacon Street
Office of the Governor, Room 280
Boston, MA 02133

Dear Governor Baker,

I ask that you veto the "Reform, Shift + Build Act", S.2800/S.2820, a bill that was ramrodded through the State Senate in a 4 am vote Tuesday morning. Deliberately avoiding any input from police unions, police departments or any minority police associations, the Senate has in essence begun the process of eliminating the Commonwealth's greatest workforce- our police officers with secondary implications aimed at our firefighters and teachers.

The provisions of the bill mandate that individuals employed in the three most important sectors of the Commonwealth now be required to place their lives and all tangible assets on the line when they begin work each day. To not offer police officers and firefighters the Qualified Immunity that each one deserves is not only retaliatory but is the most egregious signal that those professions are now considered persona non grata.

Leaving the Qualified Immunity coverage to municipalities ensures three things- a catastrophic loss of jobs in the Commonwealth across the board, an overwhelming increase in taxes and weaker bodies of law enforcement. Cities and towns will be forced to eliminate positions because the insurance premiums they will now have to cover for police, fire and teachers will skyrocket, forcing financial expenditures and result in jobs eliminated. Additionally, the endless legal fees cities and towns will have to absorb threaten to bankrupt municipalities. The bill is a jackpot for trial attorneys, however, as it ensures that attorney fees are now to be awarded to plaintiffs. The 1-2 punch of increased insurance premiums with unknown costs for legal protection without a doubt will proliferate property taxes.

This Trojan Horse of a bill is a total job killer. Cutbacks in personnel will affect every city and town department; municipalities which are less affluent will be the hardest hit, not just with layoffs but with a drastic increase in crime since no measures will be in place to effectively deter or address criminal activity. I do not believe any police officer or firefighter will continue to work without the Qualified Immunity protection he or she was promised at the start of their careers. They should not be forced to go without it in 2020, especially when every single legislator and member of the State Executive branch enjoys mandatory defense and indemnification for civil rights law violations. This is an absurd double standard and places lawmakers in poor light.

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JUSTINELAURENRICHARDS@GMAIL.COM

The police and fire academies certainly are going to look dramatically different going forward. Who would want to enter a profession where they are physically, verbally and emotionally attacked every day with not only their lives but also finances at risk? This bill makes certain there is zero incentive for anyone to enter the police or fire academies, thereby ensuring that police and fire departments are crippled with closures looming. Early retirements will begin immediately and the NYPD is presently the perfect example of this.

For comparison, look no further than what has transpired with the Catholic Church here in Boston. The massive lawsuits depleted the Church's assets, forcing the Archdiocese to liquidate a number of properties. Having fewer churches in turn has not been a problem because the numbers at the Seminaries are lower than ever, so the Church could not staff parishes if they had them. Why would anyone enter the Seminary when becoming a member of the clergy will lop someone in with all of the other hateful priests who have come before them? That type of ugly, unilateral and discriminatory sentiment is exactly what this Senate bill perpetuates for law enforcement. This bill is about punitive measures aimed at an entire professional body which up until now was the gold standard of law enforcement in the United States.

Not many people understand entering the police, fire or teaching fields is not as much of a profession in as much as it is a calling. Everything is asked of these individuals. Most officers place their lives on the line every day because of a family member or associate who inspired them to think beyond themselves by placing the emphasis on serving others rather than being served. It is apparent that this bill attempts to encourage anyone feeling unfairly treated by a police officer, firefighter or teacher to bring suit and potentially drain that officer's, firefighter's or teacher's financial holdings. I am not aware of one teacher, firefighter or member of law enforcement who would seek for the same right to sue an individual who infringed upon their civil liberties. That right there is the difference between people of honor and those without honor; individuals who respond to a calling versus those who just want to call someone out.

Finally, the other meritless part of the Senate bill is the certification process by an independent review board. I wonder how the medical profession would react if lawmakers decided that all medical doctors should have their licenses issued by a board of accountants? Most residents of the Commonwealth understand that the governing bodies of law enforcement know the requirements, equipment, circumstances and situations better than anyone outside the field. Members of law enforcement do not believe they are beyond reproach. The accreditation and pertinent standards need to be determined and judged by their superiors or peers, just as they are for every single other trade or professional field requiring certification.

Tuesday morning I was walking through my town center in Weston where much construction work is underway. Several Weston Police Department officers were on details. I watched a vehicle drive up to a Sergeant and profusely thank him for issuing him a warning several years ago on a traffic stop. The gentleman said to the Sergeant: "you saved my life". Most of the other officers that day mentioned incredible numbers of people stopping to offer their support of law enforcement because of the passage of the Senate bill. However, the mood was not celebratory; rather it was like watching a rolling wake.

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To provide some perspective, over the past four years I have placed over 35 calls to the Weston Fire Department for medical calls for my disabled sibling who lives with me and dozens of calls in the past two years to the Weston Police Department for issues with two separate stalkers I have. My condominium association has issued a No Trespassing Order against one stalker and I have a Harassment Prevention Order against the other stalker who resides 175 yards away from me. Every single officer from The Weston Police Department has responded in some manner, at some point, to one of my calls and during each call the officer conducts himself or herself with the highest level of professionalism and skill. Every member of the Weston Police Department treats me with the same courtesy and respect as they treat every other party. None of these incidents has risen to a level of assault, thankfully. The reason why Police responses are so imperative is to deter and keep at bay those with malicious intentions, potentially needing to employ the tactical skills they possess in de-escalation before violence commences.

It is a horrible feeling to feel unsafe at home. Because of the responses and support extended by the Weston Police Department I have begun to start feeling safer once again. Now I realize that the safety I have begun to enjoy will be fleeting as there is a likelihood law enforcement will soon disappear from the Commonwealth.

In my opinion, Massachusetts Police Officers have the best training of any force in the country. The proof of that belief lies across the Commonwealth in the robust economy and stellar real estate market, both of which will be placed in immediate jeopardy with the implementation of this bill.

I urge you Governor to veto the bill, but go beyond the veto and work with the State Senate and Legislature in a way that promises the Commonwealth will be safe for generations, while addressing the concerns brought about from incidents in Minneapolis and outside Massachusetts. Laws should not be created for Commonwealth residents based on incidents happening elsewhere. Rather, discussions should begin about what the issues are within the Commonwealth, which are similar to nationwide ones, but which require a specific response based upon the unique make-up here in Massachusetts.

Respectfully,

Justine Richards

Justine Richards

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JUSTINELAURENRICHARDS@GMAIL.COM

JUDGE BAKER CHILDREN'S CENTER

The Honorable Robert DeLeo
Speaker of the House of Representatives
State House, Room 356 Boston, MA 02133

The Honorable Aaron Michlewitz,
Chair House Committee on Ways and Means
State House, Room 243 Boston, MA 02133

The Honorable Claire Cronin
Chair House Judiciary Committee
State House, Room 136 Boston, MA 02133

The Honorable Michael Day
Vice Chair House Judiciary Committee
State House, Room 136 Boston, MA 02133

July 14, 2020

Dear Speaker DeLeo, Chair Michlewitz, Chair Cronin, Vice Chair Day:

Judge Baker Children's Center understands that the Massachusetts Legislature is considering amending existing expungement legislation to better reflect the latest brain science and advance racial justice in Massachusetts. We applaud the Legislature's commitment to advancing racial justice and improving outcomes for vulnerable populations in the Commonwealth. 85% of youth arraigned in Massachusetts are accused of low-level nonviolent crimes. However, these accusations may follow a youth into adulthood, well beyond their involvement in (or dismissal from) the justice system. The presence of a criminal record can lead to long-term negative consequences, often posing a significant barrier to future academic, professional and social life, and can contribute to future justice system involvement.

Based on research and best practices, the recommendations outlined in UTEC's recent proposal are consistent with recommendations in our 2019 Policy Brief: Promoting Positive Outcomes for Justice-Involved Youth (hyperlinked; printed copies available on request). Notably:

- Research shows that juvenile justice-involvement can contribute to negative outcomes well beyond an individual's adolescent years;
- Research shows that adolescent brain development is a complex process lasting through a youth's early to mid- twenties, inhibiting abilities to make safe and appropriate decisions or consider long-term consequences the way an adult would – often resulting in impulsivity or poor decision making. For some youth this leads to delinquent acts, interactions with the juvenile justice system and a corresponding record;
- Racial and ethnic disparities are of paramount concern. Youth involved in the juvenile justice system are disproportionally impoverished and members of racial and ethnic minority groups. National research has found that youth of color make up approximately two-thirds of incarcerated youth, but only one third of the general adolescent population. In Massachusetts, youth of color make up about 33% of the youth population; but they represent 60% of those

arraigned, 66% of pre-trial detainees and 68% of DYS-committed youth. Research on racial and ethnic disparities in juvenile courts has further found that practices are both directly and indirectly influenced by racial bias, that racial biases are more likely to occur earlier in system processing, and that racial disparities often worsen as youth move through the system.

- Continued and enhanced system reform can lead to improved outcomes for youth, greater diversion from system involvement, bolstered community strengths and resources, and significant return on investment and overall cost-savings.

Tenets of Positive Youth Development include building on strengths, promoting emotional, cognitive, behavioral and moral competencies, fostering a belief in the future, and providing opportunities for pro-social involvement. Criminal records can derail this positive development and therefore undermine the essential restorative premise of the Massachusetts juvenile justice system. As the Commonwealth considers justice system reform and practice improvement, focusing on the police alone is not enough. Pathways to healing for individuals who have experienced system involvement also warrant consideration. Record expungement under appropriate circumstances can give individuals an opportunity to move beyond the transgressions of their youth and pursue positive, healthy lives contributing to society. This in turn can provide a pathway to healing for victimized populations and begin repairing damage caused by systemic racism.

With respect and gratitude,

Christopher Bellonci, MD
VP of Policy and Practice, Chief Medical Officer, Judge Baker Children's Center
cbellonci@jbcc.harvard.edu

Matthew J. Pecoraro, MSW
Associate Director of The Evidence-based Policy Institute, Judge Baker Children's Center
mpecoraro@jbcc.harvard.edu

Massachusetts Teachers Association

Merrie Najimy, President
Max Page, Vice President
Lisa Gallatin, Executive Director-Treasurer

July 17, 2020

The Honorable Aaron Michlewitz
House Committee on Ways and Means
Massachusetts State House, Room 243

The Honorable Claire Cronin
Joint Committee on the Judiciary
Massachusetts State House, Room 136

Dear Chairs Michlewitz and Cronin:

We write to you on behalf of the Massachusetts Teachers Association regarding S.2820, *An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color*. While the MTA continues to analyze the details of this legislation, we are in strong support of the historic steps it takes toward dismantling systems of racism and white supremacy inside our public institutions that have for too long devalued, dehumanized and criminalized Black and brown lives.

As educators, we see the impacts of institutional and structural racism every day in our classrooms and on our campuses. The legacy of disinvestment in public schools and colleges has denied far too many students of color their right to equal educational opportunities and has only widened the racial inequities in our society. The House and Senate rightfully acknowledged the racial disparities in public preK-12 schools by passing the *Student Opportunity Act*. Yet we know now more than ever that still more work must be done to deconstruct systemic racism in public education and in all public institutions.

We understand that many of the changes needed to truly address systemic racism will not be easy. This moment demands that we take meaningful steps to address this issue now, and the MTA stands ready to partner with you in this effort in the days and weeks ahead.

Thank you for your attention to this vitally important issue.

Sincerely,

Merrie Najimy
President

Max Page
Vice President

Massachusetts Teachers Association

Merrie Najimy, President
Max Page, Vice President
Lisa Gallatin, Executive Director-Treasurer

July 17, 2020

The Honorable Aaron Michlewitz
House Committee on Ways and Means
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Thank you for your attention to this vitally important issue.

Sincerely,

Merrie Najimy
President

Max Page
Vice President

Christine Carey
86 Lynnway, Revere MA 02151
Email: christinecareyesq@gmail.com

By email

TO: House Committee on Ways and Means
Judiciary Committee

ATT: Representative Aaron Michlewitz, Chair House Committee
Representative Claire Cronin, Chair Judiciary Committee

RE: Police Reform Bill/ Senate Bill No. S.2820

FM: Christine Carey, Esq.

DATE: July 16, 2020

As a resident of Revere Massachusetts, a constituent, and an attorney, I write to you today to express my strong opposition to the recently filed and passed police reform bill in the Senate (S.2820). As everyone know this bill was passed without public hearings, input from the police departments, or meaningful debate. The way it was passed is undemocratic and non-transparent. The Senate's rush to pass this reform bill is nothing more than a knee-jerk reaction to the current climate of anti-police sentiment that this running rampant through this state and the country. I have many family members on the force and serve the community well every day. It is maddening and disturbing that the Senate made the police more of a target by pushing this bill through instead of taking the necessary time to make changes **meaningful** with input from the general public, police departments and debate.

I ask that you vote to amend major portions of this bill do ensure that the police who put their lives on the line every day in the Commonwealth of Massachusetts get due process and allowed input into the reform bill which, as written, will adversely affect them and their families.

As an attorney, I find the current bill rife with issues which will result in lengthy and multiple court cases and would not afford the police officers due process as currently written.

Below are just a few areas, among many others, of this bill that concern me and warrant your amendment of this bill:

1. The removal of qualified immunity protections is inappropriate. This removes important liability protections essential for the police officers we send out on patrol in our communities and who often deal with some of the most dangerous of circumstances with little or no back-up. Qualified immunity protects good officers from civil lawsuits, not the bad officers. Removing qualified immunity protections in this way will open officers up to personal liabilities so they cannot purchase a home, a car, obtain a credit card, or other things for the benefit of them and their families. **This would have a deleterious and chilling effect on recruitment and opens up the City and the State to the same lawsuits. Every potential litigant will sue not only the police officer but its employer who has a deeper pocket and insurance.** If the Senate bill is passed in its current form the costs to municipalities and the State will skyrocket from frivolous lawsuits and potentially having a devastating impact on budgets statewide. Changes to qualified immunity would be unnecessary if the legislature adopted a uniform statewide standard and bans unlawful use of force techniques which all police personnel agree**.. This section needs to be revised so that this matter can be studied with public hearings, police department input and debate and should not pass in its current form.**

2. This bill grants the POSAC Committee broad powers, including the power of subpoena, in active investigations- even when the original law enforcement agency has conducted its' own investigation. **The current language sets the groundwork for unconstitutional violations of a police officer's 5th amendment rights against self-incrimination (see Carney vs Springfield) and constitutional protections against "double-jeopardy".** The Senate version of a regulatory board is unacceptable as does away with protections currently set forth in collective bargaining agreements and civil service law. The Senate created a board that is dominated by anti-police groups who have a long-detailed record of biases against law enforcement and preconceived punitive motives toward police and cannot be fair and impartial. **This section**

needs to be revised so that this matter can be studied with public hearings, police department input and debate and should not pass in its current form.

As your constituent I ask that you vote to amend this bill for the reasons stated above, and others. For the Senate to jam this through without the proper process is beyond inappropriate and paints all police as bad officers instead of the great dedicated professional people that I know them to be along with many others who they serve admirably on a daily basis. **Massachusetts police officers are among the highest educated and trained in the country. The Senate version of this bill as written will seriously undermine public safety by limiting police officer's ability to do their jobs while simultaneously allowing provisions to protect criminals.**

Thank you.

YWCA IS ON A MISSION

July 16, 2020

Public Testimony on S.2800 to the House Ways and Means and Judiciary Committees

Dear Chair Cronin, Chair Michlewitz, Vice Chair Day, and Vice Chair Garlick,

On behalf of the youth and families we work with at YWCA Lowell, and for the many affected throughout the Commonwealth, I am writing to request your consideration to expand the existing expungement law (MGL Ch 276, Section 100E) as the House takes up S.2800 to address **Racial Justice and Police Accountability**. S.2800 includes this expansion and we hope you will consider it as it directly relates to the harm done by over-policing in communities of color and the over-representation of young people of color in the criminal legal system.

YWCA's mission is "Eliminating Racism, Empowering Women." The criminal justice system has laws in place that disproportionately affect people of color, and S.2800 is an important step in addressing these disparities. People of color are far more likely to be subjected to stop and frisk and more likely to get arrested for the same crimes committed by whites. Black youth are three times more likely to get arrested than their white peers and Black residents are six times more likely to go to jail in Massachusetts. Other systems where people of color experience racism are exacerbated, and in many ways legitimized, by the presence of a criminal record. Criminal records are meant to be a tool for public safety, but they're more often used as a tool to hold communities of color back from their full economic potential. Expungement can be an important tool to rectify the documented systemic racism at every point of a young person's journey through and past our justice system.

We also know that young adults have the highest recidivism rate of any age group, but that drops as they grow older and mature. The law, however, does not allow for anyone who recidivates but eventually desists from reoffending to benefit. Young people's circumstances and cases are unique, and the law aptly gives the court the discretion to approve expungement petitions on a case by case basis, yet the law also categorically disqualifies over 150 charges. We also know that anyone who is innocent of a crime should not have a record, but the current law doesn't distinguish between a dismissal and a conviction. It's for these three main reasons we write to you to champion these clarifications and now is the time to do it.

Since the overwhelming number of young people who become involved with the criminal justice system as an adolescent or young adult do so due to a variety of circumstances and since the overwhelming number of those young people grow up and move on with their lives, we are hoping to make clarifying changes to the law. We respectfully ask the law be clarified to:

- **Allow for recidivism** by removing the limit to a single charge or incident. Some young people may need multiple chances to exit the criminal justice system and the overwhelming majority do and pose no risk to public safety.
- **Distinguish between dismissals and convictions** because many young people get arrested and face charges that get dismissed. Those young people are innocent of crimes and they should not have a record to follow them forever.
- **Remove certain restrictions** from the 150+ list of charges and allow for the court to do the work the law charges them to do on a case by case basis especially if the case is dismissed of the young person is otherwise found "not guilty."

Refining the law will adequately achieve the desired outcome from 2018: to reduce recidivism, to remove barriers to employment, education, and housing; and to allow people of color who are disproportionately represented in the criminal justice system and who disproportionately experience the collateral consequences of a criminal record the opportunity to move on with their lives and contribute in powerfully positive ways to the Commonwealth and the communities they live, work and raise families in. Within a system riddled with racial disparities, the final step in the process is to allow for as many people as possible who pose no risk to public safety and who are passionate to pursue a positive future, to achieve that full potential here in Massachusetts or anywhere.

Thank you for your consideration,

Andre J. Chandonnet
Youth Services Director
YWCA of Lowell
978-454-5405 x 117

201 Bay Road
Norton, MA 02766

July 16, 2020 **HIGH PRIORITY**

By E-Mail: Testimony.HWMJudiciary@mahouse.gov

Representative Aaron Michlewitz
Representative Claire Cronin
Massachusetts State House
24 Beacon St.
Boston, MA 02133

Re: Bill S.2820

Dear Representatives Michlewitz and Cronin:

I am writing to letter to you today to urge you vote against Bill S.2820. This bill may have been stemmed from good intentions but comes with unintended consequences. Although police reform is a certainly a discussion to be had, the hastily manner in which this bill was thrown together will benefit no one. This bill will certainly create one change, unsafe communities.

Police are our line of defense against the evil that exists in our society. They are the ones who literally put their lives on the line for us, every single shift they work. When a police officer kisses their loved ones goodbye on their way out the door, they don't know if this will be the last time they will see each other.

This bill only makes it harder for our first responders to perform their job, and perform effectively. This bill will lead to early retirements, resignations, low recruitment and ineffective policing. It almost appears as this is the end goal, to ultimately end the role of police in Massachusetts. Just two months ago our police officers were celebrated as they continued going out to work, protecting our communities, exposing themselves to Covid-19 while the majority of us stayed in our homes. We called upon them to participate in birthday parades to help put a smile on our children's faces when their typical birthday celebrations were forced to be canceled.

Is the Massachusetts legislature going to condemn an entire professional community because of the actions of a rogue cop in Minnesota? Actions we all united behind as horrific?

The fact this bill was pushed through the Senate without a public hearing and voted upon at 4:00am speaks volumes. Those who created this piece of legislation and those who irrationally voted to support it know there are major issues with it or else it wouldn't have followed the unconventional process that it did.

Although there are numerous flaws in this bill, the following are the most egregious:

- Requiring public hearings for the purchase of military-grade equipment
- Prohibits schools from cooperating with law enforcement agencies, including alleged or confirmed gang affiliation
- Removes the requirement of a school resource officer
- Requires law enforcement training to include the history of slavery, lynching, racist legal institutions and racism in the United States. Why not apply this training to all public employees including state representatives and senators?
- Authorizes the Attorney General to bring civil lawsuits against officers
- Allows a person to bring civil lawsuits against officers
- Creates a licensing board with no law enforcement representation

Violence against our police officers is increasing every day. Our police officers are being murdered at increasing rates, yet the murders of unarmed individuals has been decreasing for years. Why would any legislator support such a poorly constructed bill, one that opens up our heroes to frivolous lawsuits which not only impact them, but their innocent families as well. How do you not see these heroes will be afraid to have any interaction with the public for fear of such lawsuits? They're families could lose their careers, their retirement, their homes, their livelihoods. If you were forced to perform this type of work under these proposed conditions, would you actively fight crime to keep our communities safe, or would you choose to limit any interaction you may have in order to keep your family safe? Vote against this bill so proper, responsible and thoughtful reform can take place.

Sincerely,

Kelly Gallagher

Kelly Gallagher

Professional Firefighters of Attleboro Local 848

Affiliated with the Professional Fire Fighters of Massachusetts and International Association of Fire Fighters AFL-CIO CLC

Honorable Aaron M. Michelwitz
Chairman
House Committee on Ways & Means
State House, Room 243
Boston, MA 02133

Honorable Claire Cronin
Chairwoman
Joint Committee on Judiciary
State House, Room 136
Boston, MA 02133

Dear Chairman Michelwitz and Chairwoman Cronin,

17 July 2020

On behalf of the Attleboro Firefighters Local 848 Membership we write to you today regarding our concerns with ***SB 2820 An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities***.

As you are aware, there has been ongoing discussion nationwide and more recently across Massachusetts regarding Police Reform. This week the Massachusetts Legislature passed a bill in the Senate (SB2820) that has caused great concern due to the scope and precedent it could set for the rights and protections of not only Public Safety Employees, but ***all*** Public Employees.

There are a few major concerns with the following policies in SB2820 that we recommend be addressed in the House version.

- The Lack of Due Process and Attack on Collective Bargaining
- The Expansion of Civil Liability to All Public Employees/Limits Qualified Immunity
- The Bill Creates One of the First, if Not the First, Licensing Agency that is Not Composed of a Majority of Professionals

Our parent organization, The Professional Fire Fighters of Massachusetts (PFFM) have submitted written testimony that we unequivocally support.

We look forward to these recommendations being deliberated in the House and urge you to remove the listed policies and qualified immunity language from SB2820 and revisit these specific concerns with a special commission.

Thank you for your time and consideration in this matter.

Sincerely,

Paul W. Jacques

Paul W. Jacques, President
and Executive Board
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LAKEVILLE POLICE DEPARTMENT

323 Bedford St.
Lakeville, MA 02347

Matthew J. Perkins
Chief of Police

Phone: 508-947-4422
Fax: 508-946-4422

July 17, 2020

Chair Aaron Michlewitz
Chair Claire Cronin
Testimony.hwmjudiciary@mahouse.gov

Please accept the following testimony in regard to SB2820:

Dear Chair Michlewitz & Chair Cronin,

I wish to express my concerns, the concerns of the men and women of the Lakeville Police Department, and those concerns of the citizens of Lakeville who fear the negative consequences of SB2820. Changing any protections to qualified immunity will no doubt change the way police officers protect and serve. Officers who are committed to giving 100% will be left second guessing every decision. This will lead to a drastic decrease in proactive policing and a drastic increase in crime. Other sections of SB2820 will also have negative consequences and should be carefully weighed. Please, stop the vilification of police officers.

Respectfully,

Matthew J. Perkins
Chief of Police
Lakeville Police Department

NEW BEDFORD BRANCH
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
95 Cedar St. New Bedford, Massachusetts 02740 • 508-990-0746
—Chartered 1917— Historic Home of Frederick Douglass -Lewis Temple -Sgt. William H. Carney

July 17, 2020

The Honorable Rep. Aaron Michlewitz
Chair, House Committee on Ways and Means

The Honorable Rep. Claire D. Cronin
Chair, Joint Committee on the Judiciary

Re: NAACP New Bedford Branch: Testimony in Support of Police Accountability -- Use of Force Standards, Qualified Immunity Reform, and Prohibitions on Face Surveillance

Dear Chairs Michlewitz and Cronin:
The **NAACP New Bedford Branch** would like to thank the Massachusetts Senate for approving Senate bill **S.2800**, "An Act to *Reform* police standards and *Shift* resources to *Build* a more equitable, fair and just commonwealth that values Black lives and communities of color.

A July 13th editorial in the *Globe* entitled, "Boston police are not Minneapolis police" argues that "the Boston Police has been a model of reform" and that police reform is an unnecessary "insult" to the police.

But whether any one police department in the Commonwealth has enacted reforms is not what is at stake here. In my city of New Bedford, the community is grappling with the murder of Malcolm Gracia; he was 15 years old at the time of his death in 2012. Whether change occurs or not is not the issue here.

The issue is preventing these killings from occurring in the first place. Ensuring accountability of the police and law enforcement to the public they serve is our focus.

This is what S.2800 addresses. Central to the bill is a simple limit on the application of Qualified Immunity — literally a "license to kill" invoked in far too many cases by police officers throughout the country.

Section 10(c) of S.2800 seeks — not to *eliminate* — but to put two limits on Qualified Immunity:

> "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law."

Only if an officer charged with misconduct *believed* that his actions at the time were a violation of the law and still chose to break the law would qualified immunity not apply — and only in civil cases.

Let's be clear — Qualified Immunity is a federal doctrine upheld narrowly by the U.S. Supreme Court. It is a doctrine that the NAACP opposes vehemently. Qualified Immunity creates two sets of laws — one for police officers and another for everyone else. This, frankly, is what one expects in a Police State and not a

democracy. The NAACP opposes Qualified Immunity because it shields human rights abuses from prosecution and accountability, and because it is fundamentally unequal.

For all its laudable efforts, the Massachusetts Senate bill only *limits* Qualified Immunity, not eliminates it. And these limits apply only to civil suits. The bill does nothing to invalidate the use of the Qualified Immunity doctrine in a criminal case. But if officers play fast and loose with unwarranted killings, escalation of force, prohibited restraint, or engage in unprofessional conduct that harms the public, S.2800 at least removes one shield from civil lawsuits. Follow the money. Only when Cities and Police Departments have to start paying for officer misconduct is it ever going to get fixed.

Limits on qualified immunity are opposed by the state's largest police union, which says that officers should not have to worry about the threat of lawsuits as they carry out their duties.

But here's the thing. Officers *should* worry about the threat of lawsuits, just like a doctor fears malpractice, just like a plumber fears losing his license, just like some of you fear being voted out of office. And there *should* be recourse for the public when an officer's actions are *not* the duties he was hired to carry out by the City he serves.

The NAACP New Bedford Branch applauds these first steps by the Massachusetts Senate but would like to see Qualified Immunity eliminated altogether. This is not only the policy of our Branch, but that of the NAACP New England Conference and the national NAACP.

We also seek greater prohibitions on violent police tactics. Chokeholds, no-knock warrants, indiscriminate use of tear gas and other chemical weapons, escalation of force, and limits to supposedly "non-lethal" technology like tasers all need tighter controls. These provisions must remain in any version that moves to the House. We also oppose any attempt to attenuate, send to a sure death in committee, or shelve limits on Qualified Immunity, as a number of rejected Senate amendments sought to do.

And we are not altogether pleased that, instead of eliminating "School Resource Officers" outright, the Senate bill now gives a Chief of Police and the School Superintendent the power to assign a police officer to schools, subject to a school board vote – not the will of the entire community.

We are at an inflection point in how we conceive of policing in the 21st Century. The nation has had enough of unpunished police murders and a culture of impunity which attends it. Millions of voices now tell us there is no going back, whether legislators vote for change today or resist it. **Enough is enough!**

Rev. Dr. Martin Luther King, Jr. famously noted that, "the arc of the moral universe is long, but it bends toward justice." Don't be on the wrong end of that arc.

Respectfully,

LaSella L. Hall

LaSella L. Hall, Ph.D.
President, NAACP New Bedford Branch

Copied: Honorable Robert A. DeLeo, Speaker of the House
Rep. Ron Mariano, House Majority Leader
Rep. Carlos Gonzalez, Chair, Mass. Black and Latino Legislative Caucus

BREWSTER POLICE DEPARTMENT

Chief Heath J. Eldredge
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July 17, 2020

Chair Aaron Michlewitz and Chair Claire Cronin,

Please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color:

As a chief of police here in the Commonwealth of Massachusetts, I stand behind the pledge to protect and serve my entire community, to include those that are routinely underserved, overlooked, or mistreated. I have dedicated my career to be in position to make a difference in people's lives and help wherever I can.

In recognizing the great authority bestowed upon police officers, I expect and welcome oversight and accountability from the community. It is the community we serve that gives us legitimacy. Sir Robert Peele said it in 1829, and it remains true that, "the ability of the police to perform their duties is dependent upon public approval of police existence, actions, behavior and the ability of the police to secure and maintain public respect."

With all of that in mind, I also recognize the complexity of police work and how to best serve our diverse communities. Changes to the profession of policing requires great care, thought, and analysis because the stakes are so high.

Many of the details within SB2820 will seemingly change the face of policing in such a way as to seriously inhibit the recruitment and retention of the kind of officer we want serving our community. The Massachusetts Chiefs of Police have provided a detailed response to this bill with highlights of their concerns, and I support those points. That being said I also wanted to briefly weigh in with my own thoughts. Due to the short time frame on submitting testimony, I will limit my remarks to just the portion of the bill that speaks to qualified immunity.

By eliminating qualified immunity, officers who are trying to do the right thing and acting in good faith will be exposed to personal lawsuits at a level that will likely stifle good police work that safeguards our citizens. This will discourage promising young people from considering a career in policing and will encourage veteran officers to run from a career that they have cherished. We have been fortunate to see many amazing police officers who have served with honor, remain working beyond the minimum requirement for retirement. These officers remain in their positions and serve as leaders inside and outside of their departments, as well as mentors for new officers coming in. I worry that by stripping away the minor protections afforded through qualified immunity (which is far from total immunity), many of these leaders will recognize that the personal risk now outweighs the reward of serving their

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community and they will walk away. This would cause a burden not only on the departments but on the communities they hold dear.

Thank you for your consideration.

Respectfully,

Heath J. Eldredge

Chief Heath J. Eldredge

Testimony related to Bill #S2820

Kathy Marshall

Organization NA

978-807-9204

Thank you for the opportunity to be heard on the recent passing of Police Reform by the Massachusetts Senate. While the public hearing process was delayed, the time is now to speak.

The current version of the legislation in not equitable. The job of a police officer is to protect and serve. The legislation in its current form creates many barriers and limitations to how successful our police community should and needs to be.

This bill contains a fair amount of additional training for officers. Knowledge is power. Everyone benefits from education that is meaningful, realistic and job related

The proposed bill would ban chokeholds, limit the use of tear gas, license all law enforcement officers and train them in the history of racism. Again, these items appear to have merit and could be deemed useful

The legislation lacks legal protection for police and other public employees. This deficit in the bill is lacking, reckless and irresponsible. Qualified immunity has an authentic purpose. This current provision would leave first responders doubting themselves and possibility their response while on the job. There are many other mechanisms in place as well as the new requirements suggested that allow for police accountability.

Police officers, perform vital tasks that require split-second decisions in stressful circumstances. Taking away qualified immunity could lead to officers being hesitant to act when the situation necessitates quick thoughtful action.

Qualified immunity is a critical legal principle that protects our front line of responders from lawsuits seeking monetary damages. A system without this immunity will lead to legal chaos and frivolous lawsuits that should outrage our tax payers. Please consider maintaining this very important item in the Legislation.

Thank you for your time and attention.

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"To Protect with Honor and to Serve with Pride"

Testimony.HWMJudiciary@mahouse.gov

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

Thank you for giving me the opportunity to express my thoughts and concerns with regards to SB2820- An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

Our police officers have been challenged to do more than enforce laws, take reports and keep the peace. Our Police Officers are challenged every shift to go out and learn something new about our town and to engage with our residents, not just on calls, but by officers initiating positive contacts. Our Police Officers have been challenged to become a resource for the community. Why? Because Police Officers see things that no one else has access to. Why? Because people call the police when they are in crisis and we respond. Why? Because Police Officers want to serve. Why? Because they care.

Over the past 5 years the model for Plymouth County Police Officers responding to calls has been to survey all scenes and look for the signs and root causes of the problems that they were dispatched or to survey for other care issues and then assist in help solving those issues or direct and connect resources to those individuals. The Plymouth County Outreach Program then grew into the Plymouth County Hub Program where Police Officers are partners with most of our local resources and we all work together to help our residents. Massachusetts has a tremendous amount of resources, but we have found that there is a serious disconnect with people in need and in crisis who may be unaware, unable to pay or sometimes just unwilling to reach out. This is where our local Police Officers play a critical role, as liaisons and as partners.

I know that you all are pressed into making changes but do your members really know what their Police Departments do every day? If you polled your members would they be able to tell you the last time, if ever, that they actually sat down with members of their police departments and discussed issues, policies and practices? All I can ask is that you lead a fair and comprehensive study of our present practices and then I will know that any changes will be informed and just.

Respectfully,

Chief Richard D Wall

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July 13, 2020

SUMMARY OF POTENTIAL IMPACTS TO CHANGES OF QUALIFIED IMMUNITY IN S.2800

The below summary is being provided by **Leonard Kesten, Evan Ouellette, and Thomas Donohue of Brody Hardoon Perkins & Kesten, LLP**. Between them, they have over 65 years of experience representing municipalities and public officials. Mr. Kesten is considered one of the leading defenders of police officers in Massachusetts. He has litigated hundreds of cases involving the application of Qualified Immunity and has conducted over 150 jury trials in his career.

WHAT IS QUALIFIED IMMUNITY

The reality of qualified immunity is often misunderstood. Qualified immunity does not serve to protect illegal actions by police officers. Rather, it safeguards all public officials in situations where the law is unclear and does not give them adequate guidance. The doctrine allows lawsuits to proceed if a government official had fair notice that his or her conduct was unlawful, but acted anyway. This commonsense and reasonable protection explains why those seeking to abolish or modify Qualified Immunity cannot point to any situations in Massachusetts where wrongful conduct by police officers has been protected by the doctrine. As addressed below, abolishing or modifying qualified immunity will have important negative unintended consequences for all Massachusetts citizens, courts, and public employees, not just police officers.

Civil rights actions brought against police officers, including those alleging excessive force, are premised on the Fourth Amendment to the Constitution, which decrees that the people shall "be secure" against "unreasonable seizures." Congress passed the Civil Rights Act of 1871

which allows individuals to bring lawsuits against public officials. 42 U.S. Code § 1983 is the modern analogue of that Act and lawsuits alleging civil rights violations by public officials are frequently brought under this Act and litigated in the Federal Courts.

In 1979, the Massachusetts Legislature enacted G.L. c. 12, §§ 11H and 11I, better known as the Massachusetts Civil Rights Act ("MCRA"), The MCRA is broader than § 1983 in that it allows individuals to bring civil actions against public officials who interfere with the exercise and enjoyment of their constitutional rights as well as "rights secured by the constitution or laws of the commonwealth." However, the MCRA includes an additional requirement not included in §1983, that this interference with constitutional or statutory rights be achieved or attempted through threats, intimidation or coercion.

A plaintiff alleging excessive force was used must demonstrate that the force used was "unreasonable under the circumstances." Obviously, the courts would be overwhelmed if the question as to what is "reasonable" was allowed to proceed to a jury trial in each case. Likewise, police officers could be faced with inconsistent verdicts involving similar actions. Thus, judges serve as gatekeepers in weeding out meritless claims. The Court has to decide whether, based on the facts alleged by the plaintiff, no reasonable jury could find against the officer. Many cases are dismissed at this point.

The doctrine of qualified immunity ("QI") was first recognized by the United States Supreme Court in 1967. In 1989, the Supreme Judicial Court of Massachusetts decided that QI applied equally to the MCRA as it does to § 1983. QI is not an absolute immunity from suit. Rather, the basics of the doctrine are that a public official cannot be found personally liable for a violation of civil rights unless he or she is on notice that the conduct complained of violates "clearly established" law.

The test is based on what the objective reasonable official could have known, not the subjective belief of that particular person. Thus, even if a police officer subjectively believes that what she or he is doing is legal, this will not protect them from liability. They would be shielded only if a "reasonable" police officer would not be aware that the conduct violated the law. The premise of this theory is that it is not fair to find a public official personally liable if, at the time she or he acted, a reasonable public official would not be on clear notice that what she or he was doing was illegal.

In determining whether QI applies, a court normally first decides whether the action taken violated the law at the time of the court's decision. If the court decides that it would, then it moves on to the question of "whether a reasonable official could have believed his actions were

lawful in light of clearly established law and the information that the official possessed at the time of his allegedly unlawful conduct." QI protects officials whose actions were lawful based on the state of the law at the time they acted or where the law was not so clearly established as to put them on notice that their actions were unlawful.

As the Supreme Court has stated in support of QI, "[b]y defining the limits of qualified immunity essentially in objective terms, **we provide no license to lawless conduct**. The public interest in deterrence of unlawful conduct and in compensation of victims remains protected by a test that focuses on the objective legal reasonableness of an official's acts. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be
made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action. But where an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken with independence and without fear of consequences."

It is also important to note that even if the Court grants QI to the individual police officer, the plaintiff can still move forward with state tort claims, such as Assault and Battery if too much force was used. The only difference between a Civil Rights claim and the State Tort is that the plaintiff's counsel cannot recover their attorneys' fees for a violation of a Tort.

Under the proposed statutory changes to the MCRA (§10 of S.2800), QI would never apply to claims against public officials without a finding that *every* reasonable defendant would have known that his conduct was lawful. This language would render the protections QI much weaker. This change will only effect cases brought pursuant to the MCRA, not § 1983. Significantly, §10(b) of S.2800 would also amend the MCRA by removing the requirement of "threats, intimidation, and coercion" in state court actions brought against government officials such as police officers. If these changes are enacted, there will be many unintended consequences.

POTENTIAL CONSEQUENCES

1. <u>These changes will result in a flood of state court actions.</u>

Currently, the majority of civil rights actions against police officers are litigated in the Federal Courts. However, if the proposed amendments are enacted, and the defense

of QI is limited in Massachusetts, plaintiffs will bring the great majority of lawsuits in the State Courts to seek an advantage.

2. Financial impact on municipalities

The proposed modification of QI will result in an increased number of lawsuits filed in Massachusetts state courts against public officials under the MCRA rather than federal court. Municipalities will be forced to shoulder the costs of defending these cases and will, in almost all cases be required to indemnify the defendant public official for any judgment against him or her. Under the MCRA, if a plaintiff is successful in his or her claim, municipalities will also be required to pay the costs of litigation and reasonable attorneys' fees incurred by the *plaintiff* in pursuing his or her claim. The economic burden of paying its own litigation costs, combined with the prospect of potentially having to fund the plaintiff's costs and attorneys' fees (which in many cases greatly exceed the amount of the plaintiff's potential damages) may also force municipalities to settle meritless claims against officials which would have been weeded out by QI rather than defend against them.

3. State Courts will have to interpret the new QI language.

Currently, there is a great body of jurisprudence in the federal courts interpreting QI. This is not a simple doctrine and has required judicial analysis in many different situations. If Massachusetts changes the doctrine, the State Courts will have to develop a whole body of case law to interpret the new language. This will lead to uncertainty for Police Officers and plaintiffs for years to come.

4. Changes to QI will affect all public officials, not just police

QI under the MCRA does not just apply to police but applies to all "government officials, in the course of performing discretionary tasks, from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." All public officials, not just police officers, benefit from this doctrine. A large percentage of claims under MCRA are brought against non-law enforcement officials such as town managers, selectmen, fire chiefs, municipal commission members, and lower level employees of the commonwealth. Also, many, if not the majority of MCRA claims are based on interference with constitutional rights unrelated to police misconduct. Section 10 of S.

2800 would limit QI in all claims made under the MCRA against any "person or entity acting under color of any statute, ordinance, regulation, custom or usage of the commonwealth or, or a subdivision thereof." Therefore, weakening or eliminating QI will put all government officials, not just police officers, in greater jeopardy of individual personal liability based on their official actions.

CONCLUSION

Changes to the doctrine of Qualified Immunity should be carefully evaluated before they are enacted. The issues as to whether any change is needed and if so, what effect any change would have on the citizens of the Commonwealth require careful consideration. S2800 should not be passed at this time.

Kyle P. Heagney
Chief of Police

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July 17, 2020

Representative Aaron Michlewitz
Chair, House Committee on Ways and Means
Representative Claire D. Cronin
Chair, Joint Committee on the Judiciary
Massachusetts House of Representatives
State House
Boston, MA 02133

Dear Representative Aaron Michlewitz,

I am writing to you concerning Senate 2820, "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on July 15, 2020.

Senate Bill 2820 is imprudent, hasty and emotionally impulsive. Poorly crafted legislation leads to poorly administration of law.

More specifically, I steadfastly do not support the vicissitude of qualified immunity for municipal workers, especially police officers. If you believe altering qualified immunity in this manner will serve our citizens better, you sadly mistaken. It will only cause more harm than good to our communities. The shift in liability onto the individual police officer will force them to alter their policing practices so as to protect themselves from liability and persecution of civil suits. It will have an equal and opposite effect. It is imperative that you understand this fact. Drastically alerting qualified immunity is an error; and errors do not cease to be errors simply because elected officials enacted them into law.

Furthermore, with police officers know having to alter the policing duties to shield themselves from civil liability, what will be the ultimate cause and effect concerning the crime rate in your representative district? Do you think removing qualified immunity will decrease the crime rate? Or will the rate of crime increase because police officers are hesitant and constantly fearful about liability every time they are required to place handcuffs on a defendant?

"Justice will not be served until those who are unaffected are as outraged as those who are."
― Benjamin Franklin

In closing, I urge you let the precedent of qualified immunity as written today.

Sincerely,

Kyle P. Heagney
Chief of Police

Amesbury

William A. Scholtz
Chief of Police

Lt. Craig J. Bailey
Executive Officer

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Dear Chair Aaron Michlewitz and Chair Claire Cronin, please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

I am sure by this time that you have received and reviewed the letter submitted to you by Chiefs Kyes and Farnsworth representing the Mass. Chiefs, which outlines the concern I and my fellow Chiefs have concerning SB 2820. Although I am in support of police reform across the Commonwealth, a harried response to "do something" in the wake of recent events is asking for significant unintended consequences down the road. I have been in law enforcement for nearly forty years, during that time many jobs and services that belonged to mental health and social services were defunded, closed and/or reduced. The need for those services, programs and facilities never diminished! The responsibility to provide those services was thrust onto law enforcement however; the funding, resources and training never accompanied the job expectations. Law enforcement in this Commonwealth has done its best to rise up and meet those demands, but without the support of our legislators we cannot be successful. I urge you not to support SB 2820 until it can be cooperatively addressed so as to reduce the potential of unintended consequences.

William A. Scholtz
Chief of Police

Kyle P. Heagney
Chief of Police

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July 17, 2020

Representative Aaron Michlewitz
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Furthermore, with police officers now having to alter the policing duties to shield themselves from civil liability, what will be the ultimate cause and effect concerning the crime rate in your representative district? Do you think removing qualified immunity will decrease the crime rate? Or will the rate of crime increase because police officers are hesitant and constantly fearful about liability every time they are required to place handcuffs on a defendant?

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― Benjamin Franklin

In closing, I urge you let the precedent of qualified immunity as written today.

Sincerely,

Kyle P. Heagney
Chief of Police

July 17, 2020
Massachusetts House of Representatives

Massachusetts Statehouse

24 Beacon Street
United States House of Representatives/United State Senate
Boston, MA 02108

Dear Sir or Madam:

As a registered voter in the Commonwealth of Massachusetts, an ordinary citizens, Massachusetts business owner, mother and wife of a suburban municipal police officer, I write to ask you to consider the following with regard to the proposed bill S.2820. the Policing Reform Package. Please consider the following:

First, while it is clear that reform needs to take place in policing regulations and guidelines both nationally and on a state level this is an issue that should be handled with level-headed. research oriented. regard. The bill as it stands has been rushed and treated as emergency legislation. In the state of Massachusetts we already have some of the strictest controls in place to protect the civil rights of our citizens in our nation, so the need for an emergency law should be weighed against the damage of rushing a law against the need for our laws in the Commonwealth to be well thought through. As citizens we count on our legislators to act with regard for the well being of all citizens of the state, and it is your job as our representatives to employ a level-headed approach in considering legislation. By acting in haste. this bill will likely have unintended consequences. that will have far reaching impact for all citizens of all race, ethnicities and creeds. I respectfully would ask the questions: what experts in law enforcement assisted in the drafting of this bill, what effects with regard to the rights of the employees of the State and local municipalities were considered. as all police officers are also citizens with rights in our Commonwealth, and what steps were taken to ensure that the safety of all citizens will be protected by a police force that has the ability to conduct their job?

Of particular concern: the composition of the police officer standard and accreditation committee does not balance parties with experience in law enforcement with parties who are civil rights experts, which is necessary for fair treatment of officers, and necessary to ensure a balanced approach to training and standards required of officers. There is a great deal of oversight and power given to this committee through this bill. And very little consideration as to the composition of the committee seems to be given. With a committee that is more heavily weighted with civil rights advocates, and less weighted with experts in police work, and public safety it will be difficult for the committee to take a through view of training, and of similar importance how will the committee fairly assess complaints and actions taken against officers, when brought to the committee for review? Fairness requires balance, and the composition of the committee does not take balance into consideration.

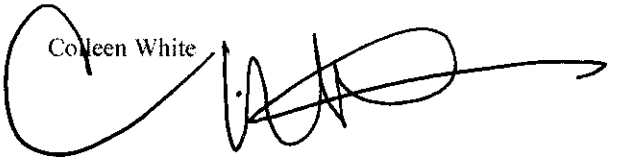
Also, of particular concern in the legislation is the issue of qualified immunity. The doctrine of qualified immunity protects law enforcement officers, government employees, and in fact all civil servants from frivolous lawsuits. That is the intended purpose of the doctrine. Of course, as with much of our legal system there are unintended consequences of the doctrine, and the application of the doctrine has been used to protect egregious violations of law in the areas of civil rights and excessive force. That said this bill does not strictly define the limitations of the use of qualified immunity, which should be the intent of the bill, but rather it vaguely does away with qualified immunity for any law enforcement officer. The unintended consequences of this are far reaching for police families. Municipal police officer salaries for example will not support the cost of expensive insurance policies if this doctrine no longer applies. And police officers, would need to protect themselves with malpractice type policies in order to be able to do their jobs, if they have no civil protection afforded to them by law. With more time and consideration this bill should consider refining and limiting the application of the doctrine of qualified immunity rather than doing away with it all together. The unintended consequence of doing away with it all together will likely be: good officers leaving the force as they do not wish to take on the liability of frivolous lawsuits, officers not doing their job to the full capacity required out of fear of lawsuits, a court system bogged down further by frivolous law suits, bankrupt families of law enforcement officers sued for frivolous complaints.

Finally, there are a number of other issues in this bill that will have unintended consequences that will impact the safety of officers, while on the job. The limitations regarding use of force, do not afford protections for officers who are sometimes faced with split second choices that are required to prevent imminent harm to themselves or other citizens. The vagueness of the limitations on use of force, will cause officers to second guess their actions in moments where their lives and the lives of those around them depend on their instincts and quick action.

At a time with the climate nationally and locally is heavily anti- police, this bill does not give enough attention, thought or research to a measured set of reforms. This is an excellent time to pass police reform that is measured, fair, and equitable to all parties. This bill is reactionary and will not result in real change for protecting the civil rights of the citizens of the Commonwealth of Massachusetts. It seems to be primarily focused on limiting the rights of police officers, who are all citizens, and civil servants. In fact, much of the bill seems to be focused not just on limiting their rights but also on punishing police officers for actions they take while performing their job. It will not encourage them to perform better, it will simply at a minimum discourage them from being thorough in their work out of fear of retaliation, complaints, lawsuits etc, and at worst this bill will impact their safety and the safety of other citizens. The passing of this bill as it stands will cause police families like ours to heavily consider leaving the police force. This will be due to the lack of protection, and lack of support on the federal, state and even the town level for our police. It will also be due to the extensive liability it will now place on our family financially. Most importantly we will consider leaving the force due to the apparent disinterest at the federal and state level in supporting the lives and safety of police officers. Please take the time to put together reform that is thoughtful and measured, not reactionary as otherwise the unintended consequence will be too far reaching.

Thank you for your consideration, and please feel free to contact me if you would like to discuss this issue further.

Sincerely,



Colleen White

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RICHARD SHAILOR
VICE PRESIDENT / NATIONAL TRUSTEE

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MICHAEL TALBOT
DIR OF GOVERNMENTAL AFFAIRS
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July 16, 2020

Representative Aaron Michlewitz
Chair, House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

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

Dear Chairman Michlewitz and Chairwoman Cronin,

We would like to take this opportunity to thank you for your public service and allowing us to submit written testimony on behalf of the Massachusetts Fraternal Order of Police relative to Senate Bill 2820.

The Fraternal Order of Police (F.O.P.) is the largest police organization in the country representing over 350,000 law enforcement professionals. The Massachusetts Fraternal Order of Police is a State Chapter under the National FOP Organization and we currently represent over 3200 law enforcement professionals including Police Officers, Police Chiefs, Sheriff Departments, Department of Corrections, Federal Bureau of Prisons, College and University Police Department and the dedicated Criminalists of the Boston Police Crime Lab. The F.O.P. (including the Mass FOP) was the first national police organization in the country to condemn the horrific killing of George Floyd. The F.O.P. has been at the forefront for years advocating for standardized police training nationally, de-escalation training, community policing and officer wellness. We believe that there are broad areas of agreement and that it is possible to build consensus on data collection, agency accreditation, expanded use of body-cameras and improved training. We believe there is a need to work for more consistent adoption of nationally accepted use of force models. The Massachusetts FOP supports this change, we believe that policing in Massachusetts is the best in the country and we support more training and education for our members. Unfortunately, the Bill proposed by the Senate last week had more to do with vengeance than reform. Instead of coming to a consensus and collectively making meaningful changes to avoid racial injustices in the Commonwealth, the Senate chose to attack the core of public sector unions' rights including Due Process, Collective Bargaining Rights and Qualified Immunity.

The Massachusetts FOP is actively involved in efforts to educate the legislators on some of the detrimental impacts of SB 2800/SB 2820. The Mass FOP has been working in conjunction of other law enforcement groups (Massachusetts Law Enforcement Policy Group) in an effort to have a unified voice to address our concerns.

The Senate Bill version as presently drafted will seriously undermine public Safety in the Commonwealth. The anti-police rhetoric has created a false narrative that the only way to stop police

misconduct is taking away Qualified Immunity. They believe that by suing cops they will change police misconduct and hold officers accountable. The reality is that the small amount of illegal conduct of officers around the country is hardly seen in Massachusetts. This is due to our professionalized training, community policing models and diversity in our ranks. If passed, SB 2820, will have unintended and unnecessary changes to qualified immunity for all public employees. Police officers will be hamstrung in the performance of their duties. The fact is that we will now be subjected to numerous frivolous nuisance suits for any action hidden in this expansive bill. Frankly, the provisions in this bill will hurt good police officers and reward criminals by protecting drug dealers, human traffickers, gang activity in minority neighborhood schools. If enacted, this bill will harm the very people that it's attempting to protect from police misconduct.

We are extremely concerned that the process employed by the senate of using an omnibus bill with numerous, diverse and complicated policy issues coupled with limited public and professional participation was at its very core undemocratic, flawed and lacked transparency. The bill is 70 pages long, with hundreds of changes to public safety sections of the General Laws and sound public policy sections, it was sent to the floor with no hearing and only a few days to digest and caucus before voting. The biggest sham was the lack of public comments in the rushed process.

The Massachusetts FOP supports uniformed standardized training statewide and policies as well as appropriate regulatory board which is fair and unbiased. The Senate created a board that is dominated by anti-police groups who have a long-detailed record of biases against law enforcement and preconceived punitive motives toward police. The board as proposed in the Senate Bill is unlike any other of the 160 professional regulatory boards in the Commonwealth. The board as proposed in the Senate Bill would be fundamentally incapable of providing regulatory due process. Furthermore, the proposed members are completely devoid of sufficient experience in law enforcement to create training policies and standards unlike members of the other 160 professional boards.

Changes to qualified immunity would be unnecessary if the legislature adopted a uniform statewide standard and bans unlawful use of force techniques which all police personnel unequivocally support. Once we have uniformed standards and policies and the statutory banning of use of force techniques both officers and the individual citizens will know what is reasonable and have a clear picture of what conduct is a violation of a citizen's rights, thus these actions would be deemed illegal under qualified immunity and subject to civil rights suit. This will limit the potential explosion of civil suits against other public employee groups. If the senate bill is passed in its current form the costs to municipalities and the State will skyrocket from frivolous lawsuits and potentially having a devastating impact on budgets statewide.

On behalf of the dedicated men and women of the Massachusetts Fraternal Order of Police we would like to thank you for your time and consideration.

Sincerely,

Todd Bramwell,
President, Mass FOP
(508)326-4737

Michael G. Talbot,
Director Governmental Affairs MA FOP
(617)794-1012

The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

BRADLEY H. JONES, JR.
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MINORITY LEADER

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July 17, 2020

The Honorable Aaron Michlewitz, Chair
House Ways and Means Committee
State House, Room 243
Boston, MA 02133

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

Dear Chair Michlewitz and Chair Cronin:

We write to offer testimony on Senate Bill 2820, An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

First, we want to thank you for the opportunity to provide input on this far-reaching piece of legislation, and your willingness to open the bill for public comment. Sadly, the process followed by the Senate in crafting and passing this bill was sorely lacking in true public participation and left many interested parties out of the discussion and unable to voice their support and concerns.

The central pieces of any police reform bill should reflect a focus on the core principles of reform outlined by our colleagues in the Black & Latino Legislative Caucus. Some of these principles are addressed in Senate Bill 2820, including the creation of a Police Officer Standards and Accreditation Committee to license all law enforcement officers and ensure that proper standards are maintained. The Senate bill also incorporates a ban on the use of chokeholds, which we fully support, as well as language requiring police officers to intervene when one of their colleagues crosses the line, without fear they will face retaliation for reporting misconduct. While there may need to be modest changes to the Senate bill in these areas, directionally there is agreement.

But the Senate proposal also contains many troubling aspects. One amendment adopted during floor debate would severely limit the ability of school officials to inform police about gang activity in schools, preventing potentially volatile situations from being addressed early on, before they are allowed to escalate.

There has also been a great deal of confusion surrounding the issue of qualified immunity, and how to make sure we avoid rushing into any changes that may negatively impact all public officials or have other unforeseen consequences. The level of confusion and uncertainty around this one issue demands we proceed with caution on any changes. We believe a more effective approach to take would be to create a focused Commission to delineate the issue's history and its impact on policing and public service, and to conduct a review of what effects, both beneficial and harmful, changes to the existing law might entail. The Commission should draw former jurists and people on both sides of the issue to

undertake a rigorous and transparent analysis and report back to the legislature with clear and understandable recommendations for all to evaluate and consider.

The murder of George Floyd is an American tragedy that has laid bare the ongoing issue of racism in our country. Our nation's history of slavery and the poor foundation it left for racial relations in the United States will forever be a stain on the history of our great country.

While we need to acknowledge the historic and persistent racial problems within policing and our society, we also need to recognize the vital role police play across a myriad of fronts to protect the public, and must be careful not to weaken or jeopardize public safety while implementing needed reforms. We must also be sure that whatever legislation we pass does not have the unintended consequence of inspiring good police officers to leave the profession, and does not serve as a deterrent to those applicants we want to join the profession.

It would be naive to think that any reform bill we pass will completely eliminate the problems associated with those individuals who are unable or unwilling to comport themselves in a manner that respects the laws of our Commonwealth, and refuse to respect individual rights and property. However, we must not lose sight of the fact that we can and must do better. As we pursue these reforms, we need to have a dynamic dialogue that engages those we expect to run towards danger so that others can flee it to ensure we are making the strides we all want to see occur, and that we do so in a productive and meaningful manner.

Sincerely,

Bradley H. Jones, Jr.
Minority Leader

Bradford Hill
Assistant Minority Leader

Elizabeth Poirier
2nd Asst. Minority Leader

Susan Williams Gifford
3rd Asst. Minority Leader

Paul K. Frost
3rd Asst. Minority Leader

Todd Smola
Ranking Member, HWM

Jay Barrows
State Representative

Donald Berthiaume
State Representative

Nicholas Boldyga
State Representative

William Crocker
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David DeCoste
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Shawn Dooley
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Randy Hunt
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Hannah Kane
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James Kelcourse
State Representative

Lenny Mirra
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David Muradian
State Representative

Mathew Muratore
State Representative

Norman Orrall
State Representative

Michael Soter
State Representative

Alyson Sullivan
State Representative

David Vieira
State Representative

Timothy Whelan
State Representative

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State Representative

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413-755-4220

TO: Chair Aaron Michlewitz & Chair Claire Cronin

FROM: Chief Jose A Rivera

RE: SB2820

DATE: June 17, 2020

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

Please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color".

MACLEA seeks to include a representative of the Association to serve on the Police Officer Standards and Accreditation Committee created by section 6 of Senate Bill 2820. MACLEA's member departments are responsible for the safety and wellbeing of the hundreds of thousands who live, learn, work, and visit our member institutions. We are in favor of the creation of a Police Officer Standards and Accreditation Committee (POSAC) and our representation on this committee would add valuable insight and information. It would also ensure that the safety and security of all of those on campuses across the Commonwealth are the highest priority.

Respectfully,

Jose A. Rivera
Chief of Police – Senior Director of Public Safety
STCC Police
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Coalition for Smart Responses to Student Behavior

July 15, 2020

The Honorable Robert DeLeo, Speaker of the House
The Honorable Claire Cronin, Chair of the House Judiciary Committee
The Honorable Aaron Michlewitz, Chair of the House Ways and Means Committee
The Honorable Carlos González, Chair of the Black and Latino Legislative Caucus

RE: Testimony on School Policing and S. 2800

Dear Speaker DeLeo, Chair Cronin, Chair Michlewitz, Chair González, and Members of the House's Judiciary Committee, Ways and Means Committee, and Black and Latino Legislative Caucus:

We urge the House to address school policing in its police accountability bill. Specifically, we seek your leadership in securing:

1. **An end to police placement in schools, and**
2. **Public accountability for what police do in schools.**

Our first priority is removing police from schools. A simple change can do so and keep schools safe. The definition of a "school resource officer" (SRO) in G.L. c. 71 § 37P(a) can be amended to include: *A school resource officer shall not be located on school grounds but at the local police station and shall be charged with serving as the primary responder to calls from public schools.*

In light of your upcoming hearing on the Senate's *Reform, Shift + Build Act* (S. 2800), we also write to identify the aspects of the Senate bill we most strongly support. They are:

- **Amendment 80** (Jehlen): Lets school committees decide, by annual public vote, whether to assign police to schools. Requires superintendents to annually share data on the costs of school policing, the budget for mental and emotional health support, and school-based arrests and referrals with the public, school committee, and the department of education.
- **Amendment 108** (Jehlen): Prohibits information-sharing from school staff and school police to the Boston Regional Intelligence Center and other gang databases.

We also wish to note our support for two amendments that increase training for police in engaging youth and students, but we must be clear that any training must not come out of school budgets and ***training alone is deeply insufficient***:

- **Amendment 25** (Boncore): Requires specific training for SROs to be developed in consultation with experts, and to be required before an officer can be assigned as an SRO.
- **Amendment 41** (Friedman): Requires police training on developmentally appropriate de-escalation and disengagement tactics and alternatives to the use of force for minor children.

Here's why:
School-based police mean school-based arrests, too often for a school discipline violation.[1] A first arrest doubles the odds a student drops out.[2] Massachusetts' Black and Latino students are far more likely than their white peers to be arrested at school, especially for school discipline matters.[3] There is significant misunderstanding between Massachusetts' police officers and school administrators on the role of police in schools.[4]

[1] Hon. Jay Blitzman, *Police Aren't Needed in Schools*, Commonwealth Magazine (Jun. 10, 2020).
[2] Gary Sweeten, *Who Will Graduate?,* 23 Justice Quarterly 462, 473-477 (2006).
[3] Robin Dahlberg, *Arrested Futures: The Criminalization of School Discipline in Massachusetts's Three Largest School Districts* (2012).
[4] Johanna Wald and Lisa Thurau, *First, Do No Harm* (2010).

Placing police in schools is expensive, especially during budget shortfalls when students may not even be in school buildings. Meanwhile, our state's ratio of students to counselors, 304:1, fails to meet the nationally recommended ratio (250:1).[5]

Schools and police are not complying with the reforms of 2018. The Massachusetts Juvenile Justice Policy and Data Board reports that many cities did not adopt the policing agreements required by the *Criminal Justice Reform Act* (CJRA).[6] Fewer still report the data that the law requires. Only 31 of 289 school districts reported any arrests. Springfield, Worcester, and Lowell reported **zero**, along with 48 other large districts.

Parents, students, educators, and communities need a say in deciding what police do in schools. We ask for your leadership in securing that say. Please do not hesitate to contact us with any questions.

Sincerely,

The Coalition for Smart Responses to Student Behavior
Together with the following organizations and individuals:

ACLU of Massachusetts
ADL New England
Boston Student Advisory Council (BSAC)
Center for Public Representation
Citizens for Juvenile Justice
Citizens for Public Schools
Committee for Public Counsel Services
CORI & Reentry Project of Greater Boston Legal Services
Disability Law Center
Framingham Families for Racial Equity in Education
Freitas & Freitas
Massachusetts Advocates for Children
Massachusetts Appleseed Center for Law & Justice
Massachusetts Attorneys for Special Education Rights (MASER)
Mental Health Advocacy Program for Kids at Health Law Advocates
Mental Health Legal Advisors Committee
Parent/Professional Advocacy League (PPAL)
Power of Self-Education (POSE) Inc.
Strategies for Youth
Worcester Interfaith
Youth on Board

Honorable Jay D. Blitzman (Ret.)
Daniel J. Losen, Center for Civil Rights Remedies at UCLA's Civil Rights Project (Mass. resident, organization listed for affiliation purposes only)
Denise Wolk, Education Consultant

(Contacts next page)

[5] American Civil Liberties Union, *Cops and No Counselors: How the Lack of Mental Health Staff Is Harming Students* (2019).
[6] Juvenile Justice Policy and Data Board, *Early Impacts of an Act Relative to Criminal Justice Reform* 65 (2019).

Contacts for the Coalition for Smart Responses to Student Behavior:

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Lisa Thurau, **Strategies for Youth**
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Town of Hanson
POLICE DEPARTMENT
775 Main Street
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(781) 293-4625 Fax: (781) 293-4624
http://www.hansonpolice.org

Michael R. Miksch
Chief of Police

Lt. Michael D. Casey
Executive Officer

July 17, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Char Cronin and Chair Michlewitz

I have been watching the debate regarding the recent amended Senate Bill 2820 "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on 7/15. I have a number of concerns regarding this Act.

I am the Chief of Police for the Town of Hanson. I am one of 22 full time officers and 8 part time officers who make up the men and women of the Department. We police a Town of approximately 11,000 people in Plymouth County. I have over 25 years in law enforcement in Massachusetts. I have worked in two different communities over those years. I also am a certified instructor for the Municipal Police Training Committee (MPTC). I am writing after consulting with the Massachusetts Chiefs of Police Association and the Southeastern Massachusetts Chiefs of Police Association.

First, I would like to say I am disappointed in the Senate for the rush to pass this bill with no public input. I want to thank the House for giving us the opportunity for public input on this important legislation. I have broken out a list of concerns that corresponds with the section numbers of Senate Bill 2820:

SECTION 4 (line 230): Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States.*" As an instructor for the MPTC, I would welcome the training. What I do not understand, is why is this limited to training for Law Enforcement? Why would we not have all State and Municipal Employees be required to take such training? I think a well researched and factual curriculum would benefit all employees. Not to compare two major issues in society, but rather as an example, sexual harassment in the workplace is addressed annually and upon being hired by most government agencies. Why would we not do training on the history of racism and racist institution just as many of us do with preventing sexual harassment in the work place? Again, I am not comparing the two societal ills but simply pointing out that we recognize one problem across all employees but we will only expose one group of government employees to a different problem in society?

SECTION 6 (line 272): In terms of the establishment of a POST (Peace Officer Standards and Training) Program, I wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* but has everything to do with *Certification* – and by implication "De- certification".

In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies*(CALEA). Utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

On a note with Accreditation, I believe assistance from the State to allow local departments to reach accreditation would add to the professionalism and standardization of law enforcement in the Commonwealth. Currently the MPAC is supported financially by the organizations taking part. For example, Hanson is starting toward certification which is the first step in reaching accreditation. It cost my department $1500 a year to support MPAC. Grant funding and incentives to cities and towns would be a great addition to this bill.

SECTION 6 (line 282): The Senate Bill states that POSAC shall be comprised of "14 members", however as outlined there are actually 15 positions. I strongly urge the House version allow for two (2) seats on the POSAC to be appointed by the Mass Chiefs of Police Association (MCOPA) Executive Committee.

SECTION 6 (line 321) :It appears from the language of the POSAC provision that the committee shall have the power to conduct what is referred to as "*independent investigations and adjudications of complaints of officer misconduct*" without any qualifying language as to how that would be implemented in terms of what type of alleged misconduct (law violations, use of force, injury, rude complaints, etc.) and when and under what circumstances will adjudications be subject to review resulting in a proposed oversight system that could go down the slippery slope of becoming arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

Also, how are these complaints vetted? Having done a number of internal affairs investigations over the years, I have found a many to either be a misunderstanding or outright lies about an officer. Remember the very nature of our job has us dealing with people who are often less than honest at times. For officers to buy in to this system they need to know they will be treated fairly.

SECTION 10(c) (line 570): Section 10 of "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" (the Act) is problematic, not only for law enforcement in the Commonwealth, but all public employees. In particular, Section 10 calls for a re-

write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). The MCRA is similar to the provisions of 42 U.S.C. § 1983 (setting for a federal cause of action for a deprivation of statutory or constitutional rights by one acting under color of law), except however, that the provisions of the MCRA as it exists today, does not require that the action be taken under color of state law, as section 1983 does. See G.L. c. 12, § 11H. Most notably, Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, who *inter alia* deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States or the Commonwealth of Massachusetts. By doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

The qualified immunity principles developed under section 1983 apply equally to claims under the MCRA. See Duarte v. Healy, 405 Mass. 43, 46-48, 537 N.E.2d 1230 (1989). "The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not 'clearly established.'" Laubinger v. Department of Rev., 41 Mass. App. Ct. 598, 603, 672 N.E.2d 554 (1996), citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); see Breault v. Chairman of the Bd. of Fire Commrs. of Springfield, 401 Mass. 26, 31-32, 513 N.E.2d 1277 (1987), *cert. denied sub nom.* Forastiere v.Breault, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 237 (1988); Duarte v. Healy, supra at 47-48, 537 N.E.2d 1230.

In enacting the Massachusetts Civil Rights Act, the Legislature intended to adopt the standard of immunity for public officials developed under section 1983, that is, public officials who exercised discretionary functions are entitled to qualified immunity from liability for damages. Howcroft v. City of Peabody, 747 N.E.2d 729, Mass. App. 2001. Public officials are not liable under the Massachusetts Civil Rights Act for their discretionary acts unless they have violated a right under federal or state constitutional or statutory law that was "clearly established" at the time. Rodriguez v. Furtado, 410 Mass. 878, 575 N.E.2d 1124(1991); Duarte v. Healy, 405 Mass. 43, 537 N.E.2d 1230 (1989).

Section 1983 does not only implicate law enforcement personnel. The jurisprudence in this realm has also involved departments of social services, school boards and committees, fire personnel, and various other public employees. That being said, if the intent of the Senate is to bring the MCRA more in line with section 1983, anyone implicated by section 1983, will likewise be continued to be implicated by the provisions of the MCRA. Notably, the provisions of the MCRA are far broader, which should be even more cause for concern for those so implicated.

Section 10 of the Act further sets for a new standard for the so-called defense of "qualified immunity." Section 10(c) states that "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred; no reasonable defendant could have had reason to believe that such conduct would violate the law"

This definition represents a departure from the federal standard for qualified immunity, although the exact extent to which is departs from the federal standard is up for debate, at least until the SJC provides clarification on it. The federal doctrine of qualified immunity shields public officials of all types from liability under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Stated differently, in order to conclude that the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987). It protects all but the plainly incompetent and those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335 (1986). As a result, the standard sought to be created under Section 10 of the Act would provide public employees with substantially less protection than that afforded under the federal standard. Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Furthermore, although the Senate's version of "qualified immunity" would only apply to state-based claims under the MCRA, what Section 10 proposes is fairly similar to that proposed by the 9th Circuit Court of Appeals in various decisions. In those instances where the 9th Circuit sought to lower the standard applicable to qualified immunity, the U.S.Supreme Court has squarely reversed the 9th Circuit, going so far as scolding it for its attempts to do so. See Kisela v. Hughes, 138 S.Ct. 1148 (2018); City of Escondido v. Emmons, 139 S.Ct. 500 (2019).

Although legal scholars and practitioners have a grasp as to the meaning of qualified immunity as it exists today, uncertainty will abound if this standard is re-written, upending nearly fifty years of jurisprudence. Uncertainty in the law can only guarantee an influx in litigation as plaintiffs seek to test the new waters as the new standard is expounded upon by the courts.

"Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

This is my and my officer's biggest concern regarding this bill. I fear officers will hesitate to take action with this new standard. This also seems to go beyond just law enforcement officers and leaves other public sector employees open to civil liability. Also, many people think that qualified immunity gives law enforcement a pass on any civil action. This is far from the truth. We do not have absolute immunity; rather Judges act as a gate keeper, keeping the frivolous complaints out of the already busy court system.

SECTION 39 (line 1025): The provision to inform both the appointing authority and the local legislative body of the acquisition of any equipment and/or property that serves to enhance public safety makes perfect sense. That said, to have a public hearing

available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is very dangerous.

Also, to require each regional law enforcement group to have public hearings in each community they cover is not practical. Hanson belongs to SEMLEC which covers over 20 cities in Towns in Plymouth and Bristol Counties. It would be impossible to have hearings in all the cities in towns.

SECTION 49 (line 1101-1115): This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers – including their own agency – when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. The learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. We have had a School Resource Officer (SRO) for over 20 years serving the Whitman Hanson Regional School District. The sharing of information has been critical. We also have an agreement where the SRO, will share with key school personal when a student or their family has had contact with law enforcement. We do not share what that contact was, just that the child maybe stressed based on the interaction.

For example, law enforcement responds to a domestic violence call at a household with school age children. The SRO would contact the principal of the school the child attends and tell them to *handle the child with care today*. This allows the school guidance counselors and administration to take a different approach to the child. For example, maybe the child is sleeping in class because the child did not get adequate rest or is having discipline issues as they do not know how to deal with the stress they are feeling. Instead of disciplining the child they go to the nurse for a nap or the guidance office to discuss their stress. By doing this we may avoid the child suffering from unwarranted discipline by the school while giving the child a safe learning environment. This information sharing in both direcetions is critical to the success of all.

SECTION 50 (line 1116): There seems to be a slight nuance to the amended language to Section 37P of Chapter 71 replacing "*in consultation with*" to "*at the request of.*" The Hanson Police have had school resource officer program for over 20 years. The only reason why officers are assigned to the schools is because they have been "requested" to be there by the school superintendents - period. These officers serve as mentors for these students. The 2018 Criminal Justice Reform Act has very specific language that outlines the qualifications of an SRO, the joint performance evaluations that are to be conducted each year, the training that they shall have and the language specific MOU's that must exist. I am not sure why this provision needs to be included.

SECTION 52 (lines 1138-1251: There are several recommended changes to data collection and analysis as it pertains to stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive

system of data collection, benchmarking, review, analyses and potential consequences. This language appears to be what did not make its way into the Hands-Free Law which as you know was heavily debated for several months based strictly on the data collection component.

I also believe handing every person we interact with a "receipt" is extreme. This will make officers again, less apt to interact with the public. I think there will be unintended consequences in the other direction as well. Why would I not just give you a fine if I am going to stop you? Instead of the polite quick interaction to warn you that your state required inspection sticker expired two days ago, I am going to give you a fine? Often I have seen many people who are just scrapping by financially, trying to do the right thing, suffer even more financial setbacks by having to deal with fines that could have gone toward repairing their car instead. Just leave the data alone and use what is already in the Hands Free Law that was debated publically.

SECTION 55 (line 1272): To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, I respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. [...]." What should also be included is a reasonable and rational provision that states, "*unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury.*"

There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

Recommended New Section] Amends GL Chapter 32 Section 91(g):

In order to expand the hiring pool of trained, educated, qualified and experienced candidates with statewide institutional knowledge for the Executive Directors' positions for both the *Municipal Police Training Committee* as well as the newly created *POSAC* (or POST), the statute governing the payment of pensioners for performing certain services after retirement, shall be amended to allow members of Group 4 within the state retirement system to perform in these two (2) capacities, not to exceed a three (3) year appointment unless specifically authorized by the Governor.

It makes sense that an experienced law enforcement professional from the Commonwealth hold these positions. We have had a number of out of State directors come in but there is always a learning curve to adapt to Massachusetts. Besides experienced law enforcement person from within the Commonwealth will have already forged relationships with and have the respect of those they serve.

In closing I want to again thank you for taking public input. This Act has far reaching impacts on both the citizens we serve and the officer who enforce the laws of the Commonwealth.

Sincerely and Respectfully Submitted,

Michael R. Miksch

Chief of Police

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Michael R. Miksch
Chief of Police

Lt. Michael D. Casey
Executive Officer

July 17, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Char Cronin and Chair Michlewitz

I have been watching the debate regarding the recent amended Senate Bill 2820 "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on 7/15. I have a number of concerns regarding this Act.

I am the Chief of Police for the Town of Hanson. I am one of 22 full time officers and 8 part time officers who make up the men and women of the Department. We police a Town of approximately 11,000 people in Plymouth County. I have over 25 years in law enforcement in Massachusetts. I have worked in two different communities over those years. I also am a certified instructor for the Municipal Police Training Committee (MPTC). I am writing after consulting with the Massachusetts Chiefs of Police Association and the Southeastern Massachusetts Chiefs of Police Association.

First, I would like to say I am disappointed in the Senate for the rush to pass this bill with no public input. I want to thank the House for giving us the opportunity for public input on this important legislation. I have broken out a list of concerns that corresponds with the section numbers of Senate Bill 2820:

SECTION 4 (line 230): Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States.*" As an instructor for the MPTC, I would welcome the training. What I do not understand, is why is this limited to training for Law Enforcement? Why would we not have all State and Municipal Employees be required to take such training? I think a well researched and factual curriculum would benefit all employees. Not to compare two major issues in society, but rather as an example, sexual harassment in the workplace is addressed annually and upon being hired by most government agencies. Why would we not do training on the history of racism and racist institution just as many of us do with preventing sexual harassment in the work place? Again, I am not comparing the two societal ills but simply pointing out that we recognize one problem across all employees but we will only expose one group of government employees to a different problem in society?

SECTION 6 (line 272): In terms of the establishment of a POST (Peace Officer Standards and Training) Program, I wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* but has everything to do with *Certification* – and by implication "De- certification".

In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies*(CALEA). Utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

On a note with Accreditation, I believe assistance from the State to allow local departments to reach accreditation would add to the professionalism and standardization of law enforcement in the Commonwealth. Currently the MPAC is supported financially by the organizations taking part. For example, Hanson is starting toward certification which is the first step in reaching accreditation. It cost my department $1500 a year to support MPAC. Grant funding and incentives to cities and towns would be a great addition to this bill.

SECTION 6 (line 282): The Senate Bill states that POSAC shall be comprised of "14 members", however as outlined there are actually 15 positions. I strongly urge the House version allow for two (2) seats on the POSAC to be appointed by the Mass Chiefs of Police Association (MCOPA) Executive Committee.

SECTION 6 (line 321) :It appears from the language of the POSAC provision that the committee shall have the power to conduct what is referred to as "*independent investigations and adjudications of complaints of officer misconduct*" without any qualifying language as to how that would be implemented in terms of what type of alleged misconduct (law violations, use of force, injury, rude complaints, etc.) and when and under what circumstances will adjudications be subject to review resulting in a proposed oversight system that could go down the slippery slope of becoming arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

Also, how are these complaints vetted? Having done a number of internal affairs investigations over the years, I have found a many to either be a misunderstanding or outright lies about an officer. Remember the very nature of our job has us dealing with people who are often less than honest at times. For officers to buy in to this system they need to know they will be treated fairly.

SECTION 10(c) (line 570): Section 10 of "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" (the Act) is problematic, not only for law enforcement in the Commonwealth, but all public employees. In particular, Section 10 calls for a re-

write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). The MCRA is similar to the provisions of 42 U.S.C. § 1983 (setting for a federal cause of action for a deprivation of statutory or constitutional rights by one acting under color of law), except however, that the provisions of the MCRA as it exists today, does not require that the action be taken under color of state law, as section 1983 does. See G.L. c. 12, § 11H. Most notably, Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, who *inter alia* deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States or the Commonwealth of Massachusetts. By doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

The qualified immunity principles developed under section 1983 apply equally to claims under the MCRA. See Duarte v. Healy, 405 Mass. 43, 46-48, 537 N.E.2d 1230 (1989). "The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not 'clearly established.'" Laubinger v. Department of Rev., 41 Mass. App. Ct. 598, 603, 672 N.E.2d 554 (1996), citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); see Breault v. Chairman of the Bd. of Fire Commrs. of Springfield, 401 Mass. 26, 31-32, 513 N.E.2d 1277 (1987), *cert. denied sub nom.* Forastiere v.Breault, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 237 (1988); Duarte v. Healy, supra at 47-48, 537 N.E.2d 1230.

In enacting the Massachusetts Civil Rights Act, the Legislature intended to adopt the standard of immunity for public officials developed under section 1983, that is, public officials who exercised discretionary functions are entitled to qualified immunity from liability for damages. Howcroft v. City of Peabody, 747 N.E.2d 729, Mass. App. 2001. Public officials are not liable under the Massachusetts Civil Rights Act for their discretionary acts unless they have violated a right under federal or state constitutional or statutory law that was "clearly established" at the time. Rodriguez v. Furtado, 410 Mass. 878, 575 N.E.2d 1124(1991); Duarte v. Healy, 405 Mass. 43, 537 N.E.2d 1230 (1989).

Section 1983 does not only implicate law enforcement personnel. The jurisprudence in this realm has also involved departments of social services, school boards and committees, fire personnel, and various other public employees. That being said, if the intent of the Senate is to bring the MCRA more in line with section 1983, anyone implicated by section 1983, will likewise be continued to be implicated by the provisions of the MCRA. Notably, the provisions of the MCRA are far broader, which should be even more cause for concern for those so implicated.

Section 10 of the Act further sets for a new standard for the so-called defense of "qualified immunity." Section 10(c) states that "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred; no reasonable defendant could have had reason to believe that such conduct would violate the law"

This definition represents a departure from the federal standard for qualified immunity, although the exact extent to which is departs from the federal standard is up for debate, at least until the SJC provides clarification on it. The federal doctrine of qualified immunity shields public officials of all types from liability under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Stated differently, in order to conclude that the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987). It protects all but the plainly incompetent and those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335 (1986). As a result, the standard sought to be created under Section 10 of the Act would provide public employees with substantially less protection than that afforded under the federal standard. Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Furthermore, although the Senate's version of "qualified immunity" would only apply to state-based claims under the MCRA, what Section 10 proposes is fairly similar to that proposed by the 9th Circuit Court of Appeals in various decisions. In those instances where the 9th Circuit sought to lower the standard applicable to qualified immunity, the U.S.Supreme Court has squarely reversed the 9th Circuit, going so far as scolding it for its attempts to do so. See Kisela v. Hughes, 138 S.Ct. 1148 (2018); City of Escondido v. Emmons, 139 S.Ct. 500 (2019).

Although legal scholars and practitioners have a grasp as to the meaning of qualified immunity as it exists today, uncertainty will abound if this standard is re-written, upending nearly fifty years of jurisprudence. Uncertainty in the law can only guarantee an influx in litigation as plaintiffs seek to test the new waters as the new standard is expounded upon by the courts.

"Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

This is my and my officer's biggest concern regarding this bill. I fear officers will hesitate to take action with this new standard. This also seems to go beyond just law enforcement officers and leaves other public sector employees open to civil liability. Also, many people think that qualified immunity gives law enforcement a pass on any civil action. This is far from the truth. We do not have absolute immunity; rather Judges act as a gate keeper, keeping the frivolous complaints out of the already busy court system.

SECTION 39 (line 1025): The provision to inform both the appointing authority and the local legislative body of the acquisition of any equipment and/or property that serves to enhance public safety makes perfect sense. That said, to have a public hearing

available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is very dangerous.

Also, to require each regional law enforcement group to have public hearings in each community they cover is not practical. Hanson belongs to SEMLEC which covers over 20 cities in Towns in Plymouth and Bristol Counties. It would be impossible to have hearings in all the cities in towns.

SECTION 49 (line 1101-1115): This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers – including their own agency – when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. The learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. We have had a School Resource Officer (SRO) for over 20 years serving the Whitman Hanson Regional School District. The sharing of information has been critical. We also have an agreement where the SRO, will share with key school personal when a student or their family has had contact with law enforcement. We do not share what that contact was, just that the child maybe stressed based on the interaction.

For example, law enforcement responds to a domestic violence call at a household with school age children. The SRO would contact the principal of the school the child attends and tell them to *handle the child with care today*. This allows the school guidance counselors and administration to take a different approach to the child. For example, maybe the child is sleeping in class because the child did not get adequate rest or is having discipline issues as they do not know how to deal with the stress they are feeling. Instead of disciplining the child they go to the nurse for a nap or the guidance office to discuss their stress. By doing this we may avoid the child suffering from unwarranted discipline by the school while giving the child a safe learning environment. This information sharing in both direcetions is critical to the success of all.

SECTION 50 (line 1116): There seems to be a slight nuance to the amended language to Section 37P of Chapter 71 replacing "*in consultation with*" to "*at the request of.*" The Hanson Police have had school resource officer program for over 20 years. The only reason why officers are assigned to the schools is because they have been "requested" to be there by the school superintendents - period. These officers serve as mentors for these students. The 2018 Criminal Justice Reform Act has very specific language that outlines the qualifications of an SRO, the joint performance evaluations that are to be conducted each year, the training that they shall have and the language specific MOU's that must exist. I am not sure why this provision needs to be included.

SECTION 52 (lines 1138-1251: There are several recommended changes to data collection and analysis as it pertains to stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive

system of data collection, benchmarking, review, analyses and potential consequences. This language appears to be what did not make its way into the Hands-Free Law which as you know was heavily debated for several months based strictly on the data collection component.

I also believe handing every person we interact with a "receipt" is extreme. This will make officers again, less apt to interact with the public. I think there will be unintended consequences in the other direction as well. Why would I not just give you a fine if I am going to stop you? Instead of the polite quick interaction to warn you that your state required inspection sticker expired two days ago, I am going to give you a fine? Often I have seen many people who are just scrapping by financially, trying to do the right thing, suffer even more financial setbacks by having to deal with fines that could have gone toward repairing their car instead. Just leave the data alone and use what is already in the Hands Free Law that was debated publically.

SECTION 55 (line 1272): To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, I respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. [...]." What should also be included is a reasonable and rational provision that states, "*unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury.*"

There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

Recommended New Section] Amends GL Chapter 32 Section 91(g):

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It makes sense that an experienced law enforcement professional from the Commonwealth hold these positions. We have had a number of out of State directors come in but there is always a learning curve to adapt to Massachusetts. Besides experienced law enforcement person from within the Commonwealth will have already forged relationships with and have the respect of those they serve.

In closing I want to again thank you for taking public input. This Act has far reaching impacts on both the citizens we serve and the officer who enforce the laws of the Commonwealth.

Sincerely and Respectfully Submitted,

Michael R. Miksch

Chief of Police

ORGANIZED
NOVEMBER 3,1887

INCORPORATED
MAY 2,1949

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In Unity There Is Strength

July 16, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

This morning members of the Massachusetts Chiefs of Police Association Executive Board and representation from the Massachusetts Major City Police Chiefs Association had the opportunity to give a thorough reading and comprehensive review of the recently amended Senate 2820, "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on 7/15.

As we have mentioned to both the Senate President and the Speaker of the House during various conference calls over the last couple of weeks, we, as dedicated and committed police leaders, will continue to embrace the challenges that lay ahead, instill strong values into our respective agencies at all ranks, hold ourselves completely accountable for all our actions, and work through these difficult and turbulent times to build a more cohesive future for our communities. With that, we would very much like to be part of this continuing conversation as it pertains to any contemplated police reform, fully realizing that time is of the essence as the legislative formal 2019-2020 session begins to wind down rather quickly.

In the interest of expediency we would like to submit a brief list of bulleted comments in the paragraphs that follow in the hopes of providing some potential insight from our law enforcement/policing perspective that is laid out in this comprehensive 89-page Senate bill. To the extent that we do not have an issue or concern with a specific provision of Senate 2820, or we view it as beyond the scope of local law enforcement we will not mention it in this communication.

The list that follows corresponds to the Section Numbers in Senate 2820 with the applicable line numbers:

- **SECTION 4 (line 230)**: Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States*." While we certainly welcome any and all training that enhances the professionalism and understanding of our officers, we are somewhat perplexed as to why law enforcement will now be statutorily mandated to have such a class to the exclusion of any other government entity?

One would believe that based on this particular mandate that the issue of what is inferred to as "racist institutions" is strictly limited to law enforcement agencies which aside from being incredibly inaccurate is also insulting to police officers here in the Commonwealth.

- **SECTION 6 (line 272)**: In terms of the establishment of a POST (Peace Officer Standards and Training) Program, the various police chief's organizations here in our state wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* per se but has everything to do with *Certification* – and by implication "De-certification". In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies* (CALEA). Utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

- **SECTION 6 (line 282):** The Senate Bill states that POSAC shall be comprised of "14 members", however as outlined there are actually 15 positions. The MCOPA is strongly advocating for two (2) seats on the POSAC to be appointed by the MCOPA Executive Committee.

- **SECTION 6 (line 321)** : It appears from the language of the POSAC provision that the committee shall have the power to conduct what is referred to as "*independent investigations and adjudications of complaints of officer misconduct*" without any qualifying language as to how that would be implemented in terms of what type of alleged misconduct (law violations, use of force, injury, rude complaints, etc.) and when and under what circumstances will adjudications be subject to review resulting in a proposed oversight system that could go down the slippery slope of becoming arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

- **SECTION 10(c) (line 570):** Section 10 of "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" (the Act) is problematic, not only for law enforcement in the Commonwealth, but all public employees. In particular, Section 10 calls for a re-write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). The MCRA is similar to the provisions of 42 U.S.C. § 1983 (setting for a federal cause of action for a deprivation of statutory or constitutional rights by one acting under color of law), except however, that the provisions of the MCRA as it exists today, does not require that the action be taken under color of state law, as section 1983 does. See G.L. c. 12, § 11H. Most notably, Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, who *inter alia* deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States or the Commonwealth of Massachusetts. By

doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

The qualified immunity principles developed under section 1983 apply equally to claims under the MCRA. See Duarte v. Healy, 405 Mass. 43, 46-48, 537 N.E.2d 1230 (1989). "The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not 'clearly established.'" Laubinger v. Department of Rev., 41 Mass. App. Ct. 598, 603, 672 N.E.2d 554 (1996), citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); see Breault v. Chairman of the Bd. of Fire Commrs. of Springfield, 401 Mass. 26, 31-32, 513 N.E.2d 1277 (1987), *cert. denied sub nom.* Forastiere v. Breault, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 237 (1988); Duarte v. Healy, supra at 47-48, 537 N.E.2d 1230.

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Section 10 of the Act further sets for a new standard for the so-called defense of "qualified immunity." Section 10(c) states that

> "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law"

This definition represents a departure from the federal standard for qualified immunity, although the exact extent to which is departs from the federal standard is up for debate, at least until the SJC provides clarification on it. The federal doctrine of qualified immunity shields public officials of all types from liability under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Stated differently, in order to conclude that the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987). It protects all but the plainly incompetent and those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335 (1986). As a result, the standard sought to be created under Section 10 of the Act would provide public employees with substantially less protection than that afforded under the federal standard.

"Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Furthermore, although the Senate's version of "qualified immunity" would only apply to state-based claims under the MCRA, what Section 10 proposes is fairly similar to that proposed by the 9th Circuit Court of Appeals in various decisions. In those instances where the 9th Circuit sought to lower the standard applicable to qualified immunity, the U.S. Supreme Court has squarely reversed the 9th Circuit, going so far as scolding it for its attempts to do so. See Kisela v. Hughes, 138 S.Ct. 1148 (2018); City of Escondido v. Emmons, 139 S.Ct. 500 (2019).

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- **SECTION 49 (line 1101-1115):** This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers – including their own agency – when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. Did the Senate quickly forget about what occurred in Parkland, Florida on February 14, 2018? The learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. Public Safety 101.

- **SECTION 50 (line 1116)**: There seems to be a slight nuance to the amended language to Section 37P of Chapter 71 replacing "*in consultation with*" to "*at the request of*." Many police departments have had school resource officer programs in this state for 25 years or longer. The only reason why officers are assigned to the schools are because they have been "requested" to be there by the school superintendents - period. The reality is that many school districts even reimburse the police budgets for the salaries of these officers who serve as mentors for these young middle and high school students. If the Senate is being told that police chiefs are arbitrarily assigning officers to schools without first receiving a specific request from the school superintendents, they are being misled. The 2018 Criminal Justice Reform Act has very specific language that outlines the qualifications of an SRO, the joint performance evaluations that are to be conducted each year, the training that they shall have

and the language specific MOUs that must exist between the Schools and the Police Department. We are very confused as to why this provision needs to be included.

- **SECTION 52 (lines 1138-1251**: There are several recommended changes to data collection and analysis as it pertains to motor stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive system of data collection, benchmarking, review, analyses and potential consequences. While we continue to welcome data that is both accurate and reliable, the issue pertaining to the classification of an operator's race has still yet to be resolved. Before any data from calendar year 2020 has yet to be collected by the RMV and subsequently analyzed by a College/University selected by the Secretary of EOPSS, these provisions now look to complicate the matter even further before a determination has actually been made as to whether any problem of racial or gender profiling actually exists here in our state. We won't belabor the point, but this language appears to be what did not make its way into the Hands-Free Law which as you know was heavily debated for several months based strictly on the data collection component.

- **SECTION 55 (line 1272)**

  To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. […]." What should also be included is a commonsensical, reasonable and rational provision that states, "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

- **[Recommended New Section] Amends GL Chapter 32 Section 91(g)**: In order to expand the hiring pool of trained, educated, qualified and experienced candidates with statewide institutional knowledge for the Executive Directors' positions for both the *Municipal Police Training Committee* as well as the newly created *POSAC* (or POST), the statute governing the payment of pensioners for performing certain services after retirement, shall be amended to allow members of Group 4 within the state retirement system to perform in these two (2) capacities, not to exceed a three (3) year appointment unless specifically authorized by the Governor.

We appreciate the opportunity to weigh in with our concerns and recommendations and hope that you would give due consideration to what we have outlined above. Should you have any follow up questions and/or concerns please do not hesitate to contact either of us in the days or hours that lay ahead. We respect that time is of the essence regarding this important legislation and stand ready to assist if and when called upon.

We will continue to be bound by our duty to public service, our commitment to the preservation of life, and our responsibility for ensuring our communities are safe. We will not waver. Thanks again for your diligent efforts in drafting this comprehensive legislation for the House and in continuing to add credibility and transparency to our valued partnership in serving our respective communities.

Respectfully Submitted:

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In Unity There Is Strength

July 16, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

This morning members of the Massachusetts Chiefs of Police Association Executive Board and representation from the Massachusetts Major City Police Chiefs Association had the opportunity to give a thorough reading and comprehensive review of the recently amended Senate 2820, "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on 7/15.

As we have mentioned to both the Senate President and the Speaker of the House during various conference calls over the last couple of weeks, we, as dedicated and committed police leaders, will continue to embrace the challenges that lay ahead, instill strong values into our respective agencies at all ranks, hold ourselves completely accountable for all our actions, and work through these difficult and turbulent times to build a more cohesive future for our communities. With that, we would very much like to be part of this continuing conversation as it pertains to any contemplated police reform, fully realizing that time is of the essence as the legislative formal 2019-2020 session begins to wind down rather quickly.

In the interest of expediency we would like to submit a brief list of bulleted comments in the paragraphs that follow in the hopes of providing some potential insight from our law enforcement/policing perspective that is laid out in this comprehensive 89-page Senate bill. To the extent that we do not have an issue or concern with a specific provision of Senate 2820, or we view it as beyond the scope of local law enforcement we will not mention it in this communication.

The list that follows corresponds to the Section Numbers in Senate 2820 with the applicable line numbers:

- **SECTION 4 (line 230)**: Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States*." While we certainly welcome any and all training that enhances the professionalism and understanding of our officers, we are somewhat perplexed as to why law enforcement will now be statutorily mandated to have such a class to the exclusion of any other government entity?

One would believe that based on this particular mandate that the issue of what is inferred to as "racist institutions" is strictly limited to law enforcement agencies which aside from being incredibly inaccurate is also insulting to police officers here in the Commonwealth.

- **SECTION 6 (line 272)**: In terms of the establishment of a POST (Peace Officer Standards and Training) Program, the various police chief's organizations here in our state wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* per se but has everything to do with *Certification* – and by implication "De-certification". In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies* (CALEA). Utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

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- **SECTION 10(c) (line 570):** Section 10 of "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" (the Act) is problematic, not only for law enforcement in the Commonwealth, but all public employees. In particular, Section 10 calls for a re-write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). The MCRA is similar to the provisions of 42 U.S.C. § 1983 (setting for a federal cause of action for a deprivation of statutory or constitutional rights by one acting under color of law), except however, that the provisions of the MCRA as it exists today, does not require that the action be taken under color of state law, as section 1983 does. See G.L. c. 12, § 11H. Most notably, Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, who *inter alia* deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States or the Commonwealth of Massachusetts. By

doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

The qualified immunity principles developed under section 1983 apply equally to claims under the MCRA. See Duarte v. Healy, 405 Mass. 43, 46-48, 537 N.E.2d 1230 (1989). "The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not 'clearly established.'" Laubinger v. Department of Rev., 41 Mass. App. Ct. 598, 603, 672 N.E.2d 554 (1996), citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); see Breault v. Chairman of the Bd. of Fire Commrs. of Springfield, 401 Mass. 26, 31-32, 513 N.E.2d 1277 (1987), *cert. denied sub nom.* Forastiere v. Breault, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 237 (1988); Duarte v. Healy, supra at 47-48, 537 N.E.2d 1230.

In enacting the Massachusetts Civil Rights Act, the Legislature intended to adopt the standard of immunity for public officials developed under section 1983, that is, public officials who exercised discretionary functions are entitled to qualified immunity from liability for damages. Howcroft v. City of Peabody, 747 N.E.2d 729, Mass. App. 2001. Public officials are not liable under the Massachusetts Civil Rights Act for their discretionary acts unless they have violated a right under federal or state constitutional or statutory law that was "clearly established" at the time. Rodriguez v. Furtado, 410 Mass. 878, 575 N.E.2d 1124 (1991); Duarte v. Healy, 405 Mass. 43, 537 N.E.2d 1230 (1989).

Section 1983 does not only implicate law enforcement personnel. The jurisprudence in this realm has also involved departments of social services, school boards and committees, fire personnel, and various other public employees. That being said, if the intent of the Senate is to bring the MCRA more in line with section 1983, anyone implicated by section 1983, will likewise be continued to be implicated by the provisions of the MCRA. Notably, the provisions of the MCRA are far broader, which should be even more cause for concern for those so implicated.

Section 10 of the Act further sets for a new standard for the so-called defense of "qualified immunity." Section 10(c) states that

> "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law"

This definition represents a departure from the federal standard for qualified immunity, although the exact extent to which is departs from the federal standard is up for debate, at least until the SJC provides clarification on it. The federal doctrine of qualified immunity shields public officials of all types from liability under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Stated differently, in order to conclude that the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987). It protects all but the plainly incompetent and those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335 (1986). As a result, the standard sought to be created under Section 10 of the Act would provide public employees with substantially less protection than that afforded under the federal standard.

"Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Furthermore, although the Senate's version of "qualified immunity" would only apply to state-based claims under the MCRA, what Section 10 proposes is fairly similar to that proposed by the 9th Circuit Court of Appeals in various decisions. In those instances where the 9th Circuit sought to lower the standard applicable to qualified immunity, the U.S. Supreme Court has squarely reversed the 9th Circuit, going so far as scolding it for its attempts to do so. See Kisela v. Hughes, 138 S.Ct. 1148 (2018); City of Escondido v. Emmons, 139 S.Ct. 500 (2019).

Although legal scholars and practitioners have a grasp as to the meaning of qualified immunity as it exists today, uncertainty will abound if this standard is re-written, upending nearly fifty years of jurisprudence. Uncertainty in the law can only guarantee an influx in litigation as plaintiffs seek to test the new waters as the new standard is expounded upon by the courts.

- **SECTION 39 (line 1025)**: The provision to inform both the appointing authority and the local legislative body of the acquisition of any equipment and/or property that serves to enhance public safety makes perfect sense. That said, to have a public hearing available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is very dangerous.

- **SECTION 49 (line 1101-1115):** This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers – including their own agency – when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. Did the Senate quickly forget about what occurred in Parkland, Florida on February 14, 2018? The learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. Public Safety 101.

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and the language specific MOUs that must exist between the Schools and the Police Department. We are very confused as to why this provision needs to be included.

- **SECTION 52 (lines 1138-1251**: There are several recommended changes to data collection and analysis as it pertains to motor stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive system of data collection, benchmarking, review, analyses and potential consequences. While we continue to welcome data that is both accurate and reliable, the issue pertaining to the classification of an operator's race has still yet to be resolved. Before any data from calendar year 2020 has yet to be collected by the RMV and subsequently analyzed by a College/University selected by the Secretary of EOPSS, these provisions now look to complicate the matter even further before a determination has actually been made as to whether any problem of racial or gender profiling actually exists here in our state. We won't belabor the point, but this language appears to be what did not make its way into the Hands-Free Law which as you know was heavily debated for several months based strictly on the data collection component.

- **SECTION 55 (line 1272)**

  To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. […]." What should also be included is a commonsensical, reasonable and rational provision that states, "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

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7/17/20

To Whom it May Concern:

I am writing to express my concerns regarding S.2820, the police reform package. My name is Stephanie Carr and my husband is a police officer and has been employed for the Town of Amherst for eight years. I have read the bill and I 100% disagree with the portion of the bill eliminating Qualified Immunity for the following reasons:

- The bill was passed very quickly by the Senate, indicating that this was a rushed decision.
- There was no input from the public, and law enforcement leadership.
- Public Servants are risking their lives to protect the well-being of our communities. I have seen not only in my husband's town, but in other towns and cities in Massachusetts as well, how thorough the municipalities are when selecting a candidate to become a police officer. Massachusetts does an amazing job with selecting the correct people for the position. They also have organized many different trainings to enhance the knowledge of police officers. This should continue! With very little incidents compared to the rest of the country, I myself feel grateful to live in Massachusetts.
- Any type of liability should fall on the town/ state if a community member feels they were treated unfairly. Similar to how a business is responsible for their employees. If a customer has a complaint, it would fall on the business to rectify the situation. Public Servants should not be held personally responsible. The financial burden alone is a cause of concern as if they were to be sued, they could lose their house, jobs, and cause pressure in the family, causing a collapse of what once was a stable environment. As you know the burden of proof in civil court is based on the preponderance of the evidence, 51% over 49%. This threshold is far lesser than criminal court, beyond a reasonable doubt. If civilians were held to the same degree for a criminal matter our Criminal Justice system let alone the correctional institutions would be flooded with persons who may be innocent but lack enough evidence to argue their case.
- Qualified Immunity is a layer of protection for public servants who made legal and justified decisions that could cause people who are affected by their actions and decisions to retaliate against the official in a personal and retributive manner. Cases of such actions have already occurred throughout the country involving criminal entities such as Sovereign Citizens who deliberately cripple the personal finances of officers who they encounter during the course of their duties. The United States Department of Justice warned officers of such incidents.
- If Qualified Immunity is removed, it would cause an increased exposure to public servants that many would have no choice but to leave their professions. Most of these men and women work in these professions because they want to help people, not because they make an exorbitant amount of money, and not for the power. They should be protected by their employer to complete the task at hand.
- I support change, I support a review and thorough investigation by our legislature into how police are trained across the state. I ask of you not to make a decision in haste as a result of the horrific tragedy of George Floyd's death but ask of you to be thorough investigators into our State's Law Enforcement practices. Please be thorough and take into account our State's community, each individual municipality and their communities, and the context of policing our home.
- Please, continue with Qualified Immunity. Have due process to charge a public servant if a situation arises. Please protect our public servants who are out there every day protecting us, teaching our children and putting out fires!

Should you need to contact me, my contact information is below.

Sincerely,
Stephanie Carr
413-272-3672

July 17th, 2020

Britany Caruso
130 Waverley Street
Belmont, MA 02478

Senator William Brownsberger
24 Beacon Street, Room 319
Boston, MA 02133

Dear Senator William Brownsberger,

My name is Britany Caruso and I live at 130 Waverley Street, Belmont, MA 02478. As your constituent, I write to you today to express my staunch opposition to S.2800, a piece of hastily-thrown-together legislation that will hamper law enforcement efforts across the Commonwealth. It robs police officers of the same Constitutional Rights extended to citizens across the nation. It is misguided and wrong.

Like most of my neighbors, I am dismayed at the scarcity of respect and protections extended to police officers in your proposed reforms. While there is always room for improvement in policing, the proposed legislation has far too many flaws. Of the many concerns, three, in particular, stand out and demand immediate attention, modification and/or correction. Those issues are:

(1) Due Process for all police officers: Fair and equitable process under the law. The appeal processes afforded to police officers have been in place for generations. They deserve to maintain the right to appeal given to all of our public servants.

(2) Qualified Immunity: Qualified Immunity does not protect problem police officers. Qualified Immunity is extended to all public employees who act reasonably and in compliance with the rules and regulations of their respective departments, not just police officers. Qualified Immunity protects all public employees, as well as their municipalities, from frivolously unrealistic lawsuits.

(3) POSA Committee: The composition of the POSA Committee must include rank-and-file police officers. If you're going to regulate law enforcement, up to and including termination, you must understand law enforcement. The same way doctors oversee doctors, lawyers oversee lawyers, teachers oversee teachers, law enforcement should oversee law enforcement.

In closing, I remind you that those who protect and serve communities across Massachusetts are some of the most sophisticated and educated law enforcement officials in the nation. Let me remind you that in 2015 President Obama recognized the Boston Police Department as one of the best in the nation at community policing. I again implore you to amend and correct S.2800 so as to treat the men and women in law enforcement with the respect and dignity they deserve.

Sincerely,

Britany Caruso

Dear Chair Michiewitz and Chair Cronin,

My name is David Clancy and I live at 60 Turner Street East Taunton 02718, Mass. I work for the Mass. Department of Correction and am a Correctional Officer III. As a constituent, I write to express my opposition to Senate Bill 2800. This legislation is detrimental to police and correctional officers who work every day to keep the people of the Commonwealth safe. In 2019 the Criminal Justice System went through reform. That reform took several years to develop. I am dismayed in the hastiness that this bill was passed but I welcome the opportunity to tell you how this bill turns its back the very men and women who serve the public.

Qualified Immunity: Qualified Immunity doesn't protect officers who break the law or violate someone's civil rights. Qualified Immunity protects officers who did not clearly violate stator policy or constitutional rights. The erasure of this would open up the flood gates for frivolous lawsuits causing officers to acquire additional insurance and tying up the justice system causing the Commonwealth millions of dollars to process such frivolous lawsuits.

Less than Lethal Tools: The fact that you want to take away an officer's use of pepper

spray, impact weapons and K9 would leave no other option than to go from, yelling “Stop” to hands on tactics and/or using your firearm. We are all for de-escalation but if you take away these tools the amount of injuries and deaths without a doubt will rise.

Civilian Oversight: While we are held to a higher standard than others in the community, to have an oversight committee made of people who have never worn the uniform, including an ex convicted felon is completely unnecessary and irresponsible. When this oversight board hears testimony where are the officer’s rights under our collective bargaining agreement? Where are our rights to due process? What is the appeal process? These are things that have never been heard or explained to me. The need for responsible and qualified individuals on any committee should be first and foremost.

I am asking you to stop and think about the rush to reform police and corrections in such haste. Our officers are some of the best and well-trained officers anywhere. Although, we are not opposed to getting better it should be done with dignity and respect for the men and women who serve the commonwealth. I ask that you think about the police officer you need to keep your streets safe from violence, and don’t dismantle proven community policing practices. I would

also ask you to think about the Correction Officer alone in a cell block, surrounded by up to one hundred inmates, not knowing when violence could erupt. I’m asking for your support and ensuring that whatever reform is passed that you do it responsibly. Thank You for your time.

Sincerely,

David Clancy
60 Turner Street
East Taunton MA
02718
(508)272-6452

As a registered voter and citizen of Massachusetts, I want to express my strong opposition to many parts of the recently passed S.2820. I hope that you will join me in prioritizing support for the establishment of a standards and accreditation committee, which includes increased transparency and reporting, as well as strong actions focused on the promotion of diversity and restrictions on excessive force. These goals are attainable and are needed now.

I am, however, concerned at the expansion of this legislation, targeting fundamental protections such as due process and qualified immunity. This bill in its present form is troubling in many ways and will make an already dangerous and difficult job even more dangerous for the men and women in law enforcement who serve our communities every day with honor and courage. Below are just a few areas, among many others, that concern me and warrant your rejection of these components of this bill:

(1) Due Process for all police officers: Fair and equitable process under the law demands the same rights of appeal afforded to all citizens and fellow public servants. Due process should not be viewed as an arduous impediment, but favored as a bedrock principle of fundamental fairness, procedure and accountability.

(2) Qualified Immunity: Qualified Immunity does not protect problem police officers. Qualified Immunity is extended to all public employees who act reasonably and in compliance with the rules and regulations of their respective departments, not just police officers. Qualified Immunity protects all public employees, as well as their municipalities, from frivolously lawsuits. This bill removes important liability protections essential for all public servants. Removing qualified immunity protections in this way will open officers, and other public employees to personal liabilities, causing significant financial burdens. This will impede future recruitment in all public fields: police officers, teachers, nurses, fire fighters, corrections officers, etc., as they are all directly affected by qualified immunity protections.

(3) POSA Committee: The composition of the POSA Committee must include more rank-and-file police officers and experts in the law enforcement field. If you're going to regulate law enforcement, up to and including termination, you must understand law enforcement. The same way doctors oversee doctors, lawyers oversee lawyers, teachers oversee teachers, experts in law enforcement should oversee practitioners in law enforcement.

In closing, I remind you that those who protect and serve communities across Massachusetts are some of the most sophisticated and educated law enforcement officials in the nation. I again implore you to amend and correct S.2820 so as to treat the men and women in law enforcement with the respect and dignity they deserve.

I STAND WITH OUR LAW ENFORCEMENT 100% AND I HOPE YOU DO AS WELL.

Thank you,

Susan Anderson

31 Lexington Drive

Beverly, MA 01915

Susananderson18@comcast.net

Dear Chair Michiewitz and Chair Cronin,

My name is Mary Ann Phelan and I live at 193 Dutcher St., Hopedale, Mass. I work for the Holliston Public School System. My husband works for the Mass. Department of Corrections for the last 20 years. As a constituent, I write to express my opposition to Senate Bill 2820. This legislation is detrimental to police and correctional officers who work every day to keep the people of the Commonwealth safe. In 2019 the Criminal Justice System went through reform. That reform took several years to develop. I am dismayed in the hastiness that this bill was passed but I welcome the opportunity to tell you how this bill turns its back the very men and women who serve the public.

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I am asking you to stop and think about the rush to reform police and corrections in such haste. Our officers are some of the best and well-trained officers anywhere. Although, we are not opposed to getting better it should be done with dignity and respect for the men and women who serve the commonwealth. I ask that you think about the police officer you need to keep your streets safe from violence, and don’t dismantle

proven community policing practices. I would also ask you to think about the Correction Officer alone in a cell block, surrounded by up to one hundred inmates, not knowing when violence could erupt. I’m asking for your support and ensuring that whatever reform is passed that you do it responsibly. Thank You for your time.

Sincerely,

Mary Ann Phelan
193 Dutcher St., Hopedale, Mas. 01747
Telephone #: 508-381-1065

Dear Chair Michiewitz and Chair Cronin,

My name is Matthew Phelan and I live at 193 Dutcher St., Hopedale, Mass. I work for the Mass. Department of Correction and am a Correctional Officer III. As a constituent, I write to express my opposition to Senate Bill 2820. This legislation is detrimental to police and correctional officers who work every day to keep the people of the Commonwealth safe. In 2019 the Criminal Justice System went through reform. That reform took several years to develop. I am dismayed in the hastiness that this bill was passed but I welcome the opportunity to tell you how this bill turns its back the very men and women who serve the public.

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Sincerely,

Matthew Phelan
193 Dutcher St., Hopedale, Mas. 01747
Telephone #: 508-381-1065

Dear Chair Michiewitz and Chair Cronin,

My name is David Clancy and I live at 60 Turner Street East Taunton Mass 02718. I work for the Mass. Department of Correction and am a Correctional Officer III. As a constituent, I write to express my opposition to Senate Bill 2820. This legislation is detrimental to police and correctional officers who work every day to keep the people of the Commonwealth safe. In 2019 the Criminal Justice System went through reform. That reform took several years to develop. I am dismayed in the hastiness that this bill was passed but I welcome the opportunity to tell you how this bill turns its back the very men and women who serve the public.

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Sincerely,

David Clancy
60 Turner Street
Taunton MA 02718
(508)272-6452

Dear Chair Michiewitz and Chair Cronin,

My name is Corinne Clancy and I live at 60 Turner Street East Taunton 02718, Mass. My Husband works for the Mass. Department of Corrections for the last 20 years. As a constituent, I write to express my opposition to Senate Bill 2820. This legislation is detrimental to police and correctional officers who work every day to keep the people of the Commonwealth safe. In 2019 the Criminal Justice System went through reform. That reform took several years to develop. I am dismayed in the hastiness that this bill was passed but I welcome the opportunity to tell you how this bill turns its back the very men and women who serve the public.

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Sincerely,

Corinne Clancy
60 Turner Street
East Taunton
02718

Dear Chair Michiewitz and Chair Cronin,

My name is Corinne L. Clancy and I live at 60 Turner Street East Taunton 02718, Mass. I work for Davita Dialysis in Dartmouth . My husband works for the Mass. Department of Corrections for the last 20 years. As a constituent, I write to express my opposition to Senate Bill 2800. This legislation is detrimental to police and correctional officers who work every day to keep the people of the Commonwealth safe. In 2019 the Criminal Justice System went through reform. That reform took several years to develop. I am dismayed in the hastiness that this bill was passed but I welcome the opportunity to tell you how this bill turns its back the very men and women who serve the public.

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Sincerely,

Corinne Clancy
60 Turner Street
East Taunton MA
02718

Holliston Police Department

550 Washington Street
Holliston, Massachusetts 01746
Tel 508-429-1212
Fax 508-429-0611
www.hollistonpolice.com

Chad E. Thompson
Lieutenant

Matthew J. Stone
Chief of Police

George A. Leurini
Lieutenant

July 17, 2020

Chair Aaron Michlewitz
Chair Claire Cronin
Massachusetts State House
24 Beacon Street
Boston, MA 02133

Re: S.2820 Reforming Police Standards

Dear Chairs Michlewitz and Cronin,

Please accept the following testimony with regard to SB2820 – "An Act to reform police standards and shift resources to build a more equitable, fair, and just Commonwealth that values Black lives and communities of color."

As a police leader I feel obligated to express my concern with many of the provisions included in Senate Bill 2820 and hope the House of Representatives will take an approach focused on common sense and not an approach that is biased to and reactionary to certain political movements. I believe there is a better solution than what is being presented and hope that we can collectively work together to develop reasonable solutions regarding concerns over policing practices and operations. It is imperative that these efforts reflect a balanced, strategic approach to combating crime and prioritizing community safety. Senate Bill 2820 is both misguided and shortsighted and will most certainly have adverse effects and negative impacts for years to come.

Massachusetts has always been ahead of the curve when it comes to police tactics and training and I welcome the idea of additional training for our officers. The general concept of establishing a Peace Officer Standards and Training (POST) program is wholeheartedly supported by many police chief across the Commonwealth. We understand that this system would set minimum training standards, regulate training programs and curricula, and set standards for maintenance of police licensure or certification. Bringing advanced training programs and workshops to our officers in an effort to help ensure accuracy and relevance to today's issues is extremely important to us. I also support a system that would require departments to track fired and problematic officers to ensure they are not unknowingly hired when leaving one department for another in the same or a different state. I believe a POST system would increase uniformity, standardization, transparency, and professionalism within police training.

The most problematic part of Senate Bill 2820, not only for law enforcement in the Commonwealth, but for all public employees, appears in section 10(c). This section of the bill essentially calls for a re-write of the "Qualified Immunity (QI)" provision that shields public officials who are performing discretionary functions from civil liability. In Massachusetts, public officials are not liable under the Massachusetts Civil Rights Act

for their discretionary acts unless they have violated a right under federal or state constitutional or statutory law that was "clearly established" at the time. It is understood that qualified immunity does not serve to protect illegal actions by police officers. However, it is recognized that it safeguards all public officials in situations where the law is unclear and does not give them adequate guidance. Abolishing or modifying qualified immunity will have important negative unintended consequences for all Massachusetts citizens, courts, and public employees, not just police officers.

In closing, it my hope that members of the House of Representatives recognize the fact that our police officers put their lives on the line each and every day. When the men and women of our community experience an emergency, our police are there to serve. We don't hesitate to jump in and protect the public when called upon. I, along with police officers from across this nation, condemn the terrible actions that occurred to Mr. Floyd in Minneapolis, but punishing the men and women of Massachusetts law enforcement by passing irresponsible legislation is both unjust and unfair.

I am extremely proud to serve alongside the many law enforcement officers across our Commonwealth. Our officers have been selected based on their character, integrity, and values and are proud of the communities that they serve. As a Police Chief, it is my our hope that the residents of Massachusetts feel secure in knowing that our law enforcement officers are highly trained, professional, and most of all, accountable. I assure you that we remain committed to providing the fair and impartial policing that our communities both expect and deserve.

I respectfully request that the House of Representatives take many of these items under careful consideration as you put forward a bill for your members to consider.

Respectfully,

Matthew J. Stone
Chief of Police

Merrimac Police Department

16 East Main Street
Merrimac, Massachusetts 01860

Tel: 978-346-8321
Fax: 978-346-0592

Eric M. Shears
Chief of Police

July 17, 2020

Via email to: Testimony.HWMJudiciary@mahouse.gov

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

Please accept the following testimony with regard to SB2820 – "*An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color*".

First, I would like to provide you with some background on our department.

Merrimac is a very close knit community. We have been fortunate to protect and serve a community comprised of dedicated families, residents and business. We, the members of the police department pride ourselves on our active involvement with our residents whether it be our schools, our family events, our senior center or the numerous birthday parades that have helped people smile though these very difficult times. Our staff is an amazing group of consummate professionals that have dedicated their lives to working in this community.

Although we are sandwiched between cities with traditionally higher crime rates, Merrimac has remained a safe town. My job, as the Chief of Police, is not only to keep our community safe but to protect the officers who have committed to serving the residents and visitors of Merrimac. Our police department is small, so small that 30% of the time, our available staff only allows for one officer to be working on the road. One person, responsible for protecting a town of 7,000 lives dispersed over 9 square miles, for an average of 10 days each month.

It is not safe for our officers to respond to certain calls without backup, and it isn't safe for our community members who may dial 911 only to be told that the only officer on duty is on another call and will get there as soon as they can – or that our residents may have to wait for mutual aid to arrive from another city or town.

All of my staff are certified and trained in accordance with Municipal Police Training Committee's standards and/or State 911 Department Guidelines. Some of my officers teach a variety of classes at various academies throughout the Commonwealth and beyond.

We seek to be the most responsive and modern police department possible. Amid the national conversation surrounding police professionalism and standards, I would also like to take this opportunity let you know that the Merrimac Police Department is beginning the challenging process of seeking State Certification and then State Accreditation. This difficult and self-reflecting process will help ensure that our policies, procedures and trainings are in line with state and national best practices for modern policing.

With an understanding of our perspective and our community, I would like to provide the following comments in hopes of providing my perspective on Senate 2820.

1. In general, I am disappointed in the Senate's rush to pass a bill without the opportunity for public hearing. With such a push for transparency in government these days, the Senate, as a legislative body, failed the people of this Commonwealth with such a hasty passage of this bill.

2. Having said the above, I am thankful the House is willing to solicit comments and have a virtual public hearing.

3. I am in agreement with the many points made by Chief Brian Kyes and Chief Jeff Farnsworth in their letter to the house on behalf of the Massachusetts Chiefs of Police regarding this proposed bill.

4. A POST should be created in Massachusetts. It is the standard across the county and has been discussed at length in the past. All Police Officers should be licensed in the Commonwealth.

5. If we take a moment to really understand the implications of Qualified Immunity, then why would we take necessary and long standing protections away from our municipal employees? Please review "A Summary of Potential Impacts to Changes of Qualified Immunity in S.2800" by Brody, Hardoon, Perkins & Kesten, LLP.

6. We do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. […]." What should also be included is a commonsensical, reasonable and rational provision that states, "Unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

Please take a moment to slow this legislation down, I do not believe we are that far off. It is important to work together and come up with a solution through solid, well thought-out legislation that will work well for all those in this Commonwealth.

Thank you for the opportunity to comment.

Respectfully submitted,

Eric M. Shears
Chief of Police

CITY OF TAUNTON
POLICE DEPARTMENT

CHIEF
EDWARD JAMES WALSH

23 SUMMER STREET
TAUNTON, MA 02780
(508) 821-1471
July 17th, 2020

Dear Chair Aaron Michlewitz and Chair Claire Cronin, please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

I am sure that you will receive a lot more articulate and well written letters than mine. I am offering my humble thoughts on the proposed legislation. I have been a police officer for 32 years and chief for ten. I also work as an adjunct professor on criminal justice and am a member of the Massachusetts Bar. I also serve as the General Chair of the International Association of Chiefs of Police Midsized Agencies Division, representing all police agencies with a sworn size between 50 and 999 sworn officers.

We as a society have issues. There is no question of that. Over the last few years, we have become more polarized and entrenched and the middle ground is dissipating. Studies have shown that when deeply held beliefs are challenged with fact that are contrary to the beliefs, that the holder's beliefs become more entranced. As a student of history, I am listening to the political discourse in this country and it scares me as anyone who disagrees with the popular voice is labeled a racist. I have been told that some members of the Senate who did not totally support the bill voted for it out of fear of being labelled a racist if they did not support it in its entity. If this is true, we have reached a sad plateau.

It is difficult to have an intelligent and rational conversation on emotionally charged issues with people when the "popular truth" cannot be questioned or challenged. History is replete with examples of this from the French Revolution to the rectification campaign in Chinese Communism in the 1940s. There is "one truth" and everyone who disagrees is cancelled by the arbitrators of the "new truth". This should not be reflective of who we are and we should encourage honest and respectful public discourse and respect the opinions of others.

The issue at the forefront is systematic racism. Policing in our society is but just one part of the overall issue. Simply "reforming the police" will not address the underlying societal issues that often create hostile encounters between police officers and the communities they serve. To have an honest and meaningful change, we need to have real discussions and solutions to the underlying structural issues that create social and economic inequality in our society.

The House is in the process of reviewing the Senate Bill. The Senate Bill was quickly drafted and passed with no input or discussion on the merits or implications of the bill. And while there are some outstanding provisions in the bill, I am concerned about several of the items and the unintended consequences that may result.

Policing in Massachusetts is nationally respected. We are generally at the forefront of the profession and are viewed as progressive. It was Chief Terry Cunningham, as President of the International Association of Chiefs of Police, that came out on the national stage and apologized for the profession's history and treatment of communities of color. This took courage and created a lot of discussion in the profession. By discussing these issues we can better understand the divides and history that separate us.

I, like many chiefs have received numerous requests under the 8cantwait movement and looking at the list befuddled because what we are being asked to change has not been policy in Massachusetts for decades. I am in my fourth decade in policing. There have been many changes during that time and we as a profession continue to evolve. We as chiefs see ourselves as agents of change, but we also see the Senate Bill as a knee jerk reaction to an action by one individual that occurred in another part of the country that does not reflect us locally. We understand the outrage, but we need to be part of the discussion. If we want meaningful change, we must come together to discuss the issues and develop solutions to local problems and not simply legislate in the dark and hope for the best.

I have read the letters written by the Massachusetts Chiefs of Police, Massachusetts Major Cities Chiefs, Bristol County Chiefs, etc. I support their views on the issues and hope that the house has the integrity to openly and seriously discuss the issues and make decisions on a reasonable and rational basis and not simply because of what is popular at the moment.

Respectfully,

Edward James Walsh, Esq.
Chief of Police

City of Everett Massachusetts
Office of the Chief of Police
Everett Police Department

Steven A. Mazzie
Chief of Police

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July 17, 2020

Via email to: Testimony.HWMJudiciary@mahouse.gov

RE: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

Please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

I have been a police Officer for 28 years serving the last 17 years as Chief of Police for the City of Everett. A city that has become one of the most diverse in the Commonwealth. I want to start by saying that my family has been policing the streets of Everett, MA since 1926 spanning three generations. In the almost hundred straight years of public service none of us have killed anyone never mind a person of color. I say this because that is the experience of most policing professionals, yet here we are on the verge of radical policing changes in the Commonwealth in a hasty manner without even properly examining the issues of concern. There is no one size fits all solution for policing in America. The history, culture, leadership, norms, laws and more of every city and department are all different.

In my professional opinion what the Senate has proposed in this bill is what would be proposed for the worst of the worst in policing and resembles the type of change that one may propose in a third world country. I am not surprised by the proposals as it is always those that have no answer or solution to societies toughest issues to blame someone - in this case it is the hard working men and women of policing in the Commonwealth. It is shameful and shows a lack of true leadership at our state level.

I will be the first to say that we are by no means perfect but the notion that we seek to go out daily and trample on peoples rights and desire to hurt and harm our citizens of color just because is ridiculous. It would be nice if our elected officials spent a little more time doing their homework and examining their local policing communities they represent before they were to act on such a large piece of legislation.

We are open to change that includes a system of standards that are consistent where all officers have to meet the same criteria. We are open to new training as well that includes topics such as black history, but if I am to line up and take the training because I am part of "the system" so

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should every elected official in the state and every other person working in government. Officers should not fear going to work worrying about if they make an honest mistake that they will be subject to frivolous law suits or be looking over their shoulder due to new boards made of up some people who may have a personal axe to grind. Many of us are already working with clinicians and social workers to co-respond and aid our residents with emotional and mental health problems but I would recommend a more thorough conversation with them before a decision is made to put all the responsibility on them as these encounters can become volatile in short order.

We need a smart measured approach to any changes in how policing is done, not knee jerk reactions based on incidents that are occurring in far away places in the US.

I fully support the amendments made by my friend and colleague Chief Brian Kyes of Chelsea and current representative of our Major City Chiefs Association.

Policing has never been a neat clean business as we are dealing with societies most complex problems. I am extremely proud of the progress we have made over the past few decades and feel we have been on a positive path. Now is not the time to lose some of our best and brightest as well as hamper our efforts to attract the next generation of professional police officers.

Thank you for your time and consideration on this important matter. If I can be of assistance feel free to reach out.

Chief Steven A.Mazzie
Everett Police Department
45 ElmSt.
Everett,MA 02149
617-394-2365

Ling-Ling Jimenez 07/16/2020

My Testimony

Hi my name is Ling-Ling and I go to UTEC. I attend because I am going to court fighting for my daughter back. At the time I was going through domestic violence and wasn't in my state of mind. Now that I am in my right state of mind I want to reunite with my daughter. That's the most important thing in my life. I am also working towards achieving my Hi-Set certificate. I am working, making progress and improving. UTEC has been doing everything they can to help me. I support my pears here in UTEC to be qualified for an expungement because I believe their past mistakes shouldn't affect their future successes and goals. For example, they may have more trouble starting a career and furthering their education due their record.

Thank You

The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02113-1054

Chairman Aaron Michlewitz
House Ways and Means
24 Beacon St.
Room 243
Boston, MA 02133

Chairwoman Claire Cronin
Joint Committee on the Judiciary
24 Beacon St.
Room 136
Boston, MA 02133

S2820: ***An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.***

Dear Chairman Michlewitz, Chairwoman Cronin, and fellow members of the House Ways and Means Committee and the Joint Committee on the Judiciary,

My name is Representative Liz Miranda representing the 5th Suffolk District in Boston and today I want to encourage us to pass bold legislation to begin to address structural racism and transform our Public Safety system in the Commonwealth. Thank you for your leadership in developing a process where electeds and our constituents can be heard.

I want to share my remarks that I believe will center the work toward Justice as a labor of love. This journey toward increasing accountability, creating standards and removing harmful practices is the work of the Legislature. I hope it will be seen as our collective walk toward Justice, a labor of love. I know that we can be stretched to go further and do better for the residents of the Commonwealth of Massachusetts.

Over a month ago, we all watched in horror as Officer Derek Chauvin killed Mr. George Floyd. We heard about the non-knock warrants that led to police to bargeinto EMT Breonna Taylor's home and murder her while she was sleeping. And just weeks before, we learned of the lynching of Ahmaud Arbery as he went for a run in his community by three white men. For me, these stories are not new. We must act to end the dehumanizing suffering that these Americans experienced at the hands of law enforcement and private citizens.

As a Black woman from and representing the most of color district (94% of color) in the Commonwealth, I have lived in the most policed, criminalized, incarcerated, and one of the poorest census districts all of my life. It is also a place where there is high crime. We are not safer even with the over criminalization of our poverty and skin color. I know that policing in my community has been radically different than other

communities and incredibly punitive since its inception. I grew up in a Roxbury neighborhood where I would watch my family be racially profiled and brutalized often, especially if we went too close to the South Boston or Dorchester community boundaries. We deserve to live in healthy, safe and communities full of opportunity without fear of harm from those meant to serve us or our fellow citizens. The anti-blackness rhetoric being fueled in this country is killing us.

I urge us to remember the words of Dr. King, in his speech the *"Fierce Urgency of Now" as* we will be making profound decisions and having historic debates that are long overdue. We cannot be too late, as the moment to make a difference is now.

> *"We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history, there "is" such a thing as being too late. This is no time for apathy or complacency. This is a time for vigorous and positive action."*

I remember Sean Bell, Rodney King and Amadou Diallo who were killed or seriously harmed publicly when I was a teenager. I remember ten years ago hearing about Massachusetts resident and Pace College student, DJ Henry. DJ's family has never received justice from the very system that took his life prematurely. Those images are permanently in my mind. I could spend fifteen minutes reading aloud all the names of the children, women, elders and men who have perished in this country from bad policing. Structural racism has always been here and it is an absolute factor in the 401 year history of this country, when the first Africans arrived on the shores of America; legal systems of oppression began for Black people. In Massachusetts, when Africans arrived in 1638 on the ship the Desire, they began their painful futures here as property, not people. In modern policing's more than 160 years of history, racism has been embedded in its foundational purpose to protect and serve white, male landowners in Boston.

Incidents of violence have happened and continue to occur here in Massachusetts. Just last month, the Justice Department found a "pattern and practice of using excessive force" by the Springfield Narcotics Unit including officers administering blows to the head likely to cause head injury, and officers slamming people into the pavement and kicking them in the face and body. Most of these incidents went unreported. This is unacceptable conduct for any individual, but is especially egregious when it comes from police officers, who are supposed to keep us safe.

I filed HD.5128, ***An Act to Save Black Lives*** with Senator Cindy Creem over a month ago to fix centuries-old problems in policing laid bare over recent months. I have been speaking to hundreds of residents across this state regarding police accountability and reform. I have also spoken to and listened to Law Enforcement, especially those of color, who have shared their concerns about disparate treatment, racism, and believing that they were being seen as the enemy when many of them signed up to help their communities. I understand it is a dangerous profession, that many do not choose to enter precisely

because of the requirements. I heard them as I heard from an overwhelming number of citizens who need us to act now to help Black and Brown people stay alive. Many of the residents I have spoken with have shared stories that are happening right here at home, about their civil rights being violated or about mistreatment at the hands of local police. For decades, we have been watching in horror as each new incident continues to further devalue Black lives.

We must have a higher standard for this noble profession. No one should be allowed to brutalize any citizen who has been sworn to protect and serve. The system has more than just a few "bad apples."

I encourage you to fight for:

- Independent Oversight
- Ending Qualified Immunity
- Strengthening use of force rules
- Banning no-knock warrants
- Banning chokeholds
- Ending the use of Facial Recognition technology
- Banning tear gas & chemical weapons
- Ensuring that police misconduct is public record
- Establishing "duty-to-intervene" when officers witness abuse
- Improving Training for all Law Enforcement in this state
- Creating a Certification and Decertification system
- Protecting Black Immigrants by ensuring we end harmful practices
- Improving our current Civil Service System to give people of color expanded opportunity
- Creating commissions on Structural Racism and the historical impact on Slavery in Massachusetts

This is just the beginning. We have a great deal of work to do together. I feel strongly that these first steps will ensure that justice and equity is at the forefront of our minds and actions as a Legislative body. For Black lives to truly matter, we must fully invest in Black communities in ways we have never done, continue to abolish and reform harmful systems and policies, and change the legal bedrock of this country that has systematically severed people of color from opportunity and freedom.

This is what it will mean to add action to our words when we scream *Black Lives Matter.*

Yours in Service,

Representative Liz Miranda
State Representative, 5th Suffolk District

The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

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July 16, 2020

Chair Aaron Michlewitz
Chair Claire Cronin
State House
24 Beacon St.
Boston, MA 02133

Re: S.2820 Reforming Police Standards

Dear Chairs Michlewitz and Cronin,

I am writing to submit testimony regarding S.2820. I am deeply concerned with many provisions including in the Senate bill and am hoping the House of Representatives will take an approach centered in common sense and not an approach that is biased to and reactionary to certain political movements.

I believe it's important to first note that there is no emergency situation in Massachusetts requiring large scale police reform. Mappingpoliceviolence.org is a website that tracks deaths as a result of interactions with police officers across the nation from 2013- 2019. According to the website, in Massachusetts with a population over 6.5 million people, there were only 56 deaths in seven years over the course of many millions of interactions with the public. This ranks Massachusetts in the bottom three in the nation for total deaths involving a police officer and puts the Commonwealth among the best in the nation with an annual rate of only 1.2 deadly use of force incidents per 1 million people. It is significant that, even according to data of national reform advocates, our excellent record of success regarding deadly uses of force includes all incidents involving the death of a suspect, most of which were clearly justified. For example, these death totals include the individual who murdered Auburn, Massachusetts Police Officer Ronald Tarentino in 2016. Also listed among the included so-called victims of police violence the marathon bomber Tamerlan Tsarnaev. These individuals are held out as victims in an attempt to manufacture a need for emergency legislation. Of note, of all the 56 deaths cited, only five deceased were categorized as unarmed. The truth is that there is no emergency here in the Commonwealth that would justify such a radical, rushed trampling of the important rights of our public safety employees.

In Massachusetts, the data is clear that minority populations are not being killed at a rate greater than White populations. Of the 56 deaths, the majority of the deaths were of White people and in fact, more White people were killed by police during this seven-year period than Black and Hispanic people combined.

One of the most alarming parts of S2820 is the changes to Qualified Immunity (QI). While some have tried to claim that there are no substantial changes to QI, that is blatantly false. The changes put forward in this bill are not only unnecessary, they will result in financial ruin for municipalities and individual police officers and their families. In fact, these changes to Qualified Immunity, coupled with the changes to the Massachusetts Civil Rights Act will put all of our municipal workers at great risk, including teachers, firefighters, Councilors and Select Board members, Zoning Boards, City and Town Managers alike - not just police officers. This is not needed, as today, QI already does not provide protection to police officers who knowingly violate civil rights, or who should have been aware that their actions violate laws or the civil rights of residents. Today, those officers do indeed get sued, fired and prosecuted. We do not need to change laws to accomplish that. What this change does is water down the requirements of the state civil rights act, and provide that cities and towns pay attorney's fees for people who sue municipalities under these new laws. A new flood of lawsuits which previously have been tossed out by a judge before ever even making it to trial will now be allowed to move forward to a full trial. The proposed changes would be a major win for attorneys who will set up a new cottage industry suing municipalities and police officers because that State Law would allow for attorney's fees to be recovered in trials, and will force cities and towns to pay millions of dollars to resolve these cases that would have previously been dismissed by courts. Our communities and taxpayers will be victims right alongside our public employees acting in good faith while in service to us.

Since these changes affect every municipal worker, this bill could cause personal financial ruin to individuals who are on the front lines protecting the public every day. This includes municipal policy makers who usually get sued in such cases, as well as firefighters, municipal nurses, DPW workers, and paramedics as well as police officers who already go to work every day and face risk to their health and safety. They will now also find themselves with tremendous personal financial risk hanging over their head just for doing their jobs. Interestingly, GL c. 258 provides for guaranteed indemnity for certain state employees, including legislators like ourselves, as well as the State Police, and therefore the Commonwealth of Massachusetts employees will not face the same level of personal liability under this new provision as our municipalities and municipal employees face. This is fundamentally unfair.

Another truly disturbing item in this bill is the authorizing of citizens to interfere with an arrest if they perceive excess force is being used by a police officer. This is perhaps one of the most outrageous legal change proposals I've seen over the past decade on Beacon Hill. We are opening a pandora's box that will put our police officers in grave danger. It is not the job of the general public to play judge and jury in the field and insert themselves into hostile situations – situations for which our officers do extensive training to be able to handle. How can we on one hand propose that enormous training requirements and certifications are required for an officer to properly make such decisions, and on the other hand empower civilian passers-by to make judgments on what constitutes appropriate force in a given situation. This provision is downright dangerous.

Of utmost importance in this bill, I'm concerned about the complete lack of due process for police officers when working with the Police Officer Standards and Accreditation Committee. The bill allows local appointing authorities to have the final word on whether an internal complaint is sustained, and that final word can lead to automatic decertification. This flies in the face of long-held due process rights of public employees to appeal local decisions to arbitration or to civil service. It denies these employees with the basic "just cause" protection from unfair discipline. The bill notes that their decision is final and does not allow for appeal through the civil service commission. Not only does the lack of an appeal process fly in the face of what is traditional in the American legal system, it is a blatant violation of long-standing collective bargaining agreements. This provision should be concerning to all members of the legislative body that consider themselves pro-organized labor. As essential workers, police officers have an agreement with our government – they won't go on strike but they expect just-cause protection and a judicial process that is fair to remediate conflicts. This provision greatly violates that long standing agreement and is simply un-American

In closing, our police officers put their lives on the line every day they go to work. When the public experiences emergency situations, our police are there to serve. When an active shooter is on the loose or a violent crime is being committed, our police officers don't hesitate to jump in to protect the public. It would be nothing short of a moral crime to take the heinous actions of a terrible person and officer in Minnesota and unjustly punish the brave men and women of Massachusetts law enforcement to appease a political movement. We are better than that.

I ask that these items are taken under consideration as the House puts forward a bill for the members to consider.

Regards,

Representative Marc T. Lombardo
22nd Middlesex District - Billerica

The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1054

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July 17, 2020

Representative Aaron Michlewitz
Chair, House Committee on Ways and Means
Representative Claire Cronin
Chair, House Committee on the Judiciary
Massachusetts State House, Room 243
Boston, MA 02133

Dear Chairman Michlewitz,

I am writing to respectfully urge that Qualified Immunity be maintained as it pertains to S.2820, ***An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.***
Additionally, I am submitting an accompanying memorandum within this letter proposing the **formation of a study to devise a plan for a consolidated municipal police training academy.**

PRESERVE QUALIFIED IMMUNITY

Changes to the doctrine of Qualified Immunity could potentially lead to a myriad of negative unintended consequences for Massachusetts public employees, courts and taxpayers.

Qualified Immunity, as currently practiced in Massachusetts, acts not as a license for lawless conduct by police officers. Rather, it safeguards all public employees from litigation if they take reasonable action under legally unclear circumstances. This includes non-law enforcement officials such as town managers, selectboard members, fire chiefs, and low-level employees of the Commonwealth. Stripping this appropriate protection could open the door to impacting many other public servants.

Currently, the majority of civil rights actions against police officers and public officials are litigated in the Federal Courts. However, under the proposed changes to Qualified Immunity under S.2820, plaintiffs would be enabled to file lawsuits within the State Court system. Such a change would place the monetary burden of defending the public employee. The cost of defending the lawsuit would be potentially devastating, even bankrupting, to the officer and their family. If the plaintiff is successful, the costs to the officer and state and municipal governments are incalculable.

The legal, financial and civic ramifications of changes to the doctrine of Qualified Immunity should be carefully considered before they are enacted.

The answers to the difficult questions we have been presented with of late will not be resolved with one single piece of legislation. The answers are, at the end of the day, generational. You are all aware of my experience in the military. Fifteen years ago, when the Army decided to tackle the issue of military sexual assault head on, it was clear it would take many years of effort. While there is still work to do, the problem has been acknowledged and gotten better. We must be clear that whatever actions we take in the next few weeks will only be first steps. Part of that analysis needs to be remembering the tremendous, often life threatening work, performed by our police officers.

I firmly believe training is at the center to long term resolution. Please see below.

CONSOLIDATED MUNICIPAL POLICE TRAINING ACADEMY

CURRENT TRAINING PROGRAM

The Recruit Officer Course (ROC) is an entry-level training curriculum for new full-time police officers.

- Completion of the recruit officer course (ROC) curriculum is required under M.G.L. Chapter 41 §96B to be a sworn municipal, University of Massachusetts, or environmental police officer in the Commonwealth.

- Takes 20 weeks to complete and covers 21st century policing best practices with specific emphasis on the following core principles:
    - problem solving
    - procedural justice
    - ethical decision making
    - fair and impartial policing
- Must meet physical requirements
- Other requirements:
    - a minimum of 21 years old
    - be employed or sponsored by a municipal, Environmental, or University of Massachusetts police department or other law enforcement department authorized by the Committee
    - successfully complete the Massachusetts Human Resource Division's Physical Ability Test (PAT) and medical examinations.
- Tuition is $3000.00 which has been determined to not actually meet costs.
- No dormitories at locations causing many recruits to have to travel great distance twice a day during training.
- Locations
    - Boylston
    - Plymouth
    - Randolph
    - Reading
    - Western Mass. at Springfield Technical Community College
- Additionally, the following sites are operated as MPTC "authorized" police academies:
    - City of Boston
    - MBTA
    - City of Lowell
    - Northern Essex Community College
    - City of Springfield
    - State Police Municipal Academy
    - City of Worcester

There exist 9 Reserve/Intermittent Police Academies Spread around the Commonwealth operated by Law Enforcement Counsels, Chiefs Associations and Sheriff's Departments.

This creates a total of 21 entities providing some level of training for municipal police academies. It is unclear what level of standardization, uniformity and consistency of training is provided by each of these entities.

In Service Training

- Every officer required 40 hours of in service training annually
    - Multiple reports and audits have cited lack of course diversity as a problem with MPTC
    - MPTC only offers 23 hours of training, with the burden for providing the remaining 17 hours placed on local departments to make up the difference. **NOTE: It is clear many departments don't have the resources to make this happen and there is no real enforcement mechanism to hold those departments accountable when that training doesn't happen.**
- Although the MPTC's five training academies hold in-service sessions between October and June in a given training year, the agency does not have the ability to provide training to all municipal officers with its available facility space.
- Concern about travel distance to academies was also expressed by chiefs from western Massachusetts and the Cape Cod region. Police chiefs have remarked that the distance their officers have to travel from their departments to a police academy for training is prohibitive, making travel time as long as two hours or more. As one chief said, simply, "MPTC training facilities are poor, as well as the locations." Because these regions do not have a conveniently located MPTC regional academy, these concerns have led communities to open their own facilities. These facilities are authorized by the MPTC rather than being MPTC-operated, although they are mainly used for recruit training.

BOTTOM LINE: The physical structure of each of the current academy locations is in poor to fair shape and the academies are inconveniently located and cannot provide the level and quality of instruction for a 21st Century Police Force.

Additionally, although the curriculum should be modified to an extent to enhance de-escalation skills, cultural awareness and knowledge of both implicit and explicit bias, it is generally a solid course of instruction. (Chief (ret.)Ferullo, Director of the MPTC states de-escalation skills are indoctrinated at all points of training.) The problem is the delivery of the course content. There is a distinct lack of uniformity of content delivery and the quality and consistency of academics from academy to academy. Off duty and retired police officers and others apply online to the MPTC to be certified as instructors.

I have requested Chief Ferullo to provide me with the criteria used by the Curriculum Certification Manager to appoint someone as an instructor. There are full time staffers at the MPTC. It is my profound belief that problems will continue until a centralized, consolidated municipal police academy with a full, time professional staff similar to the Fire Academy or MSP Academy is created.

In a briefing on the Administration's police reform bill, Chief Ferullo indicated that the Acadis online system is robust enough to scale up significantly to provide any additional training required by legislation. However, the point was made several times that the dedicated revenue stream provided by the rental car surcharge would not be enough to support any additional needs.

Point: setting up a certification/licensing system, the basis of which is a 20 week basic course and then 40 hours per year of academics without creating at least a long-term plan to provide additional financial resources and quality, consistent academic instruction is setting that system up for failure. A long-term plan for consolidation of all police academies other than Boston, Worcester, Springfield and the MBTA should be articulated. All training should be provided by the academy, taking most, if not all, of the burden for the yearly, in-service training off of the local departments. The Secretary of Public Safety and Security has looked at both the former defense accounting center in southbridge and the former Atlantic Union College in Lancaster for this purpose.

Providing for consistency in the delivery, quality and professionalism of the academics will assure the public that the training of an officer in the Berkshires will be equivalent to the training of an officer in the City of Boston. It will also assure officers that they continue to be among the best trained in the country and that they have the support of those designing this system. They will be aware that abiding by the program set up to provide them with certification will allow them to have a productive, meaningful career in law enforcement.

I am well aware that current fiscal restrictions make moving forward with such a plan at this point is unrealistic, but articulating a proposal to move forward with over the next few budget cycles would be welcomed, I believe, wholeheartedly by a great majority of the chiefs, departments and officers in the Commonwealth.

I thank you for your consideration of these important items. Please do not hesitate to contact my office with any further questions.

Respectfully,

Harold P. Naughton, Jr.
State Representative, *12th Worcester District*
House Chair, *Joint Committee on Public Safety and Homeland Security*

LEAGUE OF WOMEN VOTERS® OF MASSACHUSETTS

Testimony in support of S.2820
An Act to Reform Police Standards and Shift Resources to Build a More Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color
Submitted to the House Committee on Ways and Means
in cooperation with the Joint Committee on the Judiciary
By Jennifer Muroff and Tracy Brown, LWVMA Legislative Specialists
July 17, 2020

The League of Women Voters advocates within every level of government to eradicate systemic racism. Black, Indigenous and all people of color (BIPOC) deserve equal protection under the law. LWV advocates against systemic racism in the justice system and, at a minimum, for preventing excessive force and brutality by law enforcement.

We support S.2820 and want to ensure that it is strengthened and not weakened by amendments. We urge you to include all of the aggressive and necessary measures outlined in the following two House bills:

HD.5128, An Act Relative to Saving Black Lives and Transforming Public Safety, Rep. Liz Miranda**,** which bans chokeholds, no knock warrants, tear gas, and hiring abusive officers; creates a duty to intervene and to de-escalate and requires maintaining public records of officer misconduct.

HB.3277 An Act to Secure Civil Rights through the Courts of the Commonwealth, Rep. Michael Day, which ends the practice of qualified immunity.

LWV joins civil rights organizations calling on government to implement needed policing reforms. We urge leadership to swiftly rectify the legacy of white supremacy and anti-black racism that has led to police violence against Black people across our Commonwealth and to rectify these structural wrongs through legislation before another Black life is needlessly lost. This includes an end to the qualified immunity doctrine which prevents police from being held legally accountable when they break the law.

LWV is a democracy and voting rights organization and we support legislation and policy reforms focused on creating systemic change in our government institutions, starting with unjust policing. We are working to inform voters and hold government accountable on the local and state level as that is where the real potential for change exists.

The LWVMA, representing 47 local Leagues from Cape Cod to the Berkshires, believes that all levels of government have the responsibility to provide equality of opportunity for education, employment and housing, for all persons in the United States regardless of their race, color, gender, religion, national origin, age, sexual orientation or disability.

90 Canal Street Suite 414, Boston, MA 02114
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MASSACHUSETTS AFL-CIO

PRESIDENT
Steve A. Tolman

SECRETARY/TREASURER
Louis A. Mandarini, Jr.

July 17, 2020

Dear Representative,

We thank you for your work on the pressing issues our society is facing, including systemic racism. To achieve economic justice, we must stand together and actively fight for racial justice in our workplaces, our homes, and our communities. We know that good policing and racial justice aren't mutually exclusive and both are crucial to creating a just and fair society centered in the public good. That's why we at the AFL-CIO are having the conversations with each other needed to forge a common understanding of the history, meaning, and impact of structural racism in our country, and to come up with new ways that we as an organization and as a movement can put an end to it. We applaud the effort of both chambers for taking up SB2820, which is a bold bill to fix long overdue injustices. We do have three suggestions to strengthen this bill so that we are protecting our communities without risking the livelihoods of all dedicated public servants.

We support the effort to provide revocable certifications to law enforcement. However, we are concerned at what we see as inadequate due process when those certifications are revoked. The law now calls for the creation of a hearing process that would comport with Chapter 30A. However, the ultimate agency decision is placed in the hands of what is called the Police Officer Standards and Accreditation Committee ("POSAC"), which is comprised of many management-level police personnel. We strongly believe that when a decision is made by the POSAC that could threaten to end the employment of a law enforcement officer, that officer should have an opportunity for a review process.

We also recognize the Senate bill seeks to address the difficulty that victims of police brutality have in obtaining justice through civil litigation. As written, the bill would amend the Mass. Civil Rights Act (M.G.L. c. 12, sections 11H and 11I). The MCRA applies to all public employees, not just police officers. The changes in this bill would inevitably create civil liability for many public employees, more than just police officers, where none existed before. We illustrate this point with the full understanding of the civil rights of every member of our community, particularly in egregious situations.

It is also imperative that the Legislature require all public employers to indemnify their employees against all lawsuits. Currently, almost all public employers indemnify their employees already, and it would therefore impose no practical burden on public employers.

The Massachusetts AFL-CIO is committed to continuing the work of creating lasting systemic change to fight racism in all of its forms. This bill is just one step. Racism is institutionalized in every aspect of our society. There is so much work to be done to achieve worker justice, housing justice, immigration justice, environmental justice, and we're glad to be partners with you in that effort. Thank you for your public service.

Respectfully,

Steven Tolman, President

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Massachusetts APPLESEED | Center for Law & Justice

44 School Street, Suite 415 Boston, Massachusetts 02108
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July 16, 2020

Representative Aaron Michlewitz, Chair of the House Ways and Means Committee
Representative Claire Cronin, Chair of the Joint Judiciary Committee
House Ways and Means and Judiciary Committees
Boston, MA 02133

RE: Massachusetts Appleseed letter in support of S2820, *An Act to Reform Police Standards and Shift Recourses to Build a More Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color.*

Dear Chairman Michlewitz, Chairwoman Cronin, and Honorable Members of the House Ways and Means Committee and Joint Judiciary Committee:

The Massachusetts Appleseed Center for Law & Justice ("Massachusetts Appleseed") respectfully submits the following testimony in support of S2820 and requests that the House Ways and Means Committee and Joint Judiciary Committee ensure that school policing is addressed within this bill.

The mission of the Massachusetts Appleseed is to promote equal rights and opportunities for Massachusetts residents by developing and advocating for systemic solutions to social justice issues. Appleseed centers across the country work both collectively and independently to build a society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest. Central to this mission is ensuring that all residents of Massachusetts, especially young students, are provided a safe and supportive school environment. For years Massachusetts Appleseed has been working to bring an end to zero-tolerance school discipline policies, school arrests, and the school-to-prison pipeline.

Over-policing in Massachusetts schools disproportionally impacts Black and Latinx students, who are significantly more likely to be arrested at school than their white counterparts.[1] School Resource Officers (SROs) are meant to protect our students, but instead many SROs actively place our students in danger. For example, on December 3, 2018, a Springfield Massachusetts school resource officer assaulted a 14-year-old high school boy, grabbing him by the back of his neck and pushing him against the side of a school hallway. Subsequently, the officer filed a false incident report.[2] We cannot allow this type of behavior to go on any longer.

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[1] Robin Dahlberg, Arrested Futures: The Criminalization of School Discipline in Massachusetts's Three Largest School Districts (2012).
[2] Dan Gluan, "Springfield police officer Angel Marrero, videoed shoving high school student into wall, charged with assault, filing false report," MassLive, May 31, 2019. https://www.masslive.com/news/2019/05/springfield-police-officer-angel-marrero-videoed-shoving-high-school-student-into-wall-charged-with-assault-filing-false-report.html

We have arrived at an unprecedented moment, when extensive police reform is within reach. Please ensure that the House's police reform accountability bill reforms current school policing practices by:

1. **Ending mandatory police placement in schools, and**
2. **Ensuring public accountability for what police do in schools.**

Our first priority is removing School Resource Officers from Massachusetts Schools. There is a simple legislative change you can enact that would achieve this goal, and keep schools safe. The definition of a "school resource officer" (SRO) in G.L. c. 71 § 37P(a) can be amended to include:

A school resource officer shall not be located on school grounds but at the local police station and shall be charged with serving as the primary responder to calls from public schools.

In addition, Massachusetts Appleseed would like to highlight elements of S2820 that we strongly support:

- Senator Boncore's **Amendment 25 "Training and Certification for School Resource Officers"** requires specific training for SROs on a host of important topics, to be developed in consultation with experts, and to be required before an officer can be assigned as an SRO.
- Senator Jehlen's **Amendment 80 "School Committee Approval of SROs and Data Reporting"** puts school committees – not superintendents and police chiefs - in charge of annually approving school policing by vote, and requires that the district and police department comply with the reporting requirements of school-based arrests to qualify to have an SRO.
- Senator Jehlen's **Amendment 108 "Protecting Students from Profiling"** strengthens existing provisions of S2820 on information sharing by prohibiting Massachusetts school staff and school police from sharing student information to the Boston Regional Intelligence Center, the FBI, ICE, and other gang databases.
- **Section 59-61 of S2820 (initially filed by Representatives Decker and Khan in H.1386) "Expanding Expungement Eligibility"** allows multiple cases on a juvenile's record to be considered for expungement – rather than only one, which is current Massachusetts law – and reduces the list of offenses never eligible for expungement.

These measures represent an essential step in dismantling the school-to-prison pipeline and supporting the grassroots movements led by young people in Boston, Springfield, Worcester, Framingham and across the Commonwealth who are advocating for their own safety. **Now is the time to listen to our young people. Massachusetts Appleseed strongly urges you to end mandatory police placement in schools, and ensure public accountability for what police do in schools.**

Respectfully submitted,

Deborah M. Silva,
Executive Director
Massachusetts Appleseed Center for Law & Justice

GEORGETOWN LAW
Center on Privacy & Technology

600 New Jersey Avenue NW
Washington, DC 20001

July 17, 2020

The Honorable Rep. Aaron Michlewitz
Chair, House Committee on Ways and Means

The Honorable Rep. Claire D. Cronin
Chair, Joint Committee on the Judiciary

Testimony in Support of H. 1538
Moratorium on Government Use of Face Recognition Technologies

Dear Chairs Michlewitz and Cronin,

I am submitting this testimony on behalf of the Center on Privacy & Technology at Georgetown Law in support of H.1538, which would establish a moratorium on government use of face recognition and emerging biometric surveillance technologies. Please include this critical legislation in your police reform bill. Given the increasing pervasiveness of surveillance technologies in our criminal legal system, any reform effort must take account of the way that technology amplifies the abuses and inequities within that system.

The Center on Privacy & Technology is a research organization that has been studying government use of face recognition for the past six years. We've written four major reports on the subject,[1] testified before the U.S. Congress[2] and various state legislatures including Massachusetts[3], advised policymakers on federal and state legislation, and worked with countless civil society and community organizations around the country to ensure face recognition does not threaten civil rights and liberties.

As an organization we are committed to understanding and mitigating the impact of surveillance in Black, Brown, and low-income communities. A Massachusetts moratorium on face recognition technology is critically important for everyone, but especially for the people who endure constant police presence as part of daily life. Surveillance technologies compound the existing harms that come from over-policing. For example, in recent weeks the media has reported on the cases of two Black men wrongfully arrested because of facial recognition

[1] For a full list of the Center's publications, *see* https://www.law.georgetown.edu/privacy-technology-center/publications/.
[2] *See* House Hearing on Facial Recognition Technology, House Oversight and Reform Committee, May 22, 2019, https://www.c-span.org/video/?460959-1/house-hearing-facial-recognition-technology.
[3] *See* Testimony in Support of S.1385 and H. 1538: Moratorium on Government Use of Face Surveillance Technologies, Oct. 22, 2019, https://docs.google.com/document/d/1iTiqTmIK_xYDRTQioZdakQuaOWECt5z37FnJEojD2rw.

technology. In Detroit, Mr. Robert Williams was arrested in front of his two small children and his wife, and held for 30 hours for a crime he did not commit. Separately, last year, police using face recognition misidentified a Brown University student as a bombing suspect in Sri Lanka. After the police put her picture on TV, she received death threats from vengeful strangers.

This technology threatens to create a world where we are all watched as we attend a protest, congregate at a place of worship, visit a medical provider, and go about all the regular business of our lives. Government agencies in Massachusetts are currently using this technology in secret, without any protections for our civil rights and civil liberties. We know of specific abuses that are already occurring, and we can predict others that are likely. The legislature must act urgently to prevent face recognition from causing more harm to already vulnerable communities.

For these reasons, I respectfully request that you not only include this crucial measure in the police reform bill, but that you go farther than the Senate did in S.2820. The problems with this technology will not magically disappear on December 31, 2021, when the Senate's proposed moratorium would expire. We need a moratorium on government use of this technology, at least until the legislature can come to a determination about what regulations, if any, would ensure its responsible and ethical deployment.

Thank you for your attention and consideration, and for your public service.

Sincerely,

Jameson Spivack
Policy Associate
Center on Privacy & Technology at Georgetown Law

MACDL
Massachusetts Association of Criminal Defense Lawyers

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info@macdl.com
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July 17, 2020

To House Committee on Ways and Means and Joint Committee on the Judiciary
Chairs Aaron Michlewitz and Claire Cronin

MACDL support for S.2820, "An Act to reform police standards and shift resources to build a more equitable, fair and just Commonwealth that values Black lives and communities of color."

Chairs Michlewitz and Cronin and members of the Ways and Means and Judiciary committees:

The Massachusetts Association of Criminal Defense Lawyers ("MACDL") is a statewide organization of lawyers committed to the promotion of justice for the defense bar and persons accused and convicted of crimes. MACDL supports proposed bill S.2820, but seeks to make it stronger to protect the rights of all.

Racial justice must begin at first contact with police. In that crucial moment, there is no judge to ensure fairness, no lawyer to advocate for the accused, and no independent oversight of the officer on the field. Justice must also continue from there to give those whose rights have been violated full redress in the courts.

All decisions by police must be guided by respect for the human dignity of people of color and the inherent value of their lives, their families, and our communities. Chokeholds are an inappropriate means to subdue a citizen and still permitted to be used by law enforcement here. Our Constitution protects our right to protest, but police continue to use weapons such as tear gas to disperse crowds. Now is a meaningful opportunity for our legislators to recognize that the historically excessive and inappropriate use of force by the police upon its citizenry must end immediately. Furthermore, laws that artificially protect abusive officers from lawsuits only exacerbate the problem.

While Senate bill S.2820 takes several positive steps forward, it has also watered down several key protections that were contained in HD.5128, "An Act Relative to Saving Black Lives and Transforming Public Safety," and other predecessor bills. Instead, MACDL explicitly supports:

- Removing qualified immunity altogether (and the possibility of delayed justice from interlocutory appeals that might ensue), and allowing for punitive damages in civil rights suits, as well as costs and fees of litigation for obtaining either "significant equitable, declaratory or injunctive relief or a damages award" in G.L. c.12, § 11I(b);

- Prohibiting pretextual stops for "routine driving infractions" that improperly allow police to stop and search motorists for non-criminal reasons, whether motivated consciously or unconsciously by the race or appearance of the person stopped (as Amendment 31 to S.2800 would have done). Specifically, we support:
    - Prohibiting unnecessary and unreasonable traffic stops and requiring stops to be based on the purported legal justification, without other motivation;
    - Prohibiting officers from asking questions during a stop not reasonably related to the purpose of the stop without independent probable cause;

  - Prohibiting officers from searching a stopped vehicle or person unless that search is reasonably related to the purpose of the stop or based on independent probable cause;

- Promoting transparency via collection and publication of data on officer-caused injuries and deaths, officer misconduct, and all stops made by the department whether or not resulting in a citation or summons;

- Holding accountable police departments that engage in unlawful racial profiling practices, and the imposition of meaningful consequences for departments that continue to employ or condone such practices;

- Banning *completely* so-called "no-knock" warrants which disproportionately affect people of color, introduce an element of government-imposed terror, and substantially heighten the risk to the safety of all present during search warrant executions;

- Banning *completely* the use of certain police tactics such as chokeholds (in a manner consistent with laws against strangulation), rubber bullets, and chemical weapons, and limiting the circumstances in which police may use force, or measures at least as strong as set out in HD.5128;

- Creating an affirmative duty for police officers to intervene and report the illegal or unnecessary use of force by another officer;

- Banning facial surveillance technology, without S.2820's sunset provision and without the exception that continues to permit its use by the registrar of motor vehicles, because such technology has proven to be inaccurate (especially so for people of color) and also risks creating a state of total surveillance and no privacy; and

- Assigning oversight to a commission that is truly independent of law enforcement.

Finally, MACDL asks that any resulting bill not be considered a complete solution but rather as one step among many to ensuring that everyone in the Commonwealth can be safe from police violence or bias.

/s/ Victoria Kelleher, Esq., MACDL President; victoriouscause@gmail.com

Dated: July 17, 2020

Berklee Police Department
1140 Boylston Street
MS-155 PS
Boston, MA. 02215

Dear Chair Aaron Michlewitz and Chair Claire Cronin, please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color".

MACLEA seeks to include a representative of the Association to serve on the Police Officer Standards and Accreditation Committee created by section 6 of Senate Bill 2820. MACLEA's member departments are responsible for the safety and wellbeing of the hundreds of thousands who live, learn, work, and visit our member institutions. We are in favor of the creation of a Police Officer Standards and Accreditation Committee (POSAC) and our representation on this committee would add valuable insight and information. It would also ensure that the safety and security of all of those on campuses across the Commonwealth are the highest priority.

Sincerely,

Dave Ransom

Chief of Police
Berklee College of Music Police Department
1140 Boylston Street
MS-155 PS
Boston, MA. 02215

The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

CHRISTOPHER M. MARKEY
STATE REPRESENTATIVE
9TH BRISTOL DISTRICT

Chairman
Committee on Ethics
STATE HOUSE, ROOM 527A
TEL. (617) 722-2020

July 17, 2020

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.

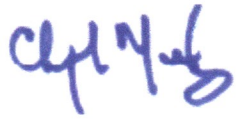
The last point I'd like to illuminate that pertains to recent issues is the transferring of police officers. I believe we need to have every internal affair's file of every police officer follow the officer through his law enforcement career. This file should contain every allegation against the officer, 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

Maryanne Conway
28 Gale Rd.
Swampscott, MA 01907

July 17, 2020

Chair of the House Committee on Ways and Means
House Chair of the Joint Committee on the Judiciary
Massachusetts State House
24 Beacon St.
Boston, MA 02133

Dear Chairs:

Current events have created a divide, a false dichotomy, where many feel they must choose to EITHER support the police OR support racial equality, and the S.2820 bill seems to be the unfortunate outcome of that sub-par mindset.

We need to do better, specifically around qualified immunity in this bill.

Is the existing version of qualified immunity a barrier to accountability? It is my layman's understanding of qualified immunity that officers are only protected under qualified immunity if they have a reasonable basis for believing their actions occurred within the scope of employment, and it specifically excludes from protection those whose actions display intentional or willful and wanton misconduct. With the nature of the job that police are hired to do there is great enough risk for personal harm whether the officer is trying to save a child from a burning car, or stop an active shooter, that they absolutely deserve this basic protection to do their job. Without this protection, the risk greatly outweighs the purpose. How are we to ask these men and women to not only risk life and limb while processing incredible amounts of data about the situation in nano-seconds but now everything their family has worked for could be lost in a civil lawsuit. It's plain old wrong.

The perspective of my Senator (Brendan Crighton) about the modification to qualified immunity seemed to be that it is not ideal to limit qualified immunity but the concession is that we will provide for indemnification. This makes no sense. If the end result of removing or limiting qualified immunity is to moderate law enforcement's use of force by impacting them financially - indemnification negates that:

Police Indemnification

Joanna Schwartz. *New York University Law Review*, June 2014.

Schwartz conducted public records requests and interviews for this national study of police indemnification. She gathered information on indemnification practices for 44 of the biggest state and municipal law enforcement agencies in the U.S., along with 37 small and mid-sized agencies, covering 2006 through 2011.

The question: Do police officers pay settlements against them out of pocket?

"The Supreme Court has long assumed that law enforcement officers must personally satisfy settlements and judgments, and has limited individual and government liability in civil rights damages actions — through qualified immunity doctrine, municipal liability standards and limitations on punitive damages — based in part on this assumption," she writes.

The bottom line: Individual officers almost never pay their own settlements. During the study period, governments paid 99.98% of the $730 million in damages plaintiffs recovered in lawsuits stemming from alleged police misconduct.

"Officers did not contribute to settlements and judgments even when they were disciplined, terminated or criminally prosecuted for their misconduct," Schwartz writes. "And officers were not required to contribute to settlements and judgments even when applicable law prohibited indemnification."

Source of above screen clip: https://journalistsresource.org/studies/government/qualified-immunity-analyses-police-misconduct-lawsuits/

If civil suit is allowed, frivolous lawsuits will arise and under an indemnification system, who is to pay for them? The taxpayers, ultimately, I am sure. This begs the question: who are we punishing for bad behavior? The taxpayers, really, not "bad cops".

The logical conclusion here is that ending qualified immunity will make it prohibitively dangerous for police to do their work, and indemnifying civil suits under a limited qualified immunity system defeats the objective of holding officers accountable. Therefore, qualified immunity is not the area of policing that should be examined for improvement. In fact, I believe that police are not the problem here in Massachusetts and we are punishing all of our police and by cause/effect (police will NOT be able to do proactive police work in the same way they do now if they're not protected by qualified immunity) we are punishing our citizens by taking away qualified immunity. There have studies that racism is present in Boston in the following areas:

- real estate (https://www.wbur.org/bostonomix/2020/07/01/study-black-renters-in-boston-face-deep-discrimination-subsidized-renters-face-even-more)
- education (https://www.bostonglobe.com/2020/06/22/metro/black-students-stories-reveal-pattern-racism-elite-high-schools/)
- transportation (https://huntnewsnu.com/55680/city-pulse/systemic-inequality-threatens-bostons-transit-system/)

…and I'm sure there are many, many more areas that are impacting the every day lives of Black Bostonians more than our police. I would love to see legislation tackle those areas. Why are we punishing our police.

My husband is a proud Massachusetts State Trooper. He is a deserving Medal of Valor recipient. He sits watch outside Governor Baker's house, keeping the Governor's family safe many nights while my family is at home without him and I am proud of this. I am proud of the work he has done taking guns and drugs off the streets of the district he works in. He deserves more from you, my family deserves better than this, and the people of this state at large do too.

Thank you for hearing my concerns,

Maryanne Conway

ORGANIZED
NOVEMBER 3,1887

INCORPORATED
MAY 2,1949

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In Unity There Is Strength

July 16, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

This morning members of the Massachusetts Chiefs of Police Association Executive Board and representation from the Massachusetts Major City Police Chiefs Association had the opportunity to give a thorough reading and comprehensive review of the recently amended Senate 2820, "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on 7/15.

As we have mentioned to both the Senate President and the Speaker of the House during various conference calls over the last couple of weeks, we, as dedicated and committed police leaders, will continue to embrace the challenges that lay ahead, instill strong values into our respective agencies at all ranks, hold ourselves completely accountable for all our actions, and work through these difficult and turbulent times to build a more cohesive future for our communities. With that, we would very much like to be part of this continuing conversation as it pertains to any contemplated police reform, fully realizing that time is of the essence as the legislative formal 2019-2020 session begins to wind down rather quickly.

In the interest of expediency we would like to submit a brief list of bulleted comments in the paragraphs that follow in the hopes of providing some potential insight from our law enforcement/policing perspective that is laid out in this comprehensive 89-page Senate bill. To the extent that we do not have an issue or concern with a specific provision of Senate 2820, or we view it as beyond the scope of local law enforcement we will not mention it in this communication.

The list that follows corresponds to the Section Numbers in Senate 2820 with the applicable line numbers:

- **SECTION 4 (line 230)**: Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States*." While we certainly welcome any and all training that enhances the professionalism and understanding of our officers, we are somewhat perplexed as to why law enforcement will now be statutorily mandated to have such a class to the exclusion of any other government entity?

One would believe that based on this particular mandate that the issue of what is inferred to as "racist institutions" is strictly limited to law enforcement agencies which aside from being incredibly inaccurate is also insulting to police officers here in the Commonwealth.

- **SECTION 6 (line 272)**: In terms of the establishment of a POST (Peace Officer Standards and Training) Program, the various police chief's organizations here in our state wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* per se but has everything to do with *Certification* – and by implication "De-certification". In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies* (CALEA). Utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

- **SECTION 6 (line 282):** The Senate Bill states that POSAC shall be comprised of "14 members", however as outlined there are actually 15 positions. The MCOPA is strongly advocating for two (2) seats on the POSAC to be appointed by the MCOPA Executive Committee.

- **SECTION 6 (line 321)** : It appears from the language of the POSAC provision that the committee shall have the power to conduct what is referred to as "*independent investigations and adjudications of complaints of officer misconduct*" without any qualifying language as to how that would be implemented in terms of what type of alleged misconduct (law violations, use of force, injury, rude complaints, etc.) and when and under what circumstances will adjudications be subject to review resulting in a proposed oversight system that could go down the slippery slope of becoming arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

- **SECTION 10(c) (line 570):** Section 10 of "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" (the Act) is problematic, not only for law enforcement in the Commonwealth, but all public employees. In particular, Section 10 calls for a re-write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). The MCRA is similar to the provisions of 42 U.S.C. § 1983 (setting for a federal cause of action for a deprivation of statutory or constitutional rights by one acting under color of law), except however, that the provisions of the MCRA as it exists today, does not require that the action be taken under color of state law, as section 1983 does. See G.L. c. 12, § 11H. Most notably, Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, who *inter alia* deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States or the Commonwealth of Massachusetts. By

doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

The qualified immunity principles developed under section 1983 apply equally to claims under the MCRA. See Duarte v. Healy, 405 Mass. 43, 46-48, 537 N.E.2d 1230 (1989). "The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not 'clearly established.'" Laubinger v. Department of Rev., 41 Mass. App. Ct. 598, 603, 672 N.E.2d 554 (1996), citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); see Breault v. Chairman of the Bd. of Fire Commrs. of Springfield, 401 Mass. 26, 31-32, 513 N.E.2d 1277 (1987), *cert. denied sub nom.* Forastiere v. Breault, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 237 (1988); Duarte v. Healy, supra at 47-48, 537 N.E.2d 1230.

In enacting the Massachusetts Civil Rights Act, the Legislature intended to adopt the standard of immunity for public officials developed under section 1983, that is, public officials who exercised discretionary functions are entitled to qualified immunity from liability for damages. Howcroft v. City of Peabody, 747 N.E.2d 729, Mass. App. 2001. Public officials are not liable under the Massachusetts Civil Rights Act for their discretionary acts unless they have violated a right under federal or state constitutional or statutory law that was "clearly established" at the time. Rodriguez v. Furtado, 410 Mass. 878, 575 N.E.2d 1124 (1991); Duarte v. Healy, 405 Mass. 43, 537 N.E.2d 1230 (1989).

Section 1983 does not only implicate law enforcement personnel. The jurisprudence in this realm has also involved departments of social services, school boards and committees, fire personnel, and various other public employees. That being said, if the intent of the Senate is to bring the MCRA more in line with section 1983, anyone implicated by section 1983, will likewise be continued to be implicated by the provisions of the MCRA. Notably, the provisions of the MCRA are far broader, which should be even more cause for concern for those so implicated.

Section 10 of the Act further sets for a new standard for the so-called defense of "qualified immunity." Section 10(c) states that

> "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law"

This definition represents a departure from the federal standard for qualified immunity, although the exact extent to which is departs from the federal standard is up for debate, at least until the SJC provides clarification on it. The federal doctrine of qualified immunity shields public officials of all types from liability under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Stated differently, in order to conclude that the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987). It protects all but the plainly incompetent and those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335 (1986). As a result, the standard sought to be created under Section 10 of the Act would provide public employees with substantially less protection than that afforded under the federal standard.

"Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Furthermore, although the Senate's version of "qualified immunity" would only apply to state-based claims under the MCRA, what Section 10 proposes is fairly similar to that proposed by the 9th Circuit Court of Appeals in various decisions. In those instances where the 9th Circuit sought to lower the standard applicable to qualified immunity, the U.S. Supreme Court has squarely reversed the 9th Circuit, going so far as scolding it for its attempts to do so. See Kisela v. Hughes, 138 S.Ct. 1148 (2018); City of Escondido v. Emmons, 139 S.Ct. 500 (2019).

Although legal scholars and practitioners have a grasp as to the meaning of qualified immunity as it exists today, uncertainty will abound if this standard is re-written, upending nearly fifty years of jurisprudence. Uncertainty in the law can only guarantee an influx in litigation as plaintiffs seek to test the new waters as the new standard is expounded upon by the courts.

- **SECTION 39 (line 1025)**: The provision to inform both the appointing authority and the local legislative body of the acquisition of any equipment and/or property that serves to enhance public safety makes perfect sense. That said, to have a public hearing available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is very dangerous.

- **SECTION 49 (line 1101-1115):** This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers – including their own agency – when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. Did the Senate quickly forget about what occurred in Parkland, Florida on February 14, 2018? The learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. Public Safety 101.

- **SECTION 50 (line 1116)**: There seems to be a slight nuance to the amended language to Section 37P of Chapter 71 replacing "*in consultation with*" to "*at the request of*." Many police departments have had school resource officer programs in this state for 25 years or longer. The only reason why officers are assigned to the schools are because they have been "requested" to be there by the school superintendents - period. The reality is that many school districts even reimburse the police budgets for the salaries of these officers who serve as mentors for these young middle and high school students. If the Senate is being told that police chiefs are arbitrarily assigning officers to schools without first receiving a specific request from the school superintendents, they are being misled. The 2018 Criminal Justice Reform Act has very specific language that outlines the qualifications of an SRO, the joint performance evaluations that are to be conducted each year, the training that they shall have

and the language specific MOUs that must exist between the Schools and the Police Department. We are very confused as to why this provision needs to be included.

- **SECTION 52 (lines 1138-1251**: There are several recommended changes to data collection and analysis as it pertains to motor stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive system of data collection, benchmarking, review, analyses and potential consequences. While we continue to welcome data that is both accurate and reliable, the issue pertaining to the classification of an operator's race has still yet to be resolved. Before any data from calendar year 2020 has yet to be collected by the RMV and subsequently analyzed by a College/University selected by the Secretary of EOPSS, these provisions now look to complicate the matter even further before a determination has actually been made as to whether any problem of racial or gender profiling actually exists here in our state. We won't belabor the point, but this language appears to be what did not make its way into the Hands-Free Law which as you know was heavily debated for several months based strictly on the data collection component.

- **SECTION 55 (line 1272)**

  To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. […]." What should also be included is a commonsensical, reasonable and rational provision that states, "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

- **[Recommended New Section] Amends GL Chapter 32 Section 91(g)**: In order to expand the hiring pool of trained, educated, qualified and experienced candidates with statewide institutional knowledge for the Executive Directors' positions for both the *Municipal Police Training Committee* as well as the newly created *POSAC* (or POST), the statute governing the payment of pensioners for performing certain services after retirement, shall be amended to allow members of Group 4 within the state retirement system to perform in these two (2) capacities, not to exceed a three (3) year appointment unless specifically authorized by the Governor.

We appreciate the opportunity to weigh in with our concerns and recommendations and hope that you would give due consideration to what we have outlined above. Should you have any follow up questions and/or concerns please do not hesitate to contact either of us in the days or hours that lay ahead. We respect that time is of the essence regarding this important legislation and stand ready to assist if and when called upon.

We will continue to be bound by our duty to public service, our commitment to the preservation of life, and our responsibility for ensuring our communities are safe. We will not waver. Thanks again for your diligent efforts in drafting this comprehensive legislation for the House and in continuing to add credibility and transparency to our valued partnership in serving our respective communities.

Respectfully Submitted:

Chief Brian A. Kyes
President, Major City Chiefs

Chief Jeff W. Farnsworth
President, Mass. Chiefs of Police

MASSACHUSETTS COALITION OF POLICE

"The only Union for Law Enforcement Officers"

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July 17, 2020

Representative Aaron Michlewitz
Chair, House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

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

Dear Chairwoman Cronin and Chairman Michlewitz:

Thank you for providing this opportunity to submit written testimony on behalf of the Massachusetts Coalition of Police relative to Senate Bill 2820.

The virtual hearing and public input process set forth by The Speaker on this important legislation demonstrates a strong commitment to inclusion and transparency. Unfortunately, the Senate process – in its haste, exclusion of key stakeholders and disinterest in public input – was a disappointment to not only thousands of law enforcement professionals, but to people from all walks of life across the Commonwealth.

The Massachusetts Coalition of Police (MassCOP) is the largest union representing police officers in the state, representing over 4,300 members sworn to protect and serve in 157 cities and towns. We are committed to bringing about constructive reform to policing and law enforcement in Massachusetts and ensuring public confidence in the professionalism of police officers and their respective departments.

The important national conversation prompted by abhorrent and criminal conduct by officers in other states has created an extended moment to reflect on, and an opportunity to improve, police training and standards in the Commonwealth.

We have been fortunate to engage in productive and positive discussions with Governor Baker, members of the Legislature to include the Black and Latino Legislative Caucus and our fellow professionals within the Massachusetts Association of Minority Law Enforcement Officers and the Massachusetts Law Enforcement Policy Group. There is broad consensus and agreement on important measures such as the creation of an independent body to oversee department accreditation and officer certification, standardized training on police procedures and protocols, clear language banning chokeholds and the use of excessive force, a formalized 'duty to intervene' responsibility for all officers, and the promotion of diversity and a commitment to recruiting more people of color into law enforcement.

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It is our strong belief, however, that the foundation of all true reform must be established through accreditation of all municipal police departments and certification of all officers.

We agree with the governor and lawmakers on the need for a comprehensive process for certifying all police officers in Massachusetts. But we also believe that every Massachusetts police department should be held to the highest standards and best practices in law enforcement. Having the confidence of Massachusetts citizens, including and especially communities of color, is critical for police officers as America experiences this period of reflection around social justice and racial equality.

Accreditation enforces a commitment to excellence in training and will standardize best practices for policing. Our leadership and members – the men and women sworn to protect citizens and property in 157 communities - strongly support a process through which all municipal police departments become accredited utilizing the consistent standards of the Massachusetts Police Accreditation Commission.

Certification holds each officer accountable within a fair and reasonable but high set of standards, and with the preservation of their due process rights. Similarly, accreditation for all municipal departments places organizational accountability squarely on each department: limited not only to rank and file officers and their direct supervisors, but extending to police chiefs, commissioners and all those officials with a direct influence on department leadership and culture. **There can be no comprehensive reform of policing without a mechanism for accreditation of all departments.**

Police officers have an important role, and responsibility, to play in the police reform movement. As professionals committed to protecting the public, who take pride in our profession, we believe proven cases of serious misconduct should be prosecuted to the fullest extent of the law. We are not here to simply say 'no.' Rather, we join other advocates for police reform with our desire to ensure that reforms being sought truly enhance policing in Massachusetts.

To be clear: "chokeholds" have *not* been an accepted practice in the Commonwealth of Massachusetts for decades. Massachusetts police officers are not taught "chokeholds" in the police academy or at veteran officer training. We support a **ban** on this tactic except in the extreme circumstance of the officer's life or another person's life in imminent threat of death or serious bodily injury.

The use of excessive force by police officers is unacceptable and we strongly support the proposed ban. And we support the Legislature's proposal that an officer has a *duty to intervene* if they witness excessive force. All these reforms require statewide training for officers.

We also support creation of *an independent body to oversee police standards and best practices and administer a process for certification.* The board should include both law enforcement professionals and non-law enforcement professionals that have *knowledge of policing*.

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Unfortunately, Senate Bill 2820 is gravely inadequate in this area. In fact, the proposed 15-member committee that would oversee certification would likely be the first such professional certifying or licensing authority to not be made up of a majority of professionals with specific knowledge in the respective field: in this case law enforcement. It is our strong position that this must be rectified as the House considers the legislation.

MassCOP and its members are also deeply troubled by the Senate's *elimination of due process* for police officers facing disciplinary action – a fundamental right of all public employees covered under a collective bargaining agreement.

Finally, we must address in the most clear and forceful terms that a persistent and misguided Senate initiative to remove qualified immunity protections from police and other public servants is *completely unacceptable*. It is no less than a hostile act against more than 16,000 officers across the Commonwealth and their families – with collateral impact on thousands of other public servants who will lose important protections from unreasonable, unpredictable and nuisance lawsuits over good-faith actions on the job.

Abolishing or modifying qualified immunity will have severely negative unintended consequences for *all* Massachusetts citizens, courts, and public officials – *not* just police officers. Qualified immunity is *not* an absolute immunity from civil suit.

The Massachusetts Civil Rights Act of 1979 (MCRA) allows civil actions against public officials who use force, intimidation or coercion to interfere with Constitutional or statutory rights. Current law – unchanged – still allows individuals to file suit against a police officer or other public official granted Qualified Immunity if they use force, intimidation or coercion to interfere with an individual's rights.

Senate Bill 2820 would *dramatically lower the standards* under which a civil action could be brought against a public official with qualified immunity. Lawsuits against public officials would increase exponentially. This would send a chill through all areas of local government where thousands of public servants must deal directly with citizens. And the consequences would be damaging and disruptive to the Commonwealth:

- State courts would be flooded with civil actions – as plaintiffs who would otherwise pursue civil actions in federal court seek an advantage in state courts.
- Cities and towns across Massachusetts would be forced to absorb massive legal costs in defense of the municipality's role in the action – and almost certainly indemnify public employees against damages.
- Municipalities will almost certainly incur burdensome legal costs – including plaintiff attorney fees – from litigation and settlement of meritless claims that would have been weeded out by QI.
- The massive new financial burdens would come at the worst time possible: as cities and towns are bracing for devastating budget impacts from the COVID-19 pandemic and related economic shutdowns

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- Federal courts have a large body of case law on which to base interpretations and analysis of new QI cases. Under the proposed Senate bill changes, the state courts will have to develop a whole new body of case law to interpret the new language. This will lead to uncertainty for municipalities, public employees and plaintiffs for years to come.

The Senate bill's language on qualified immunity is a **direct threat** to the thousands of hard-working and dedicated municipal officials, commission appointees and employees in all 351 cities and towns across Massachusetts.

This standard legal protection offered to nearly all government workers is, as the Supreme Court of the United States has said, 'no license to lawless conduct.'

Judges, prosecutors and members of Congress hold positions where they have far more time to make decisions, and don't face the prospect of death or injury if those decisions are not made quickly. Yet unlike police officers, they enjoy "absolute immunity." It is not too much to ask that officers – and other public servants - continue to be able to act in good faith in their jobs without fearing that each decision could lead to a lawsuit. As police officers, we know the dangers that come with this job and we accept that fear in order to carry out our duties. We should not live in fear of potentially damaging retribution for doing that job.

In closing, we would like to again thank yourselves, Madame Chairwoman and Mr. Chairman, as well as The Speaker and the entire House of Representatives for conducting this important public process in deliberating the legislation before you. We are of course available, at your convenience, to answer any questions or provide further information.

Sincerely,

Scott Hovsepian – President
John Nelson – First Vice President
Robert Murphy – Secretary Treasurer
Tim King – General Counsel

CC: House of Representatives

Maynard Police Department

Chief Michael A. Noble
197 Main Street
Maynard, MA 01754
978-897-1006

July 17, 2020
Via e-mail to: Testimony.HWMJudiciary@mahouse.gov
Re: Concerns to Senate 2820 as Amended

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

Please accept the following testimony with regard to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

As the Mass Chiefs of Police Association (MCOPA) outlined several key problems with the senate's bill, I will not repeat them but assuredly I agree with them. I write to you and wish to reiterate that a process that has no public hearing and no input from the key stakeholder that it affects is not only wrong it is dangerous. This process will unavoidably produce unintended consequences as there is only one side of thinking with their bill.

Massachusetts police officers are the best in the nation, despite the aversion from the Legislature over the years. We have the most educated and trained officers; however, the Commonwealth provides the least amount of money for training per officer in the country. Why are Massachusetts officers so well trained is not a mystery; we take pride in our profession and are always ahead of the curve using best police practices. Many years ago, the Commonwealth funded the Massachusetts Police Accreditation Commission (MPAC), however stopped funding it for reasons unknown. When this happened police departments around the state, knowing how important it is to be accredited and to have uniformed policies and procedures, self-funded the Commission. There are numerous other programs police departments implemented with no monetary assistance from the Commonwealth, because Massachusetts officers know the value of training and professionalism will pay for itself in the long run. The ironic and farcical concept regarding the Commonwealth's lack of funding for police training is that the Senate Bill's POSAC commission would cost nearly as much as the entire yearly budget of the MPTC.

We **must** work together to pass true legislation that will hold officers accountable for misconduct, keep the training at a high level, and still be able to recruit great young talent. We cannot keep debasing the police profession if we want good quality officers over the next generation. Recently I was asked "how can we recruit more minority officers?" the obvious answer to begin with is to stop denigrating the profession as a whole. It is difficult for people to want to go into a profession where you are disliked with such disdain by people who don't know you just because of the uniform you wear.

The make-up of the POSAC commission has to be fair and look at any investigation or training honestly and impartially. The senate's version has too many absolute adversaries of the police profession and will not look at training or incidents with an open mind. Imagine most of

the persons on a doctor malpractice commission made up of victims of malpractice and the lawyers who sue for malpractice; it is a ludicrous philosophy. Also, the idea that Chiefs and officers on this commission won't hold officers accountable is nonsensical. We want bad officers gone more than anyone**, Period**. You need to look no further than the malevolence that one despicable officer in Minneapolis has done to our profession (I do understand there are other officers and incidents, but the officer in the Minneapolis incident disregarded the sanctity of life to a level that was inhuman, it sets it apart from any other). As a Chief I understand we must do better and there is legislation that can help achieve this, but it is absolutely not the senate legislation.

Police officers right now are very demoralized. The profession is getting pummeled with hostility and blanket allegations that apply to all officers, no matter how much they have done for their community. Much like politicians, police officers have to have thick skin. However, vitriolic comments spouted to good officers that they are "racist bastards" no matter how thick your skin is it will obviously take its toll. Officers feel they are not appreciated even with all the good they have done, which is exorbitantly more than any unscrupulous behavior. One of the most unintended consequence will become recruiting in the future. This will have a devastating impact for years to come.

Qualified immunity must not be repealed or altered. Qualified immunity only applies to personal civil liability and doesn't shield officers from criminal penalties; however, many state and national media and legislators describe qualified immunity as if it was complete immunity to all liability (criminal and civil). Also, I find it ironic that state employees, including the senate, are automatically indemnified by the Commonwealth in these actions where municipal employees are not. Further, allowing suits to be brought in state court and assessing attorney's fees will cost municipalities significantly. A relatively minor incident could cost a municipality significantly more than the damage when accounting for the attorney's fees. There was and still is a purpose for qualified immunity, eliminating it will have dire consequences as officers will be less proactive and more reactive out of fear. This undoubtedly will make communities less safe especially already high crime areas.

The senate's legislation in s.2820 is severally flawed with foreseeable unintended consequences. These consequences will have devastating effects to the police profession but more importantly to the safety of citizens of the Commonwealth.

Respectfully Submitted

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July 17, 2020

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Representative Denise C. Garlick
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Joint Committee on the Judiciary:
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Representative Claire D. Cronin
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Senator Sonia Chang-Diaz
Sonia.Chang-Diaz@masenate.gov

Representative Michael S. Day
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Via Electronic Submission

Re: Reform, Shift and Build Act – July 17, 2020 Hearing

On behalf of the City of Framingham, I write today regarding Senate Bill 2820, An Act to Reform Police Standards and Shift Resources to Build a More Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color.

Reforms such as the creation of a Police Officer Standards and Accreditation Committee to ensure that those who serve meet statewide standards and earn and maintain professional credentials are sorely needed—such professional standards of training are what our communities and police forces deserve. There must be greater accountability for inappropriate action and inaction—accountability that prevents officers from being hired in another community if they have been stripped of their credentials. Additionally, the arbitration and bargaining processes for addressing police misconduct get in the way of the timely and effective accountability that our communities and forces deserve. There have been numerous arbitration decisions over the years that have prevented municipalities from holding offending officers accountable for misconduct. These decisions are a disservice to both the communities the officers serve and the vast majority of police officers who comply with their obligations and serve their communities with professionalism, honor and integrity.

I similarly applaud the proposals to establish a Commission on the Status of African Americans and a Latinx Commission and to mandate that our police training provide our police forces with an understanding of the history of racism in our country. Setting limits on police use of force is also essential. Here in Framingham, I issued an executive order jointly with the Police Chief to strengthen the Framingham Police Department's use of force policy, bringing it in line with the #8Can'tWait reforms that include bans on chokeholds and a duty to report. It is my hope that

these important use of force limitations are adopted across the Commonwealth via the passage of this legislation to protect our citizens' rights, especially people of color.

However, state-level police reform must include reforms to the civil service system. We here in Framingham have been working for nearly 10 years to negotiate a way out of the system with our Superior Officers' and Patrolmen's unions, which we have successfully done. Exiting the system would enable us to attract a wider, more diverse pool of candidates for our police force. It would give us the invaluable opportunity to create a set of hiring and promotional criteria that is most appropriate for our community—so that we can build a department according to our community's antiracist and antiviolent values by finding candidates who uphold similar principles. We are filing a home rule petition to obtain approval from the Legislature to finalize Framingham's departure from civil service, but every community in the Commonwealth should have the opportunity to shape its force in the way that best fits its own unique challenges and opportunities.

These areas are where S.2820 falls short and must be amended in order to create a policing system in our Commonwealth more conducive to providing justice for all.

Thank you for your time and attention to this matter.

Sincerely,

Yvonne M. Spicer

Dr. Yvonne M. Spicer, Mayor

ORGANIZED
NOVEMBER 3,1887

INCORPORATED
MAY 2,1949

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In Unity There Is Strength

July 16, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

This morning members of the Massachusetts Chiefs of Police Association Executive Board and representation from the Massachusetts Major City Police Chiefs Association had the opportunity to give a thorough reading and comprehensive review of the recently amended Senate 2820, "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on 7/15.

As we have mentioned to both the Senate President and the Speaker of the House during various conference calls over the last couple of weeks, we, as dedicated and committed police leaders, will continue to embrace the challenges that lay ahead, instill strong values into our respective agencies at all ranks, hold ourselves completely accountable for all our actions, and work through these difficult and turbulent times to build a more cohesive future for our communities. With that, we would very much like to be part of this continuing conversation as it pertains to any contemplated police reform, fully realizing that time is of the essence as the legislative formal 2019-2020 session begins to wind down rather quickly.

In the interest of expediency we would like to submit a brief list of bulleted comments in the paragraphs that follow in the hopes of providing some potential insight from our law enforcement/policing perspective that is laid out in this comprehensive 89-page Senate bill. To the extent that we do not have an issue or concern with a specific provision of Senate 2820, or we view it as beyond the scope of local law enforcement we will not mention it in this communication.

The list that follows corresponds to the Section Numbers in Senate 2820 with the applicable line numbers:

- **SECTION 4 (line 230)**: Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States*." While we certainly welcome any and all training that enhances the professionalism and understanding of our officers, we are somewhat perplexed as to why law enforcement will now be statutorily mandated to have such a class to the exclusion of any other government entity?

One would believe that based on this particular mandate that the issue of what is inferred to as "racist institutions" is strictly limited to law enforcement agencies which aside from being incredibly inaccurate is also insulting to police officers here in the Commonwealth.

- **SECTION 6 (line 272)**: In terms of the establishment of a POST (Peace Officer Standards and Training) Program, the various police chief's organizations here in our state wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* per se but has everything to do with *Certification* – and by implication "De-certification". In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies* (CALEA). Utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

- **SECTION 6 (line 282):** The Senate Bill states that POSAC shall be comprised of "14 members", however as outlined there are actually 15 positions. The MCOPA is strongly advocating for two (2) seats on the POSAC to be appointed by the MCOPA Executive Committee.

- **SECTION 6 (line 321)** : It appears from the language of the POSAC provision that the committee shall have the power to conduct what is referred to as "*independent investigations and adjudications of complaints of officer misconduct*" without any qualifying language as to how that would be implemented in terms of what type of alleged misconduct (law violations, use of force, injury, rude complaints, etc.) and when and under what circumstances will adjudications be subject to review resulting in a proposed oversight system that could go down the slippery slope of becoming arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

- **SECTION 10(c) (line 570):** Section 10 of "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" (the Act) is problematic, not only for law enforcement in the Commonwealth, but all public employees. In particular, Section 10 calls for a re-write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). The MCRA is similar to the provisions of 42 U.S.C. § 1983 (setting for a federal cause of action for a deprivation of statutory or constitutional rights by one acting under color of law), except however, that the provisions of the MCRA as it exists today, does not require that the action be taken under color of state law, as section 1983 does. See G.L. c. 12, § 11H. Most notably, Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, who *inter alia* deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States or the Commonwealth of Massachusetts. By

doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

The qualified immunity principles developed under section 1983 apply equally to claims under the MCRA. See Duarte v. Healy, 405 Mass. 43, 46-48, 537 N.E.2d 1230 (1989). "The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not 'clearly established.'" Laubinger v. Department of Rev., 41 Mass. App. Ct. 598, 603, 672 N.E.2d 554 (1996), citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); see Breault v. Chairman of the Bd. of Fire Commrs. of Springfield, 401 Mass. 26, 31-32, 513 N.E.2d 1277 (1987), *cert. denied sub nom.* Forastiere v. Breault, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 237 (1988); Duarte v. Healy, supra at 47-48, 537 N.E.2d 1230.

In enacting the Massachusetts Civil Rights Act, the Legislature intended to adopt the standard of immunity for public officials developed under section 1983, that is, public officials who exercised discretionary functions are entitled to qualified immunity from liability for damages. Howcroft v. City of Peabody, 747 N.E.2d 729, Mass. App. 2001. Public officials are not liable under the Massachusetts Civil Rights Act for their discretionary acts unless they have violated a right under federal or state constitutional or statutory law that was "clearly established" at the time. Rodriguez v. Furtado, 410 Mass. 878, 575 N.E.2d 1124 (1991); Duarte v. Healy, 405 Mass. 43, 537 N.E.2d 1230 (1989).

Section 1983 does not only implicate law enforcement personnel. The jurisprudence in this realm has also involved departments of social services, school boards and committees, fire personnel, and various other public employees. That being said, if the intent of the Senate is to bring the MCRA more in line with section 1983, anyone implicated by section 1983, will likewise be continued to be implicated by the provisions of the MCRA. Notably, the provisions of the MCRA are far broader, which should be even more cause for concern for those so implicated.

Section 10 of the Act further sets for a new standard for the so-called defense of "qualified immunity." Section 10(c) states that

> "In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law"

This definition represents a departure from the federal standard for qualified immunity, although the exact extent to which is departs from the federal standard is up for debate, at least until the SJC provides clarification on it. The federal doctrine of qualified immunity shields public officials of all types from liability under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Stated differently, in order to conclude that the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987). It protects all but the plainly incompetent and those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335 (1986). As a result, the standard sought to be created under Section 10 of the Act would provide public employees with substantially less protection than that afforded under the federal standard.

"Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223 (2009).

Furthermore, although the Senate's version of "qualified immunity" would only apply to state-based claims under the MCRA, what Section 10 proposes is fairly similar to that proposed by the 9th Circuit Court of Appeals in various decisions. In those instances where the 9th Circuit sought to lower the standard applicable to qualified immunity, the U.S. Supreme Court has squarely reversed the 9th Circuit, going so far as scolding it for its attempts to do so. See Kisela v. Hughes, 138 S.Ct. 1148 (2018); City of Escondido v. Emmons, 139 S.Ct. 500 (2019).

Although legal scholars and practitioners have a grasp as to the meaning of qualified immunity as it exists today, uncertainty will abound if this standard is re-written, upending nearly fifty years of jurisprudence. Uncertainty in the law can only guarantee an influx in litigation as plaintiffs seek to test the new waters as the new standard is expounded upon by the courts.

- **SECTION 39 (line 1025)**: The provision to inform both the appointing authority and the local legislative body of the acquisition of any equipment and/or property that serves to enhance public safety makes perfect sense. That said, to have a public hearing available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is very dangerous.

- **SECTION 49 (line 1101-1115):** This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers – including their own agency – when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. Did the Senate quickly forget about what occurred in Parkland, Florida on February 14, 2018? The learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. Public Safety 101.

- **SECTION 50 (line 1116)**: There seems to be a slight nuance to the amended language to Section 37P of Chapter 71 replacing "*in consultation with*" to "*at the request of*." Many police departments have had school resource officer programs in this state for 25 years or longer. The only reason why officers are assigned to the schools are because they have been "requested" to be there by the school superintendents - period. The reality is that many school districts even reimburse the police budgets for the salaries of these officers who serve as mentors for these young middle and high school students. If the Senate is being told that police chiefs are arbitrarily assigning officers to schools without first receiving a specific request from the school superintendents, they are being misled. The 2018 Criminal Justice Reform Act has very specific language that outlines the qualifications of an SRO, the joint performance evaluations that are to be conducted each year, the training that they shall have

and the language specific MOUs that must exist between the Schools and the Police Department. We are very confused as to why this provision needs to be included.

- **SECTION 52 (lines 1138-1251**: There are several recommended changes to data collection and analysis as it pertains to motor stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive system of data collection, benchmarking, review, analyses and potential consequences. While we continue to welcome data that is both accurate and reliable, the issue pertaining to the classification of an operator's race has still yet to be resolved. Before any data from calendar year 2020 has yet to be collected by the RMV and subsequently analyzed by a College/University selected by the Secretary of EOPSS, these provisions now look to complicate the matter even further before a determination has actually been made as to whether any problem of racial or gender profiling actually exists here in our state. We won't belabor the point, but this language appears to be what did not make its way into the Hands-Free Law which as you know was heavily debated for several months based strictly on the data collection component.

- **SECTION 55 (line 1272)**

  To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. […]." What should also be included is a commonsensical, reasonable and rational provision that states, "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

- **[Recommended New Section] Amends GL Chapter 32 Section 91(g)**: In order to expand the hiring pool of trained, educated, qualified and experienced candidates with statewide institutional knowledge for the Executive Directors' positions for both the *Municipal Police Training Committee* as well as the newly created *POSAC* (or POST), the statute governing the payment of pensioners for performing certain services after retirement, shall be amended to allow members of Group 4 within the state retirement system to perform in these two (2) capacities, not to exceed a three (3) year appointment unless specifically authorized by the Governor.

We appreciate the opportunity to weigh in with our concerns and recommendations and hope that you would give due consideration to what we have outlined above. Should you have any follow up questions and/or concerns please do not hesitate to contact either of us in the days or hours that lay ahead. We respect that time is of the essence regarding this important legislation and stand ready to assist if and when called upon.

We will continue to be bound by our duty to public service, our commitment to the preservation of life, and our responsibility for ensuring our communities are safe. We will not waver. Thanks again for your diligent efforts in drafting this comprehensive legislation for the House and in continuing to add credibility and transparency to our valued partnership in serving our respective communities.

Respectfully Submitted:

Chief Brian A. Kyes
President, Major City Chiefs

Chief Jeff W. Farnsworth
President, Mass. Chiefs of Police

ORGANIZED
NOVEMBER 3,1887

INCORPORATED
MAY 2,1949

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In Unity There Is Strength

July 16, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

This morning members of the Massachusetts Chiefs of Police Association Executive Board and representation from the Massachusetts Major City Police Chiefs Association had the opportunity to give a thorough reading and comprehensive review of the recently amended Senate 2820, "*An Act to Reform Police Standards and Shift Resources to Build a more Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*" submitted to the House on 7/15.

As we have mentioned to both the Senate President and the Speaker of the House during various conference calls over the last couple of weeks, we, as dedicated and committed police leaders, will continue to embrace the challenges that lay ahead, instill strong values into our respective agencies at all ranks, hold ourselves completely accountable for all our actions, and work through these difficult and turbulent times to build a more cohesive future for our communities. With that, we would very much like to be part of this continuing conversation as it pertains to any contemplated police reform, fully realizing that time is of the essence as the legislative formal 2019-2020 session begins to wind down rather quickly.

In the interest of expediency we would like to submit a brief list of bulleted comments in the paragraphs that follow in the hopes of providing some potential insight from our law enforcement/policing perspective that is laid out in this comprehensive 89-page Senate bill. To the extent that we do not have an issue or concern with a specific provision of Senate 2820, or we view it as beyond the scope of local law enforcement we will not mention it in this communication.

The list that follows corresponds to the Section Numbers in Senate 2820 with the applicable line numbers:

- **SECTION 4 (line 230)**: Under (iv), the provision states that there shall be training in the area of the "*history of slavery, lynching, racist institutions and racism in the United States*." While we certainly welcome any and all training that enhances the professionalism and understanding of our officers, we are somewhat perplexed as to why law enforcement will now be statutorily mandated to have such a class to the exclusion of any other government entity?

One would believe that based on this particular mandate that the issue of what is inferred to as "racist institutions" is strictly limited to law enforcement agencies which aside from being incredibly inaccurate is also insulting to police officers here in the Commonwealth.

- **SECTION 6 (line 272)**: In terms of the establishment of a POST (Peace Officer Standards and Training) Program, the various police chief's organizations here in our state wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards Accreditation and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* per se but has everything to do with *Certification* – and by implication "De-certification". In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies* (CALEA). Utilizing the word "Accreditation" in the title is definitely misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

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doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims.

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  To be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. […]." What should also be included is a commonsensical, reasonable and rational provision that states, "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation.

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We appreciate the opportunity to weigh in with our concerns and recommendations and hope that you would give due consideration to what we have outlined above. Should you have any follow up questions and/or concerns please do not hesitate to contact either of us in the days or hours that lay ahead. We respect that time is of the essence regarding this important legislation and stand ready to assist if and when called upon.

We will continue to be bound by our duty to public service, our commitment to the preservation of life, and our responsibility for ensuring our communities are safe. We will not waver. Thanks again for your diligent efforts in drafting this comprehensive legislation for the House and in continuing to add credibility and transparency to our valued partnership in serving our respective communities.

Respectfully Submitted:

Chief Brian A. Kyes
President, Major City Chiefs

Chief Jeff W. Farnsworth
President, Mass. Chiefs of Police

MASSACHUSETTS
CHARTER PUBLIC SCHOOL
ASSOCIATION

July 16, 2020

The Hon. Aaron Michlewitz, Chair
The Hon. Claire Cronin, Chair
House Committee on Ways & Means
Joint Committee on the Judiciary
State House, Rooms 243 & 136
Boston MA, 02133

Dear Chairs Michlewitz and Cronin,

As the Executive Director of the organization representing 74 of Massachusetts' charter public schools, I am writing to ask that you pass legislation before the end of the session to address issues of systemic racism in law enforcement that includes the 10-point plan released by the Massachusetts Black and Latino Legislative caucus and reform of qualified immunity for police.

Massachusetts' charter public schools serve approximately 5% of all of the Commonwealth's public school students, but 15% of the state's Black public school students. Our collective mission is to ensure that all students, especially historically underserved students, have access to a high-quality public education. And the truth is that while striving to deliver on the promise of educational equity is vitally important, unfortunately, it is not enough. Every day we are reminded that no matter what our Black students achieve in their lives, until we as a society are successful in fundamentally transforming our institutions, policies, and laws, our Black students' minds, self-worth, and bodies will continually be subjected to harm.

Specifically, we kindly ask that the following proposals be included in any police reform legislation taken up by the House:

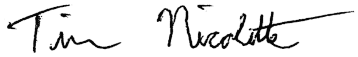
- Eliminate barriers to accountability by limiting "qualified immunity" for police officers.
- Create a statewide process for certifying police officers and de-certifying police officers for misconduct and abuse.
- Impose statutory limits on the use of force, including a ban on chokeholds and other tactics known to have deadly consequences.
- Increase data collection and reporting on race regarding arrests and police use of force by every department.
- Establish a commission on structural racism to study how the presence of institutional racism and culture of structural racial inequality impacts communities of color, especially as it relates to contact with the criminal justice system.
- Limit the presence of police officers in schools.
- Additional reforms that would seek to increase accountability, limit the potential for police brutality, and dismantle systemic racism in our law enforcement community.

Putting forward legislation that supports the 10-point plan released by the Massachusetts Black and Latino Legislative caucus, and which also includes language limiting qualified immunity for police officers, would represent a critical first step in eliminating barriers to accountability. As it relates to language limiting qualified immunity specifically, it would also help restore the ability of all of our state's citizens to obtain relief when police officers violate their legal and constitutionally secured rights.

We urge the Committee to act swiftly to adopt a comprehensive bill that encompasses all of these provisions as soon as possible.

Thank you, as always, for your leadership.

Sincerely,



Tim Nicolette
Executive Director, Massachusetts Charter Public School Association

SUPPORTING MASSACHUSETTS PROSECUTORS

MDAA

Massachusetts District Attorneys Association

July 17, 2020

The Honorable Aaron Michlewitz, Chair
House Committee on Ways and Means
24 Beacon Street
State House, Room 243
Boston, MA 02133

The Honorable Claire Cronin, House Chair
Joint Committee on the Judiciary
24 Beacon Street
State House, Room 136
Boston, MA 02133

Dear Chairs Michlewitz and Cronin,

On behalf of the District Attorneys, thank you for the opportunity to provide feedback on S.2820, *An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.* Given that the Senate did not release the printed bill as engrossed until yesterday, we respectfully request that you accept written comments until Monday, July 20th so that we could have a few days to review the extensive bill and provide further, thoughtful feedback.

Despite the time constraints, we have conducted an initial review and are deeply concerned with the authority of The Police Officer Standards and Accreditation Committee, established in section 6, to conduct an independent, and potentially simultaneous, investigation into a police officer's actions that result in serious injury or death. Upon receiving a complaint about a police officer, the Committee would have the power to subpoena documents, materials, and witnesses and hold hearings. General Law chapter 38, section 4 provides the District Attorneys with exclusive jurisdiction to "direct and control" death investigations, which are often technical and complicated. Any concurrent and independent investigation would jeopardize these cases, and potentially interfere with fresh witness accounts, chain of custody of evidence, and the release of information to the public during an active investigation.

We owe the victims of crime, and their families, a thorough, meticulous investigation, without the interference of a simultaneous inquiry by this Committee, regardless of whether or not the incident involves a police officer.

Thank you,

Anthony D. Gulluni
Hampden District Attorney
MDAA President

Massachusetts Law Enforcement Policy Group
295 Freeport Street
Boston, MA 02122

July 16, 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 Massachusetts Law Enforcement Policy Group on S.2820*

Dear Chairs Michelwitz and Cronin:

On behalf of the over 16,000 sworn police officers who make up the Massachusetts Law Enforcement Policy Group (MLEPG), we write to express our areas of concern with S.2820, *An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.* The MLEPG was created several years ago to serve as a coalition of the Commonwealth's major police unions and organizations to speak on Law Enforcement legislation and policy.

The MLEPG has been actively engaging with the Massachusetts Black and Latino Legislative Caucus on issues relating to improving policing in the Commonwealth. Through our discussions, we have reached agreements regarding: 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. We welcome the inclusion of these areas of agreement in a House bill. However, we oppose certain portions of S.2820. We oppose the composition of the new Police Officer Standards and Accreditation Committee ("POSAC") in S.2820 as being unfair and improper. We also oppose the provisions of S.2820 that improperly deny our members due process with regards to certification proceedings. Finally, we oppose changes to the judicial doctrine of qualified immunity that are not thought out, will create unintended consequences, and were not discussed at any point in meetings with the Black and Latino Legislative Caucus.

Due Process

As written, the POSAC will institute revocation proceedings against officers before officers are able to appeal discipline issued by their employers. This is a fundamental violation of the officer's right to due process. All public employees who are in unions have the right to challenge discipline through either arbitration or Civil Service. Other professions, such as

teachers, are overseen by boards. But teachers are able to arbitrate any discipline *before* proceedings are instituted against their licenses. This is only fair.

It is also common sense to allow the arbitration process to complete prior to institution of proceedings by POSAC. In this way, the POSAC proceeding will benefit from a complete record, and will not need to start from square one. This will not only aide the POSAC, it is fiscally responsible, and will avoid the need for the POSAC to have a large staff of investigators and hearing officers. The POSAC will need an annual budget of tens of millions of dollars to effectively function as written in S.2820. It would be irresponsible to not allow a record to be developed by the officer and his or her municipality, which will then aid the POSAC.

Qualified Immunity

The provisions of S.2820 (section 10) regarding qualified immunity would have unintended and far reaching consequences. Before reaching qualified immunity, §10(b) (found at line 559, page 27) dramatically alters the Massachusetts Civil Rights Act ("MCRA"), M.G.L. c. 12, §11I, by removing the requirement that a legal deprivation include threats, intimidation or coercion in order to be actionable. This is a huge change that will shift the majority of civil rights cases from the federal to the state courts. The state courts will be inundated with new cases. It is clear that the Senate did not factor into consideration the need to greatly expand the ability of state courts to hear cases that will be required if S.2820 becomes law.

Regarding qualified immunity, it is clear that S.2820 will not have a beneficial impact, but will have many unintended consequences. To be clear, qualified immunity does not protect knowingly illegal actions by police officers. Instead it only protects an officer who could not have known her actions violated the constitutional rights of another from being held liable for her actions. It is simply fundamental fairness – you should not be punished for something that no reasonable officer would have known was illegal.

Importantly, the changes to qualified immunity will not only impact police officers, but will impact all public employees. Many cases brought under the MCRA do not involve police officers, but involve suits against town officials, building inspectors, etc., for alleged violations of rights. This change will make suits against all public employees more prevalent.

The change to qualified immunity contained at §10(c) of S.2820 will not "close any loopholes" as claimed. Rather, it will create the need for the development of an entirely new body of law. Cases will be litigated that should have been dismissed. The cost of litigating these cases will fall to cities and towns, who will see legal defense budgets skyrocket. The only people who will benefit are the lawyers.

The change proposed to qualified immunity will lead to uncertainty, and will make all employees second guess their actions. Officers will be negatively impacted, as will efforts to recruit and retain good officers.

For these reasons, and because it is clear that the Senate did not fully understand the far-ranging implications of §10, we urge the House to create an expert commission to study qualified immunity and make detailed, and reasoned recommendations.

Composition of the POSAC

The POSAC created by S.2820 would be unlike any board overseeing any other profession. As proponents of the bill point out, many professions are overseen by boards. Those boards, however, are predominantly composed of members of the profession they oversee. Doctors oversee doctors, teachers oversee teachers, nurses oversee nurses, etc. Most boards do have community members, but a small minority thereof. The reason for this is obvious – those called upon to pass professional judgment on others should have professional experience. The committee established by S.2820 would have 15 members, and only 6 law enforcement officers. This is fundamentally unfair to the officers the board will oversee. 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.

In addition, the law enforcement members of the committee are predominantly police chiefs. A proper board should draw on the experience and knowledge of rank and file police officers. The POSAC should also include patrol officers from police unions who can properly represent the rank and file officers on the street.

Conclusion

As stated, the MLEPG supports many elements of police reform under consideration. But S.2820 is too overbroad, and was passed too quickly and without due input and deliberation. We know the House will give these important issues careful consideration, and we look forward to further input and discussion. Thank you for your consideration of our concerns.

Sincerely,

Lawrence Calderone
President, BPPA
MLEPG

John Nelson
Vice President, MCOP
MLEPG

MASSACHUSETTS LATINO POLICE OFFICERS ASSOCIATION

P.O. BOX 117 South Easton, Massachusetts 02375

website: www.masslatinopolice.org

July 16, 2020

Respectable Chair of The House Ways and Means Committee and the House Chair of the Judiciary Committee.

On behalf of the members of The Massachusetts Latino Police Officers Association, Inc. (MLPO). We ask your committee to consider all members of law enforcement and minority groups before passing Bill S2820. The approved bill by The Senate, will be making an irreversible change that would bear dire consequences to police officers and their respective communities.

We agree that creating a POST commission (Police Officer Standards and Training) is a necessary change and long overdue. We in fact welcome a certification and training mandate for all police officers across The Commonwealth of Massachusetts. However, the way bill S2820 that was voted on and the provisions it has attached to it threatens all the members of the public sector, as it aims to sweep away from public employees the fair and equitable due process and qualified immunity that ensures that no reasonable officers while in the performance of their duties is held liable for what may be perceived as racial or excessive force behavior.

If changes are to be made to qualified immunity, such change needs to be methodical and transparent. This cannot be done overnight, without proper protocols being followed. The fundamentals of due process and fair representation are being taken away from our profession. The bill S2820 passed by The Senate is unacceptable, it undermines our profession, public safety, and denies us the right to be heard and not having a say is clearly undemocratic.

This extremely dangerous legislation, S2820, that was passed by The Senate does away with basic protections that are currently set in civil service law. The Senate failed to include law enforcement and/or minority groups in any discussion, the Commission they have created is driven by anti-police groups, with a one-sided view of resentment towards police that is filled with biases and deemed incapable of being fair and impartial towards our profession. The Senate's bill has put good officers in jeopardy of civil lawsuits while in performance of their duties to protect their respective communities.

The Members of the Massachusetts Latino Police Officers Association, Inc, welcomes a uniform police training system across The Commonwealth, as such standards have been a long-awaited change. However, we are against rushing a knee-jerk reaction legislation that fails to look at all the risks that these hastily made changes will cost law enforcement and public employees in general. The cost of Senate bill S2820 is to astronomical to bear as it has been

presented. Therefore, we ask that you stop and do not pass this legislation in order to more carefully evaluate it before it becomes enacted into law.

The consensus is that reform is needed, the profession is not perfect and there is always room for improvement in policing. The proposed bill S2820 has too many concerns and requires your immediate attention. Those issues are enumerated below:

-Due Process should be maintained and all Police officers and public employees are deserving of a right to appeal and impartial adjudications.
-Qualified Immunity is only extended to those police officers and public employees who act "reasonably" and in compliance with rules and regulations. It protects the employee and the municipalities from lawsuits.
-The POST Commission needs to be equally represented by police officers.
-Bi-annual training for Use of Force, Firearms, Defensive Tactics, De-escalating Techniques, Crisis-Prevention/Intervention, aggressive behavior recognition/management, cultural diversity training, communication and second language classes need to be provided.
-Support for the MPTC's work on the standardization of training for all academies that are in place now (full-time, reserve intermittent and SSPO that currently exist should be grandfathered in)
-One standardized academy going forward for all officers of The Commonwealth regardless of the department.
-Officers to have free tuition or discounted classes for those who want to pursue further training/education in social justice, sociology, psychology, race and community relations and other courses/programs deemed necessary in the performance of our duties.
-Bring back mandatory in person-training vs all-online training.

In closing, I want to thank you for your time and consideration on this extremely important matter. The MLPO is here and ready to be part of the reform conversation. I ask The House of Representatives to effectively delay and vote no on S2820 legislation until more discussion can occur and a more sensible bill can be drawn up. Help protect the law enforcement officers and public employees from the harm of this legislation.

Sincerely,

Yessenia Gomez, President
Massachusetts Latino Police Officers Association, Inc.
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617-281-5953

MMA Massachusetts Municipal Association

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July 16, 2020

The Honorable Aaron Michlewitz
Chair, House Committee on Ways & Means
The Honorable Claire Cronin
House Chair, Joint Committee on the Judiciary
State House
Boston, MA 02133

Dear Chair Michlewitz, Chair Cronin and Members of the House Ways & Means and Judiciary Committees,

The Massachusetts Municipal Association wishes to express its support for S. 2820, important legislation to create a system for the training and certification of police officers, and make other needed changes to law and policy to improve and enhance the accountability of policing in the Commonwealth. This is landmark legislation that would help transform how law enforcement is practiced in Massachusetts, with a long overdue focus on racial equity in our justice system.

The provisions in the bill are important first steps, but much more is needed to ensure that cities and towns have the management authority to ensure that the spirit and the expectations raised in the bill can actually be achieved. Beyond S. 2820, state law must be changed so that local governments can effectively implement modern policing methods, and cases of misconduct can be swiftly and properly addressed at the local level, and not be undermined by the obsolete Civil Service system and the state's regressive collective bargaining rules. In addition to reforming state laws to empower cities and towns to hold public safety officers accountable, communities need flexibility in hiring and promotions so they can diversify local police, fire and other municipal departments. These are necessary steps to advance racial equity in our public safety system. There is an incredible amount of work that needs to be done, and we look forward to collaborating closely with you and your colleagues to advance these priorities.

The additional long-term priorities include the following:

Civil Service Reform

In a manner similar to the provisions in S. 2820 related to the State Police, municipal decisions to discipline police officers for excessive use of force or other acts of misconduct, such as racial discrimination and profiling or refusal to implement departmental policies, should NOT be appealable to the Civil Service Commission and subject to being overturned administratively. This important reform would provide a timely and effective way for cities and towns to act on misconduct and would complement the responsibilities of the proposed Police Officer Standards and Accreditation Committee (POSAC). This reform should apply to police, fire and all municipal departments.

In addition, cities and towns should have the authority to remove police and fire departments

from Civil Service without special legislation or through protracted negotiations. In addition to improving accountability, departing the Civil Service system would allow communities to make progress in adopting modern hiring and advancement systems to diversify their public safety personnel. We urge you to take into consideration legislation included in the Ten Point Plan released last month by the Massachusetts Black and Latino Legislative Caucus (H. 2292) filed by Rep. Russell Holmes and legislation filed by Rep. Stephen Kulik in the last session (H. 1410).

Collective Bargaining Reform

It is indisputable that Chapter 150E, the state's collective bargaining law for municipal employees, has created a system of unresponsive contract rules that make accountability of public employees for misconduct, particularly police and fire, almost impossible to implement. For a comprehensive analysis, please see this 2017 study of police contracts, which details the many ways that collective bargaining statutes have led to arbitration requirements and other provisions that undermine the ability of municipalities to hold officers accountable for misconduct.

We ask the Legislature to review Chapter 150E and modernize the law to clarify that discipline and termination policies, procedures and actions related to excessive use of force, racial discrimination and profiling, or refusal to implement departmental policies are fundamental management rights and are NOT permissible subjects of collective bargaining.

Chapter 150E should also be updated to ensure that use of force policies, use of body cameras, reporting requirements related to collecting and providing information regarding race, ethnicity and gender, decisions regarding whether or not to leave the Civil Service system and the replacement of that system, the creation of civilian review boards or other disciplinary review processes, and training on racial equity, implicit bias, de-escalation, use of force, are basic management rights and NOT permissible subjects of collective bargaining.

Almost all of the contract rules that undermine accountability have been in place for a very long time, added during a different time and without a full understanding of how the system would evolve. For example, having disciplinary decisions subject to arbitration may sound reasonable, except that the arbitration system has evolved such that it is quite common for an arbitrator to overturn or weaken a disciplinary action – arbitrators have a natural incentive to "find middle ground" so they are rehired in the future – but this is not in the public interest when it comes to use of force or racial bias.

Once in place, it is exceedingly difficult to remove these contract provisions, because new language needs to be agreed to by both parties, and management has been unable to win reform at the bargaining table. The situation is further complicated by the state-imposed "evergreen law" enacted in 2011, which continues all contract provisions (when an evergreen clause exists) until a successor contract is approved. This makes police and fire contract provisions related to accountability almost impossible to reform. The solution is to clarify in state law that the policies, procedures and actions listed above are inherent management rights, and are not subject to collective bargaining under Chapter 150E.

The Joint Labor Management Committee

Cities and towns have long been frustrated by the overreaching conditions and infringements on

management decision-making that have been imposed by the Joint Labor Management Committee over the years. After binding arbitration was repealed by the voters in 1980, the JLMC process was established in state law to provide a closure process for collective bargaining on police and fire contracts. The process has led to significant encroachment on municipal operations, far beyond salary and benefit decisions. In order for the reforms in S. 2820 and the Chapter 150E and Civil Service reforms listed above to be effective, the JLMC statute must be clarified to limit the agency's mediation and arbitration process to salary and benefit decisions only. Arbitrators should not have authority to recommend or impose any provisions that conflict with basic management authority, including discipline and termination policies, procedures and actions related to excessive use of force, racial discrimination and profiling, implementation of departmental policies, use of civilian review boards, use of body cameras, decisions about exiting the Civil Service system, hiring and promotional practices, racial equity training or training in general, and similar management prerogatives.

Qualified Immunity

The issue of civil actions against public employees is highly complex and multi-layered. The goal of providing individual accountability in our civil justice system is an important one to advance, yet there are many issues to address to avoid unforeseen impacts or consequences, such as exposing taxpayers to financial liability. Further, while the intent of the change is to address public safety, the language in S. 2820 is very broad and would impact the entire state and local governmental system. The qualified immunity changes as passed by the Senate would impact all municipal employees, far beyond law enforcement, and would also include public entities. Since a public entity is really the taxpayer, it will be essential to reach consensus on the actual impact of the proposed changes before enacting them. We strongly recommend a detailed and comprehensive study to understand and address all aspects of the qualified immunity issue.

Summary

We applaud the Legislature and Governor for prioritizing racial equity, and police standards, training and accountability legislation in the closing weeks of the legislative session. While we strongly support S. 2820 and similar legislation, it is important to recognize that these are first steps in a longer reform process. We raise the Civil Service, collective bargaining and JLMC issues, knowing that these will be challenging reforms to advance, yet certain that these are necessary to move the Commonwealth forward to ensure that we have modern and accountable policing and a diverse public safety workforce.

We look forward to working with you on these important issues. Please contact me or MMA Legislative Director John Robertson at jrobertson@mma.org if you have any questions.

Thank you very much.

Sincerely,

Geoffrey C. Beckwith
Executive Director & CEO

MORE THAN WORDS

Empowering Youth to Take Charge of Their Lives by Taking Charge of a Business

The Honorable Aaron Michlewitz
Chair, House Committee on Ways and Means
State House, Room 356 Boston, MA 02133

The Honorable Claire Cronin
Chair, House Judiciary Committee
State House, Room 136 Boston, MA 02133

The Honorable Denise Garlick
Vice Chair, House Committee on Ways and Means
State House, Room 238 Boston, MA 02133

The Honorable Michael Day
Vice Chair, House Judiciary Committee
State House, Room 136 Boston, MA 02133

July 17, 2020

Dear Chair Michlewitz, Chair Cronin, Vice Chair Day, Vice Chair Garlick and Committee Members,

Under the law, 18-year-olds are adults for the purpose of criminal prosecution. The law, of course, doesn't have children. Think about your kids, or young people you know. I imagine my own 8 and 10 year olds at age 18, and I know they will need guidance and support well beyond that milestone. Their late teens and early twenties will be marked by some bone-headed decisions. The idea of them going to adult prison for mistakes they may make at age 18 is gut-wrenching.

As CEO of More Than Words, a nonprofit empowering court-involved and system-involved youth, I am heartbroken seeing that exact circumstance play out time again. The youth who need us the most are derailed and criminalized rather than diverted and supported.

As the House takes up S.2820, I am asking for your leadership to include language to raise the age of the juvenile justice system. This is a crucial issue for racial justice. Only 25% of Massachusetts' young adult population is Black or Latino, but 70% of young adults incarcerated in state prisons and 57% of young adults incarcerated in county jails are people of color.

This move will align with brain science research, is backed by data and experience with effective diversion strategies, and will yield better outcomes for youth and our Commonwealth. Young people detained or committed to the Department of Youth Services (DYS) are mandated to attend school every day and have easier access to special education resources, decreasing their likelihood of dropping out of high school. By contrast, an adult record creates a barrier for employment. The DYS census is down, and there is capacity to serve these young people. We just need to lift up our sense of justice to use it.

Please listen to our young people. Despite COVID, they have been learning about advocating for Raise the Age legislation. You can hear directly from our youth on our website. We have also included some of their testimony in this document.

Thank you for your time and consideration.

With gratitude,
Jodi Rosenbaum, CEO
Youth of More Than Words

MORE THAN WORDS

RAISE THE AGE

YOUTH TESTIMONY

Johnathan, Partner at More Than Words

I think we should change this law. At 18, most kids are still in High School. It is different than if you do something and are 30 and have already gone thru that part of growing up and life. I was experimenting and figuring life out. The system doesn't have a good understanding of who I am and where I come from.

When you are a teenager, going to jail makes things worse. There is no support. You just go and do time. At DYS you have to go to school and get services. And, you are really stuck if you have an adult record. That is your future.

Jacob, Partner at More Than Words

Research has found that adult and teen brains work differently. Adults think with the prefrontal cortex, the brain's rational center. This is the part of the brain that responds to situations with good judgment and an awareness of long-term consequences. Teens process information with the amygdala, the emotional center. The connections between the emotional and decision-making centers of the brain are still developing until about age 25.The young adult brain is still developing; this development is influenced – *positively or negatively* – by their environment.

The first time I got arrested was just a few months after turning 18, this affected me well into my 20s. I am now close to 23 and a rehabilitated individual in contrast to the circumstances my life or mental health were once in. Throughout my case hearings I didn't have a full understanding of the judicial system/what it meant to take a plea/having a felony on my record, regardless of some lawyer interpretation. I hadn't yet been presented with the opportunity to learn about law in a way that could have helped me in this situation. Please consider my statement.

Kenny, Alumni of More Than Words

I am 24 years old. I came to the US from Haiti when I was 6 years old. I never had a family that took care of me. I was placed in DCF custody for abuse and neglect where I spent the rest of my childhood. I think I was moved around about 10 placements and picked up a few juvenile charges which were handled by juvenile probation.

When I was 18 I got adult charges for stealing with a group of youth. I went to jail for the first time for a few months. I was with people much older than me, many with much worse violent crimes. It is almost like a set up for failure. It really screws with your head. I wasn't convicted of those charges, and when I got out I completed my high school certificate, but DCF closed my case shortly after I got out of jail.

I was 19 and homeless. I didn't have any information about how to survive on the streets. Being homeless, you don't think clearly. I made a desperate choice to try and get money and was arrested. I didn't hurt anyone physically, but I shouldn't have done it. I don't think I had the best legal representation and took a plea for a felony.

I spent 3 years in state prison. It was tough. There is a lot that goes on in there. I went to solitary a lot of times because the environment was really hard for me to function. I was assaulted, I got in fights and once had my jaw broken. For a lot of people like me, prison is a hard place to make your best choices. There is a lot of yelling and screaming. There are a lot of drugs inside.

More Than Words was the only one who still stayed in touch with me while I was in prison. While I was there, I found out that I was also facing deportation to go back to Haiti where I hadn't been since I was a little kid. I finished my sentence but was transferred to ICE, but More Than Words found the right lawyer to help me. In Oct, 2018 I was released. Even though I was out, I was homeless again. I faced a lot of struggles to figure out how I would live my life as a 24 year old. MTW helped me find services and gave me the opportunity to work at MTW again.

I have been out of jail and getting on track for over a year and I am doing well. I should not have been in adult jail. I should not have been made homeless by the state. I was a kid. And the state didn't do everything to take care of me, but then it had no problem sending me to jail. I think it could have been a lot different if I went to DYS when I started to get into trouble. If I could have gotten more support past the age of 18. I am here now to share this with you to help make this change. I don't want other kids to go through what I did.

Katie, Partner at More Than Words

The harsh zero-tolerance policies of the school-to-prison pipeline puts disadvantages youths in prison with adults… In adult prisons they will lose out of opportunities that are available in the juvenile system like offers of educational, vocational, and psychological services as well as contact with family and friends. With these services it helps lower the recidivism rate. However, if the youth is put into the adult prison system, they're thirty-four times more likely to recidivate.

Instead of punishing youths, we should rehabilitate them, not ruin their lives before it has even started. We must show them compassion and sympathy. Massachusetts, please raise the age to twenty before putting youth into adult prisons.

Alidio, Alumni of More Than Words

I am writing from MCI Shirley prison, as I am currently incarcerated and serving a 4 year sentence. I am being held in a maximum security prison, and almost everyone in the unit with me is serving a life sentence. I was convicted as an Armed Career Criminal at the age of 20. How can you be a career criminal when you have hardly lived your life?

I grew up being involved in the court system, between juvenile court and the Department of Youth Services. DYS was persistent on bettering my future. I just wasn't ready to put the effort in. My caseworkers set me up with job interviews and programs, but I was still getting into trouble. The environment I was living in didn't promote work and school. I did not have stable housing, and was bouncing from couch to couch for a period of time.

By the time I was 18, I was fed up with dealing with the court system and having people tell me what I should be doing and listing all the things I was doing wrong. I did not feel like I had realistic options. I looked to my caseworker for guidance, but she was essentially forced out of my life once I "aged out of the system." I was disappointed to know that a person who committed to my well-being was now gone. The door shut on me when I turned 18.

It wasn't until I turned 20 years old that I really changed my perspective of what I wanted to do with my life. I know that if I still had my juvenile resources in my life until that time, I would've had more job opportunities, college options, maybe even my own apartment and driver's license. I just wish that I had those resources around me for a bit longer because I didn't actually want the help – and wasn't READY for the help – until it was too late for me. By then it was too late to look at the system for the help I wanted and needed.

The biggest failure of the court system was treating me like an adult when I wasn't one. No one stuck around after I turned 18 to help teach me to be an adult, and then penalized me when I made the wrong choices. For me, the adult system has been a waste of time. We should be taking the money spent to incarcerate young adults, and spend money on more resources for teens who can avoid being in that predicament to begin with - just by having what he/she needs while still a juvenile. The system bears the responsibility to help a juvenile offender or potential juvenile offender from re-offending or offending in the future. Raising the juvenile age wouldn't just help keep people of out adult prison, but it would also give them more time with resources they truly need, supports they are lacking, and more motivation into bettering they're futures to keep them off the streets and out of adult prison.

Samir, Partner at More Than Words

When people are young, they make mistakes. We all make mistakes. Just because you turn 18 doesn't make you an adult, you are still developing and working on yourself. People need more chances at that age.We need to increase the age so young people can finish their education and get services. that's what makes things safer. When you go to adult jail, it is traumatizing. youth are no longer thinking like a teenager when you send them there, locked up with people so much older. When youth get out of adult jail, they are not the same. You haven't helped them."

Jasmine, Partner at More Than Words

I have to say that I am severely disappointed. Young adults are able to be pushed into an adult prison. Especially people of color. That is not acceptable.

I have close friends of mine who have been thrown into jail when they were just minors. A friend of mine was in the foster care system, dealing with many hardships. He got thrown in an adult prison just because he was having struggles and made mistakes and no one knew what to do with him.

Why do you think it's acceptable to lock them up for 10 plus years because you don't want to do your job and help them? They're not able to finish school, get their diploma, rebuild their lives. It is time to stop throwing away the key. The appropriate human brain is not developed until you are 25.

How is someone supposed to learn from their mistakes if they're stuck in prison for the most of their lives? DO BETTER & BE BETTER. Period.

Milka, Associate at More Than Words

They think when you turn 18 you don't need any more help and you are completely developed. But when you're 18 you're still learning. It's not about the age it's about how your brain develops.

When you grow up in a community with a lot of violence and drugs it can be hard to get yourself on the right track, or get a job, it's easy to get involved in things that will lead you to jail.

JQ, Senior Partner at More Than Words

We should raise the age because being arrested and going to adult jail and being under 21 is not right. People's brains normally don't fully develop until around the age of 25. Some people have no choice but to accept the environment they're in, and sometimes it may not be a good one, sadly. This absolutely affects people when they commit crime is the environment they are in and the people surrounding them.

I have been in and out of jail a lot, unfortunately. It is almost entirely my fault. But it is also the government's fault. The reason I say that is that I was around these bad influences in school, in my neighborhood, almost everywhere I was, and caused me to want to be under the influence too. I would like for us to take action and do everything possible to raise the age in which people end up going to adult jail, if they end up in the sad situation of being arrested. It's just not fair.

Ryder, Senior Partner at More Than Words

I believe that everyone deserves a second chance. No one should feel limited or haunted by their past mistakes, especially if those mistakes are ones they made when they were young. I studied psychology in college, and one thing I remember is that our brains are not fully developed until our mid-20's. That is when our prefrontal cortex is fully developed, the part of our brain that determines our personality and helps with decision-making.

If people had determined my fate based upon my behavior when I was 18, 19, or 20 years old, I would not be working, and I would not be living independently. In fact, I would probably be in a psychiatric institution because I have a history of mental illness and doctors told me that I would never have a meaningful life outside of a psychiatric facility. I was able to prove them wrong, and create a life worth living for myself.

There are so many black and brown kids who don't get that opportunity to create a meaningful life for themselves. Instead of receiving the support, love, and kindness that they need, many are thrown into state-funded systems like DYS, DCF, and DMH, while many more are put in prison, with people much older than them.

When you try these folks as adults, when you treat them as though their brains are fully developed when they are not, you are setting them up for failure. This is why so many people, including myself, feel that this game is rigged and something needs to change.

Adam, Associate at More Than Words

It's your obligation to go through with this instead of condemning youth to a cycle they can't get out of. Youth you are imprisoning are legally adults who can't pay taxes. I don't want my money and taxes going to locking people up. This is irresponsible and shows you don't care.

Luis, Partner at More Than Words

Raise the age and continue raising it until we see improvements in our communities and positive outcomes. I believe that this will have the most positive outcomes because there will be less kids in the adult justice system. As citizens and taxpayers we would not be investing in the trauma being inflicted on young people. Lawmakers are responsible for this; young people shouldn't be in jail with much older people. You are condemning them to more trauma that will unravel this person. Generational trauma continues and you are the reason that happens because you choose not to listen to the citizens' needs.

If youth don't have stable household, and everything we are inflict on young people we are asking them to deal with alone when they are not developed yet. We need to invest in hopes and dreams before any crime happens. We should not have to pay this much after 18 to incarcerate if we can heavily invest in their schools, mental health

(these are things youth get at DYS) to combat generational poverty. We are still breaking the chains of colonization. 300 years this has continued generational trauma. This law affects people we know, people who struggle. If you care about young people of color, you need to support this. You have the power to prevent people of color from being caught in this.

Indigo, Associate at More Than Words

I'm 21 and I have adult charges hanging over my head…. There are youth who are like me who want into the medical field, who have the potential to achieve their goals, and it's not fair. I don't want to be stuck working a cashier position all my life.

Christina, Partner at More Than Words

I love that we are trying to get this Raise the Age done and pushing for something that needs to happen. So many kids today have to deal with so much that happened to them and forced to live in a reality where society doesn't love them and doesn't care where they end up.

I've never been to jail, but a lot of people in my family have. It hurts to wonder what we would have been like if it hadn't happened- if my uncle hadn't stolen that 1 thing from the store when he was 18. Would he and others be a happier family? I want to prevent that from happening to more people.

Everyone deserves a proper chance to get it together. I am almost 18 and I can't imagine going through the adult legal system as I am now. I barely feel able to schedule a Dr appointment by myself. It is wild to think about the # of people facing this part of our world they are not ready for yet. Raise the Age needs to happen. It needs to happen for the world, for the future of the US. We will be a better a place for it.

Shakye, More Than Words

I am asking for your support on raise the age. As you know youth under the age of 20's brains are not fully developed and we may make impulsive decisions that may get us in trouble. Throwing us into adult prisons is not the answer. Juvenile systems will allow us to be accountable but also finish our high school diploma.

Teens of color are not given the right and proper way of growing emotionally or mentally, which is caused by the lack of teaching programs in our community to help coach teens into the right direction. It is nearly impossible for our next generation to prosper because their parents have been caught up in the criminal justice system. Not allowing them to grow will lead to future generations without leaders that look like them.

Raise the age will give young people of color a real chance to be productive citizens of MA. Adolescents' mistakes should not hold them back. If Black Lives Matter to you, then you will support this bill and let equality be for everyone and not just those who can afford a high price attorney.

Kayla, More Than Words

They're charging kids with adult crimes. They're trying to make them do adult time. That just doesn't fit together. You are trying to make a child grow up too fast.

Sameen, Senior Partner at More Than Words

Young adults and minors, especially those who are of color, are getting targeted to be incarcerated and treated unfairly like adults due to situations they need help on which they do not receive.

It is baffling that in 2020, we are still facing this unsolved issue that is harming kids and their futures. Minors do not have fully developed minds, and need guidance and support no matter what they're like, what the situation is like, and what they do. POC kids can face discrimination and unfairness by the system as much as POC adults do, that that says something about the system. These kids need help. They need guidance. They need support in becoming a better person. When a minor does not receive that help, guidance, and support, and instead get sent to jail like adults, they are being set up for failure at such a young age. It can ruin their future. It can ruin their chance of getting a job. It can ruin their mental state further.

Alexis, Partner at More Than Words

I was born and raised in Dorchester MA, as well as my entire family. Growing up I came from poverty stricken neighborhoods where we didn't have much but we made the best out of what we did have. All my life I've been a victim to violence and crime, sometimes personally, sometimes from the outside looking in. I've grown up with friends who have been involved with DCF, DYS, both, or worse.

Although their actions were in no way excusable the people locking them up need to take into account that they are still human beings. They are still young adults learning how to maneuver through life. Some do not have the proper guidance or resources to make the best decisions.

You gather POC and throw them in these very poor, crime ridden neighborhoods where there is nothing to do but resort to the violence that they are being exposed to from the time they are children. This system was meticulously designed for POC to fail simply because of our skin color.

Let me elaborate. America is predominantly white totaling to a whopping 76.3%. Black/African Americans only make up 13.4% of the population, Natives/Native Americans 1.3%, and Asians/Asian American make up 5.9%. My point in bringing this up is POC make up about 80% of the jail population. Statistically speaking we are overpowered, yet we are still feared. People fear what they don't understand. Understand this, we are systematically cursed. We are products of generational curses. Understand we are no different from one another.

Please don't look at our children as a nuisance but instead grant them the same help and effort as you would one of your own. All they need is someone who cares not because they have to but because it's the right thing to do. Please raise the age for youth in the system so that they have a second chance at a new beginning. Show them that they do not have to succumb to the pressures of their everyday life, that there is a better way out.

Scott, Senior Partner at More Than Words

Youth don't get a record at DYS and so they have more opportunities to succeed with job applications and their future. The environment in adult system is not healthy. You are going to jail with people a lot older than you and it doesn't make sense when you aren't even grown and an adult yet.

I recently had a friend who got caught up when he was still in high school. He didn't get a chance to graduate. He made a dumb mistake and went to jail for over a year for stealing something and he had just turned 18. I hope he can get back on track, but it is really difficult if you are in that environment.

To survive in adult jail you have to get accustomed to that environment, the violence. So, when you come out, it is impossible to be the same person. When you come out, you are mostly changed but not for the better. You feel like everything is stacked against you. You don't feel like you know what a safe environment is; it is like being in a dungeon. It is hard to love a country when you don't feel like it loves you back.

Chris, Partner at More Than Words

The reason why I believe they should raise the age is because many people mess up and it's okay if you do that's life but what's not okay is destroying the rest of your life by putting you away in a locked cages like a dog. I feel as if it would be better to help the people not hurt them. Not to lie to them but to tell them it's going to be okay and make them feel as if they are part of something bigger than just a number.

Emilia, More Than Words

I truly believe that everyone deserves a second chance, and kids should get help. They should not have their entire lives ruined based on bad decisions they made when they were young.

We need you to pass the Raise the Age law. This will affect the future of so many youths. The livelihood of so many people are at stake. I know you want to make the world a better place for your children, grandchildren, nieces, and nephews. This is how.

Mako, Partner at More Than Words

I feel like raising the age at which one can be tried and incarcerated as an adult to at least 20 is a matter of common sense. It's pretty widely known that the human brain isn't finished developing until around the age of 25, so why are we treating young adults as though their brains are fully developed?

Why can someone be tried as an adult for a crime before they can legally drink or smoke? Why does our justice system feel the need to antagonize us from such a young age instead of trying to provide us with support, especially our Black and Brown youth? A person's entire livelihood does not need to get destroyed for them to learn - they need guidance and support for that to happen. We need to step back, take a look at the whole system, and start to rebuild it.

OVER 18,000 MEMBERS

Honorable Aaron Michlewitz
Committee on Ways and Means
State House Room
Boston, Mass 02133

Honorable Claire Cronin
Committee on Judiciary
243State House Room 136
Boston, Mass 02133

Dear Chairman Michlewitz and Chairwoman Cronin:

On behalf of our 20,000 members of the Massachusetts Police Association, representing campus, municipal, state and federal law enforcement professionals in the Commonwealth, I would like to thank you for allowing us to weigh in on the critical piece of legislation. An Act to Reform Police Standards (S2820) will shape the future of policing here in the Commonwealth.

Since 1900, the Association has worked with the legislature to advance professionalism in law enforcement. Although we have made gains since the civil rights movement of the sixties, we know there is much more to do. We join you in seeking to remove bias, racism and prejudice from policing. We agree that standardized training and education will place all Massachusetts law enforcement officers on equal footing. We have always promoted the idea that Massachusetts has the highest educated officers in the nation.

Although well intentioned, we believe S2820 is flawed in several important areas:

1. **Decertification Process**

   We feel that allowing POSAC to claim jurisdiction after one year regardless of the status of any local investigation infringes on the rights of the officer to collective bargaining rights and due process.

2. **Makeup of the Board**

   We feel that a separate 7 person board with a background in law, use of force, defensive tactics, firearms, psychology and social science serve as the decertification committee. Allowing civilians without experience or expertise to decertify an officer runs contrary to any other such oversight board in the Commonwealth. Are doctors or lawyers barred from practice by civilian review boards? Of course not and rightfully so

3. **Qualified Immunity**

We feel this issue so complex that any decision must be hashed out by legal scholars, academics and members of the judiciary. We asked that a body be formed and given an adequate period of time to report back with their findings.

We look forward to working with you to find solutions to make Massachusetts a place where all citizens can enjoy the freedoms and prosperity of this great country. Please contact us with any questions. Again, thank you for this important exchange of ideas.

Sincerely,

James Machado

James Machado
Executive Director
Massachusetts Police Association
Cell: 508-208-6001
Email: jmachado@masspolice.com

NARAL PRO-CHOICE MASSACHUSETTS

July 17, 2020

The Honorable Rep. Aaron Michlewitz
Chair, House Committee on Ways and Means

The Honorable Rep. Claire D. Cronin
Chair, Joint Committee on the Judiciary

Re: Testimony in Support of Police Accountability -- Use of Force Standards, Qualified Immunity Reform, and Prohibitions on Face Surveillance

Dear Chairs Michlewitz and Cronin,

On behalf of NARAL Pro-Choice Massachusetts, I write in strong support of the many provisions in S.2820 designed to increase police accountability. In particular, our organization urges you to:

1) Adopt strict limits on police use of force,
2) End qualified immunity, because it shields police from accountability and denies victims of police violence their day in court, and
3) Prohibit government use of face surveillance technology, which threatens core civil liberties and racial justice.

Our organization's mission is to protect and expand reproductive freedom for all people in Massachusetts. Reproductive freedom is more than the ability to decide if or when to have a family, it is the ability to safely raise a family. Systemic racism undermines this goal. The targeting, over-policing, and state-sanctioned violence against Black bodies is an assault against reproductive freedom that cannot go unchecked.

George Floyd's murder by Minneapolis police brought hundreds of thousands of people into the streets all around the country to demand fundamental changes to policing and concrete steps to address systemic racism. This historic moment is not about one police killing or about one police department. Massachusetts is not immune. Indeed, Bill Barr's Department of Justice recently reported that a unit of the Springfield Police Department *routinely* uses brutal, excessive violence against residents of that city. We must address police violence and abuses, stop the disparate policing of and brutality against communities of color and Black people in particular, and hold police accountable for civil rights violations. These changes are essential for the health and safety of our communities here in the Commonwealth.

Massachusetts must establish strong standards limiting excessive force by police. When police interact with civilians, they should only use force when it is absolutely necessary, after attempting to de-escalate, when all other options have been exhausted. Police must use force that is proportional to the situation, and the minimum amount required to accomplish a lawful purpose. And several tactics commonly associated with death or serious injury, including the use of chokeholds, tear gas, rubber bullets, and no-knock warrants should be outlawed entirely.

Of critical and urgent importance: Massachusetts must abolish the dangerous doctrine of qualified immunity because it shields police from being held accountable to their victims. Limits on use of force are meaningless unless they are enforceable. Yet today, qualified immunity protects police even when they blatantly and seriously violate people's civil rights, including by excessive use of force resulting in permanent injury or even death. It denies victims of police violence their day in court. Ending or reforming qualified immunity is the most important police accountability measure in S2820. Maintaining Qualified Immunity ensures that Black Lives Don't Matter. We urge you to end immunity in order to end impunity.

Finally, we urge the House to prevent the expansion of police powers and budgets by prohibiting government entities, including police, from using face surveillance technologies. Specifically, we ask that you include H.1538 in your omnibus bill. Face surveillance technologies have serious racial bias flaws built into their systems. There are increasing numbers of cases in which Black people are wrongfully arrested due to errors with these technologies (as well as sloppy police work). We should not allow police in Massachusetts to use technology that supercharges racial bias and expands police powers to surveil everyone, every day and everywhere we go.

NARAL Pro-Choice Massachusetts proudly supports the health, safety, and well-being of Black communities in our work and in our worldview. We acknowledge the painful and systemic problems caused by over-policing and the strong need for investments in communities, including a focus on healthcare, education, and economic opportunity.

S2820 takes meaningful steps to protect Black lives and reproductive freedom by limiting the use of force, banning tear gas, and limiting qualified immunity to ensure that those who abuse their power through violence and murder can be held responsible and that victims will get their day in court. Without police reform, we cannot achieve the justice and equality that the Black community has long been denied.

There is broad consensus that we must act swiftly and boldly to address police violence, strengthen accountability, and advance racial justice. We urge you to pass the strongest possible legislation without delay, and to ensure that it is signed into law this session.

Sincerely,

Rebecca Hart Holder
Executive Director
NARAL Pro-Choice Massachusetts

NEW ENGLAND POLICE BENEVOLENT ASSOCIATION, INC.

CORPORATE HEADQUARTERS

7 Technology Drive, Suite 102 - NEPBA Building

Chelmsford, Massachusetts 01863

www.nepba.org

"Representing New England's Finest"

"Representing New England's Fine

July 17, 2013

Sent Electronically To: Testimony.HWMJudiciary@mahouse.cov

Chairman Michlewitz, Chairwoman Cronin and Members of the House Ways and Means and Judiciary Committees,

Please accept this letter as the written testimony of the New England Police Benevolent Association (NEPBA) and its many locals and members from across the Commonwealth of Massachusetts with regards to SB2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color, which has been passed by the Senate and is now before your committee.

The NEPBA represents police and support personnel in more than 120 bargaining units across our State. Our members span the Commonwealth – they are from both large and small departments in Western, Central and Eastern Massachusetts Police Departments, all the way to the tip of Cape Cod. They are law enforcement working for our UMASS system protecting our students and university communities. The NEPBA family also includes the hard-working corrections officers and civilian staff in Middlesex County, Worcester County and Norfolk County. Our locals represent the best of Massachusetts' working families. I write to you on behalf of these members, and on behalf of those working families.

First, let us thank you for ensuring that there would be an opportunity for all members of the public, who so desired, to give their input, testimony, views and arguments for or against the many novel, and in some cases overreaching, provisions in this bill before any determinative action is taken by the House.

Second, it is our opinion that the bill that the Senate passed was much more about punishing the police than professionalizing them and bringing unity to the issue of racism. As a result, the Senate missed the opportunity of bringing everyone together in this just cause.

We stand here as citizens of the Commonwealth in support of ending racism and, as law enforcement officers, appalled by the actions that took the life of Mr. Floyd in Minneapolis.

However, we cannot, and nor should you, support Senate Bill 2820 which marginalizes those who have taken the oath to protect and serve all the other citizens of the Commonwealth while fulfilling their duties in the most dangerous situations in society. The following are just a few key issues that we would like to bring to your attention that unnecessarily degrade law enforcement officers and their careers and, which will eventually be to the detriment of those that they are to protect and serve.

1. Police use-of-force practices in Massachusetts are a success, not a failure, and there is no public emergency that justifies the hurried, extremely damaging fait accompli legislative process that produced Senate Bill 2820.

Based on a what everyone agrees was a criminal act in Minnesota, our Senate has put forth the premise that every police officer in Massachusetts needs to serve as a test-case for a national anti-police agenda. This effort, incredibly, authorizes the gutting of basic collective bargaining rights and civil service protections that are as synonymous with Massachusetts as the Boston Tea Party. In Massachusetts, we have long recognized that public employees are particularly susceptible to politically motivated employment decisions, and so, as a bedrock principle, our government has long assured public servants that they will be protected from discipline or removal absent "just cause." If SB2820 stands, that bedrock protection will be tossed aside for our police officers, making their careers once again – and in fact by design – subject to the political whims of those who openly seek to abolish much of this honorable profession. This is not necessary, and you should stop it.

Our use-of-force statistics are among the nation's best. Before you accept the false premise that Massachusetts policing is a failure that requires an emergency fix, take a look at the data. Even using national reform advocates data (reported on mappingpoliceviolence.org), police in the Commonwealth are among the best in the nation when it comes to deadly uses of force. We have an annual deadly use of force rate of only 1.2 incidents per million residents. That is an amazing success, considering that we police a nation that literally has more guns than citizens, that we are a heavily and often densely populated area with major to small cities, and that our communities are made up of many diverse cultures, languages and challenges. Adding to this success story is that our officers are able to accomplish this low rate while state and local leaders continue to pile more on our plates – traditional police work has evolved into handling just about every other societal problem that comes down the pike.

Ask your district's officers how they are doing in this area. Have you done your due diligence? Do not accept the national narrative that police are arbitrarily killing citizens - it is a false narrative. Look at the data from our state, and specifically from your district. Are you prepared to wipe out the due process protections and jeopardize the security of so many thousands of families without knowing what change is actually needed? For example, you will see that the City of Worcester, in the 7-year period tracked by reform advocates, has had ZERO use of force deaths (the one cited by their website was a taser incident which, contrary to their assertion, was not caused by the police, but was ruled a drug overdose by the state medical examiner). Likewise, the City of Lowell, where I spent my career as a police officer, has had only ONE use of force related death in that time period.

These are two significant cities, with many urban challenges, and between them in 7-years have had one police use of force death (justified) while handling millions of calls for service. In fact, of the deaths in Massachusetts in that 7-year period, all but 5 involved suspects were armed. Also, when anti-police hold out these so-called victims of police violence and ask us to remember their names, they include among them people like the Boston Marathon Bomber, and the despicable individual that murdered Auburn Officer Ronald Tarentino, a native of Tewksbury, in 2016. The marathon bomber injured and maimed 264 people in Boston and killed 3 others. Officer Tarentino was murdered keeping us safe, and here we sit in full view of the public and accept data that characterizes these killers and terrorists as "victims" in the name of emergency police reform? Are we still in Massachusetts? Are we still in America?

Most State Representatives will find that their own district's police officers have had no use of force deaths, and have very low rates of use of force complaints. That is the data you should analyze before deciding to eviscerate the rights of police officers, or aid the attempts by others to villainize this profession in a relentless drive to satisfy a social media driven sense of conscience.

There is no emergency that justifies forcing through legislation as fait accompli – setting out a pretext that something must be done immediately, before considering the results, before thoughtful examination and without transparency. That method will most certainly result in years of negative consequences. This is not speculation. We know there will be labor unrest and explosive labor related litigation. We know there will be an onslaught of litigation against communities that will be underwritten by the taxpayers – the Senate Bill expressly allows and encourages it. There are many mandates that are unfunded. There are baked-in impediments to officers actually doing the jobs. We are already seeing officers retire in record numbers and our departments will suffer an experience deficit. The public will pay the price. This is not speculation, and the more people use that label – speculation – the more it is apparent that nobody can say for sure, because nobody has really thought this through.

As you debate the nature and extent of reforms, now knowing that there is plenty of time for common sense legislative action, please keep in mind the following considerations: the role and function of any POST committee, the preservation of due process rights, and the truth about what qualified immunity is, and what the proposed changes will accomplish.

2. The POST committee – like every other professional licensing board in Massachusetts - must be comprised of a majority of experienced individuals from this particular profession, and its role should be certification and review – not independent crusaders.

Committee Make-Up. In the wake of the Minnesota incident, fueled by social media, the Massachusetts Senate has created a police licensing board made up of a minority of law enforcement members, mostly from management, and a majority of agenda-driven advocacy groups, many of which oppose and even sue police as part of their core missions. This is, frankly, outrageous both in principle and in practice. The matter under consideration right now – this legislative effort - instructs us that policing and using force requires extensive annual training and professional certification. We know that policing involves many dynamic, fast moving situations, and technically advanced weapons and response techniques. Departments require use of force trainers to be state certified instructors. Court's employ expert witnesses to explain force issues to juries because the technical nature of the profession is well beyond the knowledge of the layperson. Despite all of this, the Senate has seen fit to appoint a majority of untrained people to judge the actions of those who are trained. Not only will the majority lack the specialized knowledge, but they will be designated by political advocacy groups that openly oppose police and their practices. For example, the Lawyer's for Civil Rights, Inc. – one of the Senate appointees to the Committee – boasts on its website that it has made millions of dollars suing police officers. No reasonable person can agree this is either fair or an appropriate committee make-up.

GL c. 13 sets out all of the professional licensing boards in the Commonwealth. Look at them. All are basically the same make up – a majority of members must have several years of experience in the subject profession and be similarly licensed. Then, a small minority is comprised of experienced but related professionals, or in some cases citizens. The Pharmacy Board is mostly licensed pharmacists.

Same goes for the Board of Accountancy, Physicians, Podiatrists, Plumbers, Nurses, etc. No board is made up of a majority of people who are from outside the subject profession, and who openly oppose the profession. This is untenable and wrong. Can you point to any other professional board in our state that does this? If the idea of the board is to properly analyze a set of circumstances, then the board must also have the training and experience to make that judgment. Otherwise, the only function of this system will be to ensure arbitrary and capricious treatment of public employees.

You must not punish police officers by creating a licensing board made up of those who advocate against police. Design a common sense, professional committee that is consistent with every other licensing committee in our state.

Committee's Role. Governor Baker's original bill was 11-pages. It has since ballooned to 89 pages. The original bill set the role of the Certification Committee as a review board. In addition to training standards and re-certification, the board was tasked with reviewing conduct that, if sustained by the appointing authority, would result in board action based on that sustained finding. While this "sustained finding" system in the Governor's bill remains problematic (discussed below in Due Process Concerns), the review system the Governor proposed makes much more sense than expanded powers granted by the Senate.

In a use of deadly force incident, there is currently significant review in Massachusetts. Immediately, a State Police CPAC unit investigation is commenced, followed by a review and opinion by the District Attorney regarding whether force was justified and whether excessive force was used in violation of the criminal law. In addition, a Department internal investigation is performed, often by independent, outside agencies. That investigation determines whether rules or procedures were violated. If discipline is issued, the subject officer has a right to a hearing before the appointing authority (i.e. Mayor, Manager, or Select Board, etc.). If there is discipline, the officer then gets to appeal – for the first time in this process – to a neutral hearing officer or arbitrator. That person makes factual findings and a decision on discipline. Those findings – by this one and only neutral – are binding on all parties. This is consistent judicial and administrative precedent in Massachusetts and everywhere else in America.

Now, SB2820 proposes that this new Committee may disregard all of the above processes and professional review, and on its own, solicit complaints, investigate complaints, and make findings that may be contrary to binding findings on the parties. This is inconsistent with due process, any sense of fairness, and contrary to American jurisprudence. No other profession lives under such an arbitrary system. Allowing this politically designed committee to both solicit complaints and make its own findings, unbound by an advocacy process that is governed by just cause principles and neutral factfinders, cannot possibly achieve fairness.

The House should limit the role of any committee to review of established findings made pursuant to the same due process that is available to every other public employee in the Commonwealth. Police – because of the highly charged, often emotional, frequently violent, and always unsettling nature of their occupation - need this protection more than most.

3. Due process rights must be preserved.

Police, like teachers, firefighters, and state and municipal workers of all types, depend on protection from employment decisions that are politically motivated or not based on merit. All public employees in the country enjoy such due process rights. The government cannot remove a property right (in this case, a public job) without due process of law. This is right guaranteed by the US Constitution. In our state, that due process is also guaranteed for unionized employees by Collective Bargaining Agreements, and for civil service communities, by the just cause provisions of GL c. 31.

In fact, because Massachusetts was acutely aware of public employees' susceptibility to political employment decisions, it created the Civil Service Commission specifically to guard against employment decisions motivated by bias or political considerations, or something other than basic merit principles.

In this legislation, the Senate has expressly flouted the very reason for the creation of the civil service law. The Senate created an inherently political committee made up of many anti-police advocates, gave them the power to solicit complaints directly, the power to ignore binding findings of fact made pursuant to just cause analysis, and even allowed them to remove an officer's certification without the benefit of those basic due process rights. Moreover, they then expressly insulate themselves from the Civil Service Commission – the very body set up to guard against political or biased employment decisions not based on just cause.

The House must reinstate a police officer's right to appeal disciplinary decisions to the Civil Service Commission and make the Committee's actions subject to those full appeals. Any attempt to remove an officer's right to appeal to a neutral arbitrator (selected by both parties) would be an unlawful government interference with a Union's collective bargaining agreement, and a violation of the Contracts Clause of the US Constitution. These agencies are the only neutral factfinders in the entire process. Anything short of full due process is no due process.

It is very easy to envision a certification system that could protect all due process rights and allow the Committee to act on pending matters. New Hampshire has that very system, and regularly issues temporary restrictions on law enforcement certifications during the pendency of due process appeals. It is not a difficult goal to achieve if advocacy is not run amuck.

The definition of "Sustained Complaint" must be changed. Both the Senate and Governor's bill propose that a sustained complaint is one that has been appealed only through the appointing authority. At that point, having made such a finding, the Committee would be required to decertify certain officers. This process would remove the neutral appeals to arbitrators and civil service hearings, and would force the committee, and the officer, to rise and fall on the final decision of the appointing authority. This cannot stand.

As stated above, a neutral, advocacy-based process, does not happen until after the appointing authority has acted. In fact, long established legal precedent states that employees do not even have a right to a fair hearing before the appointing authority, nor should they expect one. The law acknowledges that appointing authority hearings – by nature – are unfair, and the law doesn't care, because employees do have the right to fair, de novo appeals to either civil service or arbitration. The proposed law would remove all fairness from the system, and stick employees with the admittedly unfair, final decision of the appointing authority.

The House must not accept this as the standard for police officers. No other public employees in our state suffers such unfairness. A sustained finding can only be made when an employee exhausts, or waives, his or her complete appeal rights under their CBA or GL c. 31.

4. Qualified Immunity.

Do not accept the assertion that there is not much of a change here. Not only did the Senate make it more difficult to get Qualified Immunity (essentially turning it into a fact issue to be decided at trial, as opposed to a legal issue a judge could weed out early) - but the real shell game is done by removing elements from the State Civil Rights Act, particularly the requirement to prove violations were done by "threats, intimidation or coercion," and also at the same time adding a provision for attorney's fees to be awarded to plaintiffs that sue police and other public employees. These two changes will create a flood of new state law claims against public employees to be brought in the state courts - as opposed to Federal Courts - where they will cost employees and Cities and Towns so much. This has been confirmed by recognized by experts in the field that represent Cities and Towns, not unions.

Some legislators are pointing to the lack of changes in the State Indemnification Law (GL c. 258) as a reason that officers should just not worry - suggesting they will still be defended against all of this expected onslaught. This is not true. GL c. 258 presently discriminates against municipal officers as indemnification for municipal employees (police, fire, local officials, etc.) is discretionary. Employers do not have to do it. On the other hand, people like state legislators and the State Executive branch enjoy mandatory defense and indemnification for up to $1,000,000.00 if they violate the civil rights laws

Also – please don't forget - the Massachusetts State Police have a special statute of their own - GL c. 258, Sec. 9A – which provides mandatory defense and indemnification for up to $1,000,000.00 for civil rights violations as long as they are not willful or malicious.

Under the Senate bill, only municipal employees – not just police but all municipal employees – will be left walking a tightrope without a net.

We urge you to strike the changes to the State Civil Rights Act and leave the long-standing law in place that protects good officers, good municipal employers, and taxpayers. Currently, an officer that uses excessive force can be sued – no change is needed for this. Excessive force allegations rarely result in Qualified Immunity. Those officers can be fired. Those officers can be prosecuted. No changes are needed for any of this. Do not put the careers and security of the many good public employees at risk to satisfy a need that does not exist.

The NEPBA respectfully requests that you address these serious and important concerns as you consider the legislative action before you.

Respectfully,

Jerry Flynn, Executive Director
New England Police Benevolent Association, Inc.

On behalf of the NEPBA and its members in the following member locals:

Andover Police Dispatcher's Union

Montague Police Officers

Andover Superior Officers

Montague Police Sergeants

Ashburnham Police

Natick Police Department - 911 Dispatchers Union

Natick Police Superiors Officers Assoc.

Athol Police Union

Newburyport Police Patrolman's Union

Ayer Police Supervisor's Union

Newburyport Police Supervisor's Union

Billerica Emergency Service Telecommunicators

Norfolk Correctional Officers

Billerica EMT Association

Norfolk Corrections Superiors

Billerica Police Patrolman's Union

North Andover Communications Officers

Billerica Police Supervisor's Union

North Andover Police Officer's Union

Boston Housing Police

North Brookfield Police Union

Boston School Police Patrolmen

Northampton Patrol Officers

Bourne Police Patrolmen's Association

Northampton Superior Officers

Bourne Police Superior Officers

Northbridge Dispatcher

Brookfield Police Union

Northfield Police Union MA

Carver Police Association

Orange Police Union

Carver Police Dispatchers Association

Palmer Police Union

Chatham Police Dispatchers Association

Provincetown Police Labor Federation (Patrol)

Chelmsford Police Supervisor's Union

Provincetown Police Superior Officers Assoc.

Chelsea Dispatchers

Randolph Police Patrolmen

Chelsea Patrol

Randolph Police Supervisor's Union

Chelsea Superior Officers Rockland Police Superior Officers

Union

Cohasset Police Association

Rockland Police Union

Cohasset Police Superior Officers Association

Salisbury Police Patrolman's Union

Dracut Police Dispatchers Union

Salisbury Police Supervisor's Union

Dracut Police Patrolman's Union

Shrewsbury Patrol

Dracut Police Supervisors Union

Shrewsbury Superior Officers Assoc.

Dunstable Police Union

Somerset Police Dispatchers Association

Everett Police Betterment Association

Somerset Police Patrol Officers Union

Everett Police Superior Officer's Union

Somerset Police Superior Officers Assoc.

Fairhaven Police Brotherhood Southampton MA Dispathers

Fairhaven Police Dispatchers

Southampton MA Police

Falmouth Police Lieutenants Association

Stoneham Police Supervisor's

Association

Falmouth Police Superior Officers

Tewksbury Police

Groton Superior Officer's Union

Tyngsboro Police Patrolmen

Groveland Dispatcher's Association

Tyngsboro Police Supervisor Union

Hardwick Police Union

UMass Amherst Police Dept.

Harwich Police Superior Officers Assoc.

UMass Boston Patrolmen/Dispatchers

Harwich Telecommunication Dispatchers

UMass Boston Supervisors

Haverhill Police Dispatchers

UMass Worcester Patrol Union

Holbrook Police Patrolmen's Union UMass Worcester Supervisors Union

Holbrook Police Superior Officers Union

Ware Police Patrol

Hubbardston Police Union

Wareham Police Communications Officers

Hudson Patrolmen's Union

Wareham Police Sergeants Union

Lakeville Police Association

Wareham Police Superior Officers Association.

Malden Superior Officers

Warren Patrolmen's Asscociation

Marlborough Police Patrol Officers

Wayland Police Officer's Union

Mass DOC Captain's Union

West Brookfield Police Association

Mass Port Authority Police Association

Westford Police Association

Mattapoisett Police Brotherhood

Weston Police Dispatchers Union

Maynard Dispatcher Union

Weston Police Union

Maynard Patrol Officer's Union

Weymouth Telecommunicator Union

Maynard Superior Officer's Union

Wilbraham Patrol Officers and Superiors

Methuen Police Dispatchers

Wilmington Police Dispatchers

Methuen Police Superior Officer's Association

Wilmington Police Patrol Officer's Union

Middleboro Police Patrolmen's Assoc.

Wilmington Police Supervisor's Union

Middleboro Police Superior Officer's Union

Worcester County Admin

Middlesex Correction Officer's Association

Worcester County Corrections Supervisors

Middlesex Civilian Staff

Worcester County Sheriffs

Middlesex Sheriff Superior Officers Association

Worcester Police Patrolman's Union

Hi my name is Nomari,

I am here to tell you my story as it relates to expungement.

Today is my eighteenth birthday. At the age of thirteen I caught my first charge. It was an assault and battery with a deadly weapon. My second case was for vandalizing school property which I was also expelled for. My third case was being charged as a runaway, and that's only 3 of 5 cases. Every court case I have had, have been dismissed but they are still on my record.

My record gets in the way of many things. For example, I want to go to college but I don't know if I will be eligible for student loans due to the fact that my record continues to follow me with the mistakes I made in the past.

That's why this bill is important to me because it will give me a second chance and others that are finding their records standing in the way of their futures as well. I was never found guilty; all my cases were dismissed.

I grew up in Lawrence and - no offence to Andover - but if I was a white kid living in the next town over, I probably wouldn't have this problem.

I NOMARI YANIS VEGA-COLON DESERVE A SECOND CHANCE!

Thank you for including an expansion to expungement in S.2820 in the House bill.

Sincerely,
Nomari Vega-Colon

Massachusetts – National Organization for Women Inc.

15 Court Square · Suite 900 · Boston, MA 02108 · Phone: 617-254-9130
massnow@massnow.org · www.massnow.org

HOUSE WAYS AND MEANS AND JUDICIARY COMMITTEES

TESTIMONY OF MASS NOW IN SUPPORT OF
S.2800, the Reform, Shift and Build Act
June 17, 2020

Dear Chair Cronin, Chair Michlewitz, Vice Chair Day, Vice Chair Garlick, and Members of the House Ways and Means and Judiciary Committees, I am Sasha Goodfriend, President of the Massachusetts Chapter of the National Organization of Women (Mass NOW). I am pleased to offer this testimony on behalf of Mass NOW, an organization that has been leading the pursuit of equity and building intersectional feminism in the Commonwealth for over 50 years.

I am writing to express my support for strong police reform and accountability legislation as the House considers S.2800, the Reform, Shift and Build Act, which recently passed the Senate. We must address police violence and abuses, stop the disparate policing of and brutality against communities of color and Black people in particular, and hold police accountable for civil rights violations. These changes are essential for the health and safety of our communities here in the Commonwealth.

We decry those who would argue that police reform would leave women and other victims of domestic abuse behind. We know that these victims, especially Black women, are already afraid to call the police as it may only escalate the violence. Victims must weigh the decision to call for help for themselves knowing that it may result in their partner becoming a victim of the responding officer. In fact, qualified immunity protects these responding police even when they blatantly and seriously violate people's civil rights, including by excessive use of force resulting in permanent injury or even death. For this reason we believe meaningful police reform must include ending qualified immunity.

We also know that LGBTQ youth are twice as likely to enter the juvenile justice system as their non-LGBTQ peers, while LGBTQ youth of color are 4 times more likely to be incarcerated as white youth. An estimated 85% of LGBTQ youth in the justice system are youth of color. Various forces contribute to the overrepresentation of LGBTQ youth in the juvenile justice system, including discrimination and stigma that increase the number of incidents of harassment and violence against LGBTQ youth. Discrimination and stigma may also result in policies and policing strategies that disproportionately target LGBTQ youth, especially youth of color.

Massachusetts has one of the worst racial disparities for youth incarceration in the country and lacks transparency on how our legal system responds to children and youth once they are

arrested and how they move through the system. Legislation to shed light on racial inequity in our juvenile justice system was stripped from the 2018 criminal justice reform legislation due to opposition to any transparency that would reveal the disparate treatment of Black and Brown youth by our legal system. Any police reform legislation would include data transparency measures that gather key demographic data at major decision points in the justice system.

There is broad consensus that we must act swiftly and boldly to address police violence, strengthen accountability, and advance racial justice. We urge you to pass the strongest possible legislation without delay, and to ensure that it is signed into law this session.

Thank you for your time,

Sasha Goodfriend
Mass NOW President
sasha@massnow.org

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE CHILD ADVOCATE
ONE ASHBURTON PLACE, 5TH FLOOR • BOSTON, MA 02108
MAIN: (617) 979-8374 • WWW.MASS.GOV/CHILDADVOCATE

MARIA Z. MOSSAIDES
DIRECTOR

July 16, 2020
Via Email

The Honorable Aaron Michlewitz
Chair, House Committee on Ways and Means

The Honorable Claire Cronin
House Chair, Joint Committee on Judiciary

Re: S2800

Dear Chairs:

As the Legislature and Executive Branch collaborate on legislation designed to address racial bias and disparate racial impact in police practices, create a certification process for law enforcement, and bring greater consistency across the state to the training police officers receive and the rules of conduct under which they operate, **I urge you not to forget a key segment of law enforcement that has a particular impact on the children and youth of the Commonwealth: School Resource Officers (SROs).**

There is reason to be deeply concerned about the way in which policing in our schools has an outsized negative impact on youth of color. National studies have shown that Black and Brown students are 3.5 times more likely to be suspended or expelled[1] than their white peers, and account for 34% of all school-based arrests[2] – more than double their 15% overall national enrollment rate. Data on the use of suspensions in Massachusetts schools shows a similar disturbing trend: according to data reported by the Department of Secondary and Elementary Education, in the 2018-19 school year, Black youth were more than twice as likely to receive an in-school suspension and more than three times as likely to receive an out-of-school suspension.[3] Unfortunately, as explained below, **our state is currently failing to report accurate data on school-based arrests, which could give us an even clearer picture of disparities in the use of policing in our schools.**

The Commonwealth has made efforts in the past to reform the way policing is conducted in our schools, including most notably in the 2018 legislation, *An Act Relative to Criminal Justice Reform.* Unfortunately, as described in a Fall 2019 report issued by the Juvenile Justice Policy and Data Board

[1] U.S. Department of Education, Office of Civil Rights (2012). The Transformed Civil Rights Data Collection: Revealing New Truths about our Nation's Schools. Washington, DC: OCR.
[2] Not including referrals to law enforcement. See: https://www.edweek.org/ew/projects/2017/policing-americas-schools/student-arrests.html#/overview
[3] See: http://profiles.doe.mass.edu/statereport/ssdr.aspx

(JJPAD), which I chair, **many of the new statutory requirements for SROs are not being fully implemented.**[4] This is primarily because:

- **No state agency was assigned the role of actively monitoring and supporting implementation** of the various provisions at the school district or police department level.

- **There are no enforcement mechanisms**: if a school district or police department is out of compliance with the law, there are no consequences that could be enforced by a state agency.

The legislation currently under discussion provides an ideal policy structure to remedy these challenges, as it creates a system that could be expanded to provide tracking and enforcement of provisions of 2018 law related to School Resource Officers that aren't currently being fully implemented.

Accordingly, I strongly urge you to address the following issues identified by the JJPAD Board in any omnibus legislation related to police training and certification:

1. Issue – Training for School Resource Officers:

In 2018, the Legislature recognized that SROs require specialized training, and included a requirement in the Criminal Justice Reform Bill requiring that school districts that have an SRO enter into an MOU with the local police department, and that as part of that MOU SROs would be required to receive training on child and adolescent development, conflict resolution and diversion strategies. (See Chapter 71 Section 37P).

However, **no state agency is currently tracking whether or not SROs receive the required training**, and **there is no enforcement mechanism** that prevents a police officer from serving in that role if they have not completed the required trainings.

There are **also no clear procedures for ensuring that the trainings meet a minimum standard of quality**, including ensuring that trainings are developed in consultation with subject matter experts.

The Municipal Police Training Committee (MPTC) was not required by the 2018 law to implement training on this topic. Although the MPTC has assembled a training committee to work on rollout and training delivery, there are competing priorities for the Committee's time, and training on this topic has not yet been made widely available to SROs more than two years after passage of the bill. There have also been anecdotal reports that there has been some confusion as to what exactly the Legislature was looking for with regard to the SRO training curricula, and that more clarity would be helpful.

Recommended Solution: The entity charged with certifying law enforcement should be required to create a special certification designation for any police officer acting as an SRO. No police officer should be given an SRO designation if they have not completed all of their statutorily-mandated training requirements, as well as any additional requirements that the certification agency may deem necessary.

To ensure that these trainings are of high quality and achieve the objectives intended in the 2018 legislation, the legislation should require that MPTC develop and make SRO training available, and

[4] See: https://www.mass.gov/doc/early-impacts-of-an-act-relative-to-criminal-justice-reform-november-2019/download

provide more clarity on what the training should cover. The MPTC should also be required to consult with subject matter experts on the subjects of child & adolescent development, conflict resolution and diversion strategies when developing the training curricula.

S2800 included, via amendment, language adopting this recommended approach. That language can be found in Senate Amendment #25, filed by Senator Boncore. The OCA requests that this language be included in the House bill.

2. Issue – Data Collection & Reporting: The 2018 law requires that MOUs between school districts and police departments "specify the manner and division of responsibility for collecting and reporting the school-based arrest, citations and court referrals of students to the Department of Elementary and Secondary Education (DESE) in accordance with regulations promulgated by the department."[5] DESE required school districts to submit data on school-based arrests for the first time in the 2018-2019 school year.

Although that data was not available in time for the release of the JJPAD Board's 2019 report, the Office of the Child Advocate has subsequently obtained and analyzed that data, and found that the vast majority of school districts – including major districts such as Worcester and Springfield – reported zero school-based arrest in the 2018-2019 school year. (Several other large school districts, including Boston, Fall River, Brockton, Lynn, Lawrence, and Haverhill, report only one arrest in the entire year.)

This is at odds with anecdotal accounts of students being arrested in these school districts, including some high profiles cases documented in local media. (See, for example, this report on a student arrested in a Springfield school in February 2019: https://www.masslive.com/springfield/2019/02/springfield-police-officer-under-review-following-arrest-of-student-in-school-hallway.html)

In other words: **the OCA has strong reason to believe that there are significant issues with under-reporting in the data provided to DESE by school districts.**

Recommended Solution: The previously-mentioned OCA survey of police departments found a large proportion (38%) of respondents said they were "unsure" who was responsible for collecting the data. This, as well as the significant under-reporting of school-based arrests in the first year of data, suggests that additional statutory clarity is needed. Ways to provide this needed clarity and increase reporting include:

- Designate which entity is ultimately responsible for reporting data on school-based arrests and law enforcement referrals to DESE.
- Require data to be publicly reported as part of an annual SRO approval process

S2800 included, via amendment, language adopting this recommended approach. That language can be found in Senate Amendment #80, filed by Senator Jehlen. The OCA requests that this language be included in the House bill.

Our state and our society are wrestling with serious questions about the role police should play in responding to societal challenges and how to best address racial disparities in our justice system. These questions and concerns are just as pressing when it comes to considering the role police play in our

[5] See MGL Chapter 71, Section 37P: https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section37P

schools. **An urgent first step the Commonwealth should take to address these concerns is to ensure that the reforms envisioned in the 2018 legislation are fully and properly implemented.**

Our office is happy to further discuss this issue you and/or your staff. Please contact Melissa Threadgill, our Director of Juvenile Justice Initiatives, with any questions. She can be reached at Melissa.Threadgill@mass.gov.

As always, I remain grateful for your leadership and support for the children of the Commonwealth.

Respectfully,

Maria Z. Mossaides
Director
Office of the Child Advocate

Professional Fire Fighters of Massachusetts

Affiliated with the International Association of Fire Fighters AFL-CIO CLC

Richard MacKinnon Jr.
President

Billy Cabral
Secretary-Treasurer

July 16, 2020

Honorable Aaron M. Michelwitz
Chairman
House Committee on Ways & Means
State House, Room 243
Boston, MA 02133

Honorable Claire Cronin
Chairwoman
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Dear Chairman Michelwitz and Chairwoman Cronin:

On behalf of the over 12,000 active members and 222 locals of the Professional Fire Fighters of Massachusetts (PFFM), I write to express our concerns relative to **S. 2820** ***An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color***.

We believe, and have expressed since the outset, the ongoing nationwide discussions about police, race and community relations present an unprecedented opportunity to improve police training and standards. We, along with the Massachusetts Law Enforcement Policy Group and Black and Latino Legislative Caucus, support the promotion of diversity, bans on chokeholds and excessive force, standardized training of procedures and protocols, and an independent body including law enforcement experts to oversee accreditation and certification.

However, we are concerned with the scope of S. 2820 and the precedent it could set for the rights and protections of not only public safety employees, but all public employees.

Specifically, the PFFM has concerns with the following policies contained in S. 2820:

1. The Lack of Due Process & Attack on Collective Bargaining

All public employee unions, including PFFM locals, negotiate language that requires any discipline or discharge to be supported by just cause. No public employee union is forced to accept an employer's discipline as the final word because of how frequently disciplinary decisions are incorrect, unsupported, or retaliatory. Every single Union has the right for any discipline to be reviewed by a neutral, experienced labor relations expert known as an arbitrator. Many public employees have an alternative right to seek review of discipline at the Civil Service Commission. The arbitrator or Civil Service Commission ensures the discipline was fair and consistent, and that the employer provided due

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President

Billy Cabral
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process and conducted a reasonable and objective investigation. Even teachers, following the Education Reform Act, have the right to arbitration if terminated for poor performance.

This bill eliminates that due process for police officers and creates a dangerous precedent for other unions. Section 6 of the Bill proposes to add Sections 220-225 of Massachusetts General Laws, Chapter 6. Proposed Section 225(a) states that the police officer standards and accreditation committee "shall revoke an officer's certification if: (ix) "sustained complaint of misconduct based upon conduct consisting of" for a variety of serious offenses, including unjustified deadly force, a hate crime, intimidating a witness, tampering with an official record; perjury; or failing a materially false police report. Meanwhile, proposed Section 225(b)(ii) permits suspension or loss of certification if the officer has "repeated sustained complaints of misconduct, for the same or different offenses." Proposed Section 220 defines "sustained complaint of misconduct" 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...."(emphasis added). Arbitration and civil service are appeals without or beyond the authority. As such, this legislation removes many forms of discipline from collective bargaining and civil service.

In the case of *City of Boston v. BPPA*, SJC-12077 (2017), the Supreme Judicial Court upheld an independent arbitrator's determination that an African American police officer was falsely accused by a white citizen to have used excessive force. The Arbitrator determined that the police officer and others were truthful and that the force used was not excessive. The SJC affirmed the right of police departments to determine the types of force considered excessive, without having to bargain the decision with a police union first. Had S. 2820 been in place at the time, the officer would have lost his job and certification and his case could not go to arbitration or civil service and any such decision would have no effect.

2. The Expansion of Civil Liability to All Public Employees

Sections 9-11 of S. 2820 propose to make multiple amendments to the Massachusetts Civil Rights Act (M.G.L. c.12, Section 11H). Currently, MCRA allows individuals to sue public and private employers, and public and private employees who violate someone's rights "by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion."

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Section 9 creates a new claim for individuals (Section 11H1/2) to sue public employers and agents for (a)(i) law enforcement officer deprivation of rights; and (ii) discrimination based upon protected characteristics. The latter would appear to apply to all employees. Section 10(b) adds Section 12 to the MCRA that allows individuals to sue if they feel their rights have been interfered with or attempted to be interfered with. All public employees are subject to this change. The proposed Section 12(c) then limits qualified immunity for all employees to a standard that is more favorable to plaintiff's attorneys than the federal standard.

In sum, we expose the creation of new causes of action against all public employees that holds them to a standard that provides us with fewer protections than under federal law.

The indemnification laws do not sufficiently protect public employees. Section 9 of Massachusetts General Laws Chapter 258 states "Public employers *may* indemnify public employees,..." up to $1 million. The Massachusetts Appeals Court ruled that such discretion on a case-by-case basis is a managerial right that is not subject to collective bargaining or interest arbitration. Elected officials, especially at the local level, are increasingly facing pressure to limit, if not end, indemnification for public employees.

3. The Bill Creates One of the First, if Not The First, Licensing Agency that is Not Composed of a Majority of Professionals.

Chapter 13 contains a variety of licensing or certification agencies for various professions. All, or nearly, all of them are overseen by boards whose membership are themselves in the trade or profession being regulated, whether nurses, dieticians, optometrists, electricians, pharmacists, and so on. Typically, a minority of each Board are representatives of the general public.

S. 2820 tips the scales against trained, educated or experienced law enforcement. Section 6, proposed Section 221 of S. 2820 creates a committee of 15 members. The 14 members appointed by the governor include representatives of: State Police; MBTA police; City of Boston Police; Mass Police Chiefs Assn; MAMLEO, ACLU; NAACP (2); Lawyers Committee for Civil Rights; retired judge; Massachusetts Black & Latino Legislative Caucus (2); veteran of criminal justice system; and one trooper or patrol officer. The 1 member appointed by the AG must be from a group advocating for communities with disproportionately high instances

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of police interaction. In other words, trained police officers will make up *no more than* six positions on the 15-member board.

The PFFM urges you and the Massachusetts House of Representatives to remove these policies from S. 2820 and revisit these specific issues with a special commission.

Additionally, we recommend that all language relative to qualified immunity be removed and S. 2820 be amended with the following language:

"A special Commission will be convened to study qualified immunity, consisting of four (4) legal experts in the relevant areas of qualified immunity and its impacts on public safety appointed by the Governor, the Senate President, the Speaker of the House, the Chairs of the Ways and Means Committees, and the House and Senate minority leaders, and a designee of the Supreme Judicial Court. The Commission shall study the issues of qualified immunity and file a report with the House and Senate Clerks within 180 days from its creation."

These commissions will enable a full legislative and public hearing process to ensure the opinions of all public employees are heard and robustly debated on these matters to avoid any unintended consequences and adverse legal precedent that could arise to the detriment of public employees, the backbone of our municipalities and the Commonwealth.

Massachusetts has a strong history protecting its workforce. Public employees and the labor movement have fought long and hard for the benefits we currently have. The PFFM and our brothers and sisters in public safety and labor, will not sit idly by as these benefits are eroded without our voices being heard.

Thank you for your consideration during these unprecedented times and I am available at your convenience to discuss these matters further.

Sincerely,

Richard MacKinnon, Jr.
President

cc: Massachusetts House of Representatives

Richard MacKinnon Jr.
President

Billy Cabral
Secretary-Treasurer

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COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

TIMOTHY J. CRUZ
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July 17, 2020

VIA EMAIL

The Honorable Aaron Michlewitz, Chair
House Committee on Ways and Means
24 Beacon Street
State House, Room 243
Boston, MA 02133

The Honorable Claire Cronin, House Chair
Joint Committee on the Judiciary
24 Beacon Street
State House, Room 136
Boston, MA 02133

RE: **Initial Review of Senate's Police Reform Bill**

Dear Chairs Michlewitz and Cronin:

Senate Bill 2820 is an extraordinarily complex and consequential piece of legislation that, as written, will have extensive impact (both intended and unintended) on law enforcement and our criminal justice system. Regrettably, we have only been afforded a few short hours to offer our response to this 89-page document, passed after only 17 hours of debate in the wee hours of the morning under cover of darkness. Due to the scope of the bill and the significant, and perhaps, inadvertent consequences of some of the provisions, I respectfully and strenuously urge the Legislature to schedule a public hearing on this legislation. I am expressing my intention to appear and to testify at such hearing.

This bill will have very severe and likely unintended adverse consequences, including at least; the immunization of police officers from criminal prosecution during investigations by the Standards and Accreditation Committee; imposing massive financial burdens on the Commonwealth's 351 cities and towns; criminalizing or making officers liable for what is today

lawful investigative conduct; and creating both liability and confusion for all state and municipal employees for conduct that may affect the property and other rights of all persons subject to the jurisdiction of the wide variety of municipal and state agencies and actors.

As a result of the time imposed for this response, I have included and expressed concerns regarding only a small range of proposed provisions at this time:

Section 6: Investigations of Misconduct by Commission:

These provisions (sections 222, 224, 225) provide the Committee with the power and authority to immunize police officers – both those being investigated and witnesses called before the Committee – from prosecution for any and all crimes about which the Committee compels statements. Because the Committee has power to adversely affect an officer's employment status, they have the power to immunize the officers who appear as witnesses, as well as any officer under investigation, from criminal prosecution. Such immunity would be conferred simply by compelling the person to speak to investigators or commission members. To protect against such grants of immunity the power or authority of the Committee should only be activated or invoked when the prosecuting authorities (the District Attorney and Attorney General) have certified that any criminal investigation or prosecution is at an end and that action by the Committee will not interfere with the criminal investigation or prosecution.

Section 10 re civil rights lawsuits and Qualified Immunity:

Currently, Massachusetts General Law Chapter 12, section 11H provides a right of action where any person interferes by threats, intimidation or coercion (or attempts to do so) with the exercise or enjoyment of any constitutional right. As drafted, Section 10 (a) mirrors this language and would authorize a private person who has had their rights interfered with (or attempted interference) by threats, intimidation or coercion to bring a lawsuit for injunctive or other appropriate relief, including compensatory damages, costs and attorney fees. Section 10(b), however, is far broader – it provides that a private person may bring a lawsuit for any interference with the exercise or enjoyment of any rights secured by the Constitution or laws of the Commonwealth. This provision is not limited to threats, intimidation or coercion, and arguably not even limited to unlawful conduct, and is not limited to police officers. So, a zoning board that affects property interests, or a health board that has the authority to regulate local businesses, will be subject to such lawsuits for injunctive relief and damages. Obviously this provision must be amended to protect against such interference with the enforcement of the laws. Also of significant concern is the authorization for a private person to seek an injunction against another person or government agency. While it may be appropriate for the Attorney General to be able to seek injunctions against other government agencies and actors, the threat of a myriad of overbroad and potentially conflicting injunctive orders against such agencies and persons by various courts could wreak havoc on the orderly administration of the laws.

Section (c) addresses and apparently attempts to limit the doctrine of qualified immunity. First and foremost, it would be most sensible, if the statute is going to limit the legal

doctrine of qualified immunity that this law should first explicitly adopt and provide a definition of 'qualified immunity' in clear terms that every police officer and every other government actor can learn and understand. Only after the law creates and defines a clear statement of what 'qualified immunity' is for social workers, DCF workers, court clinicians, public employees of every town and city, and/or any other public employees, as well as police officers, should the statute then attempt to place any limit on that qualified immunity. In other words, by explicitly adopting and defining qualified immunity, it will necessarily be limited to that immunity granted by the Legislature to all the employees of the Commonwealth's 351 cities and towns.

Second, as written, this limit on qualified immunity is phrased with a double negative phrasing that is difficult even for an attorney to grasp. It is unlikely that the vast majority of government employees, all of whom will be affected, will understand the limits of their lawful conduct. This provision seems to say that a person has qualified immunity from being sued and held liable if a reasonable person would have believed the conduct engaged in was lawful, or at least, the conduct would not violate the law. "Law" here probably means 'a clearly defined constitutional or statutory right', but again, without further definition this is not clear.

Third, while this section also contains a reference to Chapter 258 (the Mass. Tort Claims Act) and says this provision does not "affect' Chapter 258, "with respect to indemnification of public employees." If this language is intended to affirmatively provide for indemnification for negligence, it does not clearly do that, as a lawsuit brought under Chapter 12 is not a lawsuit under Chapter 258. Simply put, there is no indemnification provision at all under Chapter 12, and the Legislature would need to explicitly incorporate such a provision.

Finally, the potential effects of this statute are very severe, not necessarily for the largest and best-trained departments, such as MSP and MBTA and Boston, Worcester and Springfield, but for the other 350 law enforcement agencies protecting our small towns and cities across the Commonwealth. Each of those municipalities will bear the burden of defending lawsuits, acquiring insurance, and paying claimants as well as indemnifying officers and departments. These additional costs and expenses will mean making hard choices for after school activities, school sports, summer camps, elderly services, and all the other basic functions that our government serves.

Section 49 of Senate Bill 2820 effectively ends and prohibits the communication of information from school department personnel and resource officers, which will frustrate the enforcement of the criminal laws. For instance, if a student in a public school is suspected of murdering another person, the simple question of whether the suspect was away at a sporting event, or was a member of a particular club at school to confirm or dispel an alibi or opportunity to commit the crime, cannot be shared. Yet, under Section 50, that school resource officer is actually a sworn officer of the local police department, who is prohibited from communicating with his/her own department.

Section 58 will substantively change the legal standard (and significantly limit the availability) for authorizing "no knock" warrants, which are needed to guard against the destruction of evidence or escape of suspects, as well as to protect the public and police officers. There has been no showing that the Judges or this Commonwealth are improperly abusing their authority in issuing these warrants, and this new limitation is a solution in search of a problem.

There are many other sections that also deserve comment and further review, however, time is of the essence. In conclusion, assessment and consideration of this far-reaching bill without the opportunity for, and the benefit of, a public hearing is inexcusable.

Sincerely,

TIMOTHY J. CRUZ
District Attorney
Plymouth District

TJC:krs
cc: State Representative Gerard Cassidy
State Representative Josh Cutler
State Representative Angelo D'Emilia
State Representative David DeCoste
State Representative Susan Gifford
State Representative Randy Hunt
State Representative Patrick Kearney
State Representative Kathleen LaNatra
State Representative Joan Meschino
State Representative Mathew Muratore
State Representative Norman Orrall
State Representative William Straus
State Representative Alyson Sullivan
Southeastern Massachusetts Police Chiefs Association
Sheriff Joseph D. McDonald, Jr.

To Whom It May Concern,

This letter is a request on behalf of the thousands of good police officers in the State of Massachusetts. We urge you to think about the ramifications of hasty and uninformed decisions, and their effect on the constituents you serve.

While policing as a whole will always evolve, and always seek to improve - as it has demonstrably done since its inception - decisions predicated on politics will ultimately serve only the politicians.

For years now, police have fostered an interest in cooperation, we have embodied community, we have welcomed transparency and, we have served this State honorably.

Admittedly, there have been instances of unscrupulous actions by a few, but to our credit we have made sure that, with due process, they no longer serve the Commonwealth.

We have grave concerns, however, with some of the amendments of S.2800. Certainly, the rapidity of the development of this resolution epitomizes its' emotional underpinnings; however, we strongly believe that we should never make permanent legislative decisions based on temporary feelings. Some of the decisions in this bill will forever change policing in this State, and not for the better.

Due process is a building block of our legal system, and our inalienable rights as citizens of this country. All public servants in this state have a right to appeal, a right that does not alter ones' guilt or innocence, simply a right that balances the power of the State. It is one of the inherent checks and balances built into our Constitution by our forefathers. To remove such a right, is to remove Constitutional protections from the power of the State, and serves no purpose but to satisfy a political agenda. These protections that have been afforded to all of us are essential if the scales of justice are to remain balanced. Where does this infringement on civil liberties end if due process is lost to an impetuous decision? Can we also eliminate it in civil and criminal cases across the state?

Qualified immunity does not protect bad police officers. In Harlow vs. Fitzgerald (1982) the United States Supreme Court had the foresight to rule that qualified immunity must exist due to "the need to protect officials who are required to exercise discretion and the related public interest in encouraging the vigorous exercise of official authority" as long as their actions were within the scope of their job. Bad officers operate outside that scope and are punished accordingly. Removing this protection will essentially eliminate discretion in policing. As the courts have demonstrated, it is not feasible to have one without the other. In fact, in the same ruling mentioned above, the Supreme Court also established absolute immunity for judges, government officials and prosecutors. Should we now make judges culpable for their rulings? Should prosecutors and government officials be held civilly and criminally liable for their decisions? The plethora of frivolous suits filed against officers, their towns, counties, cities, and the State, would absolutely bankrupt Massachusetts in no time.

As officers we do not pretend to know how attorneys or judges do their job, but we can plainly observe them in court. Yet, to have officers sit and render judgement of their actions is clearly unreasonable and unequivocally ineffective. However, this legislation wants to establish a POSA to evaluate how officers do what they do, after the fact, with no experience or training as an officer? Again the Supreme Court demonstrated its unbiased wisdom when it ruled,

> "The Fourth Amendment 'reasonableness' inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation." (Graham v Connor, 1989)

Unless as politicians and activists we can honestly say that our wisdom supersedes the US Supreme Court, then it becomes essential that the POSA is comprised of police officers who can objectively evaluate the tenets that the courts have put forth as a metric for evaluation.

In closing, we will continue to pledge to work with you, but mutual respect and cooperation must exist if we are to make constructive and sustainable changes as policing continues to evolve within a changing society. Our voices are critical to building the best possible future of the citizens of this State. All we ask is the opportunity to be listened to.

Respectfully,

OFC. Paul J Lagoa
Walpole Police Dept.

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Warren E. Nelson, Jr.
Chief of Police

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July 17, 2020

Honorable Aaron Michlewitz
Committee on Ways and Means
State House Room 243
Boston, Mass 02133

Honorable Claire Cronin
Committee on Judiciary
State House Room 136
Boston, Mass 02133

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

Please accept my testimony below with regards to SB2820 - An Act to Reform Police Standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

I endorse both the Massachusetts Chiefs of Police and Massachusetts Police Association opinion regarding this legislation.

Finding qualified candidates for law enforcement is a problem that exists today for police departments and one that has been an issue for many years. This legislation with the qualified immunity language and without the careful thoughtful input from law enforcement will only make it more difficult to secure qualified candidates for employment in the law enforcement profession.

Thank you for the opportunity to provide my concerns with this legislation. Please feel free to contact me should you have any questions or require additional input.

Respectfully submitted,

Warren E. Nelson, Jr.
Chief of Police

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MICHAEL R. KENT
CHIEF OF POLICE

To: Chair Aaron Michlewitz
Chair Claire Cronin

VIA: Testimony.HWMJudiciary@mahouse.gov

From: Thomas P. Browne, Esq.
Burlington Police Department
Deputy Chief of Police
(781) 505-4910

RE: Public comments regarding S. 2820

I appreciate the opportunity to finally voice my concerns over the proposed Senate bill regarding police reform. I will begin by stating for the record that Massachusetts law enforcement is not without its issues and can certainly benefit from some changes. Everyone and every profession needs to change with the times, and we are no different. However, in order to achieve meaningful reform and obtain the necessary buy-in from all of the necessary stakeholders in this endeavor, everyone must be heard. It seems that the only stakeholders not heard from by the Senate were the representative law enforcement personnel that have the expertise, experience and willingness to participate in making the profession better. Aside from what the Senate may say, we were given no voice and we are being painted as the enemy – likely creating a contradictory effect with this legislation. As a point of clarification, I understand that this bill was passed by a 30-7 vote in the Senate. As such, my disappointment with the Senate in this letter is directed at the 30 who voted in favor. The seven who listened and credited the legitimate arguments against some areas of the bill have my respect and appreciation.

I would like to point out the areas of concern that I have with S. 2820.

1. **Emergency Status of the bill**
   The preamble to the Senate bill contains emergency language. This emergency preamble is being advanced to the detriment of meaningful reform. While admittedly there may be some instances of racist behavior in MA, there is no emergency that any Senator can point to, with clarity of purpose or factual basis, to illustrate any such emergency exists in MA. Every police officer I speak with has conceded that the actions of the officer in Minneapolis were abhorrent and inexcusable. However, no such action has occurred in MA, and this legislation is being rushed to appease a fraction of the Senate's constituency in the hopes they gain political capital. The problem is the haste with which this bill was passed in the Senate serves only to undermine the opportunity we have, together, to implement reform that achieves the desired and necessary results.

2. **Police Officer Standards and Accreditation Committee (POSAC)**
While I am not against the creation of the POSAC, I have a serious issue with the makeup of the committee. The bill states the committee shall be comprised of fourteen members. There are fifteen members illustrated (lines 283-297) and only six of the members are law enforcement personnel; the remaining 9 are from different segments that have an arguably divergent backgrounds and experience with law enforcement, despite the requirement that they have a familiarity with the police and/or criminal justice system. The unfairness of the makeup of this board is egregious for a few reasons. First of all, no other professional board is made up of other members rather than professionals within the given service. For example, the Board of Registration in Medicine is made up of doctors; the Board of Realtors is made up of realtors and real estate brokers; the Board of Bar Overseers is made up of attorneys. The common-sense approach of this is plain to see: those being judged for misconduct should be subjected to peer review. It only makes sense that someone be judged on professional conduct or misconduct by those who have the experience and vested interest in keeping their profession in top order. Look no further than science and education where any experiment, hypothesis or thesis is tested before peers. It makes sense and should remain. To dictate otherwise paints the picture that we do not handle our own, and this is inaccurate and offensive.
The makeup as contemplated in S. 2820 immediately puts law enforcement officers at a distinct disadvantage; real or implied; and puts an adversarial slant on the power of the committee. A POSAC is a great idea. Let's formulate it in a way that makes sense and allows the police to show we do have an earnest desire to keep our ranks filled with honorable, honest and hard-working professional police officers.

Second, the power of the committee is far-reaching and confusing. The POSAC has the power, as illustrated in the text of S. 2820, at lines 319-321 inclusive, of receiving complaints of "officer misconduct" from any person and may conduct an investigation independent of the appointing authority. Yet, there is no definition of officer "misconduct." As a current police administrator who handles disciplinary issues, there must be a sensible limit on the type of complaints that may be independently investigated by POSAC. Every department has a process for filing complaints and we should be allowed to handle minor complaints as we see fit. We know our officers and likely know the root of the causes for complaint. Some are misguided actions and will be corrected. Others may be the result of harassment by the complainant. Any officer can attest to the fact that there are far more frivolous complaints than justified complaints. For instance, if an arrested person believes that an officer was rude to them during booking because they were not allowed to make multiple phone calls or sit in booking instead of a cell, does this rise to the level of a complaint that may be investigated by POSAC. We already know from the language of the bill that the prisoner may file the complaint with POSAC. What happens then? Is this really what we envision our POSAC doing with its time? Minor, frivolous complaints should stay within the department at the appropriate level of the organization. A definition of "misconduct" must be included in the interest of efficiency and direction to minimize the risk that the POSAC is flooded with ridiculous and frivolous complaints against officers. As contemplated in the Senate bill, serious misconduct will be reported to POSAC, as it should, and will then trigger the other mechanisms for discipline and disclosure. Remember too, there will be a study related to

departments' joining the Massachusetts Police Accreditation Commission with a goal of full Accreditation. The standards allow for variations in how departments handle complaints; but it instills best practices which must be followed and the department will be audited for compliance during their assessments.

Most concerning about the POSAC is the fact that the Senate believes the chairperson of the POSAC, appointed by the Governor, may convene a panel of the whole body or a subcommittee (no number set forth) by which disciplinary hearings may be held. What due process rights are instituted for a police officer when their complaint may be conveniently placed on display before three members of the POSAC that have no genuine like or respect for the officer or law enforcement as a profession? Are we really to believe that a member of the ACLU will listen with an unbiased ear regarding a frivolous complaint against an officer when no one from the ACLU can likely name one practice of law enforcement with which they agree? And, why would we give such free-reigning power to the chairperson to effectively nullify members of the panel that he or she may not agree with ideologically? Nowhere in any other law has such patent unfairness been relegated to writing. By allowing this version of the bill to remain, politics and ideology has been injected into it, creating suspicion amongst the police and it is fraught for abuse by those who may seek to exploit us.

Furthermore, the collective bargaining rights of countless officers have been extinguished. Where is the fairness in not allowing an officer to appeal to civil service if they are a civil service employee? What faith are you showing to the Civil Service Commission by leaving in-tact their right to oversee actions of appointing authorities, but not the POSAC?

Equally troubling with the POSAC is the fact that an officer may be de-certified for certain disciplinary issues. I will not argue that some are common-sense and necessary. However, the text of this bill is overly broad and will result in unintended consequences and increased litigation in the court system. For example, in Section 225 at lines 462-463, the bill references false arrest. Does this introduce the possibility that a police officer may be disciplined and decertified if a clerk-magistrate decides not to find probable cause on an arrest and the district attorney's office decides not to appeal? Have we not left our officer out on a limb? If the committee has no inside understanding of how the court system works, how can they objectively rule on this type of disciplinary issue? In line 465, the bill states an officer can be disciplined for receiving a reward or gift on account of official service. We are already governed by the state ethics laws. Why is this necessary as it only further complicates existing law? Are officers able to assert a defense based on the ethics law to save themselves at a hearing before the POSAC? More troubling than this is the language that allows for decertification for an officer who has "repeated sustained complaints of misconduct" (line 478-479, page 23). Again, the term "misconduct" must be narrowly and specifically defined in the statute.

3. **Public Records changes**

Section 49 of the bill, at page 52, at line 1109-1110 inclusive, I find it disheartening that the public records law will change to allow for public disclosure of discipline against an

officer. However, in this same legislation, the Senate feels it is appropriate to shield from law enforcement, through an outright prohibition against school department personnel and **school resources officers** (yes, actual members of our own agencies) from sharing information related to suspected gang activity of students *or their families*. Where is the balance of officer safety and due process? How is it that a police officer that is reprimanded may lose all privacy, but a police officer assigned to the schools is prohibited by statute from complying with his or her own department policies in sharing information necessary to keep other officers safe, in the veiled interest of protecting the privacy of persons known to be involved in criminal activity? This is a bright line example of the Senate's ill-guided attempts at reform as they have made this a competing piece of legislation creating an "us versus them" mentality.

4. **Citations & Receipts**

   In regards to Section 52 at page 53, relative to a change in Chapter 90: the Senate would like to require police officers to fill out receipts any time they stop a vehicle and do not issue a citation or a warning. Many times in my career, I have stopped drivers for the sole purpose of quickly educating them on something they did incorrectly. Many of you have experienced this very thing. My motivation is to make sure they incorporate safe habits into their driving. The ability to exercise discretion is key – as it allows a quick interaction for enhanced safety of the officer and motorist. It also means less time of exposure of the violator to the motoring and/or surrounding public, as the violator is often a member of the community in which they are stopped. They get to go along their way with a quick admonition and likely appreciate the interaction being handled in this manner more than receiving anything in writing. With the passage of this section, I can guarantee I, along with thousands of other officers, will resort back to writing an actual citation or warning – and this has nothing to do with color. It has to do with efficiency. If I have to write anyways, it might as well count toward production. Again, this is an unintended consequence of this bill.

   Additionally, instead of making it the responsibility of the police officers to record the race and ethnicity of motorists, make it easy and require this information on the license. What good are your data collection efforts when the data coming in is prone to inaccuracy? This is a simple fix, yet the Senate wants to handcuff the police so that the issue of race can be pointed back in our direction. Why? You have the power to legislate this and resolve all doubt in favor of accurate records. For whatever reason, you choose not to and throw back onto the police the responsibility of handling it; whereas many senators have come out and said that we expect too much of our police with improper training and funding. Make a stand and correct this problem and the unintended consequences of incorrect data collection.

5. **Use of Force**

   To me, one of the most ill-advised sections of this law is found in Chapter 147A as illustrated on page 60 at line 1289 related to the definition of "imminent harm." Imminent harm, as defined in this section, obliterates the current legal principle related to "fleeing felon." I want you to imagine what this definition does to a police officer. By

definition in this bill, imminent harm "shall not include fear of *future* serious physical injury or death."

Imagine if you will a school shooter. The saddest part of this commentary is that every one of us can actually picture it. I work in Burlington. And my oldest daughter attends the school, with my other children in different schools in town. If I was called to an active shooter in this school and entered at a point where I saw the shooter and engaged, knowing he was committing or did commit murder, and the shooter stopped shooting – but actually failed to listen to my directions and commands and began to walk toward the pre-school that is housed within the Burlington High School; under the fleeing felon rule I could shoot him if I had reason to believe he was going to escape and continue to cause serious bodily injury or death on others and I had no other means to stop him. Under this proposed change, I could not neutralize him as a threat. Now, maybe well intended Senators believe that the world functions in a manner that would never require a police officer to shoot someone who is not actively engaged in a use of force; threatening death or serious bodily injury. But, I have just illustrated that it can happen – and this language ties our hands. Imagine for yourself if you have a child or grandchild in that school or pre-school and saw this unfold on video – the fact the officer knew, through objective reasonableness – that the shooter was headed toward the younger children – and the cop did nothing. The horror is unbelievable, and yet it brings up another question: is there still legislative immunity with this bill? Or, is it truly that the police are the only segment in the crosshairs? What happens when the parents of these murdered children sue the police? You have taken away our ability to act under the law where every officer I know will still act accordingly. Then, they will likely be sued because they knowingly, willingly and intentionally disregarded your ill-advised and reckless statutory wording.

In Section 2 (d) there is a prohibition on chokeholds. I do not disagree with this prohibition, but I strongly disagree with the fact it is a total prohibition. By the terms of this bill in lines 1311-1314 inclusive, a chokehold is never allowed. There is no allowance for a chokehold if it is our only option. What if that is the only thing that an officer can do to save his or her own life? Or that of another? What if every possible means has been tried and exhausted and the only thing that keeps me from stopping a person from taking my gun from me, or from a person trying to do so to another officer or citizen, is a chokehold and you have prohibited it. I now have to endure a long legal action when I have been trained, since day 1, to use any "tool of immediate means" to meet deadly force. We do not have to train on chokeholds, just like we don't train throwing rocks. I need only mention that Sgt. Chesna from Weymouth was killed with a rock. When you are in a fight for your life, any tool of immediate means may save your life. Whether it is a rock, a flashlight, a key, or the ground. Imagine whatever you will – but in a fight for your life, you will use any means possible. By taking away, through total prohibition, a reasonable alternative to our own death, you have instead opened us up for frivolous litigation. Had we been invited to the table; this likely would not be the case today. Would any of you not fight for your own life in such a circumstance? Or is it fair to ban chokeholds for every member of this society? Why not criminalize the actions regardless of who commits it?

Ultimately, this bill serves some of its intended purposes. However, what it also does is makes clear to me and thousands of other police officers, that we are the perceived problem. At what point are you going to make our lives and safety a priority? When are you going to enact laws that make a statement in support of the police? For instance, you mandate that we deal peacefully with protests. I agree – we should. But, when those protests take a bad turn, and we are having projectiles thrown at us; bodily fluids thrown at us, and assaulted; does it not scream fairness to stiffen penalties against those aggressors, as you have for us?

6. **Body worn cameras**
In lines 1588-1590 inclusive, there is language that requires regulations recommended by the taskforce include "provisions preventing an officer from accessing or viewing any recording of an incident involving the officer before the officer is required to make a statement about the incident." I implore you to look at this differently. It is very difficult as a police officer to find that most of this legislation is not aimed at us as the enemy – a paternalistic approach at reforming law enforcement as if we are the problems of society. It is disgraceful and illustrates that many of the Senators have never been in a situation that causes a true fight or flight physiological and psychological response; where we experience auditory exclusion, tunnel vision, slowing of time and PTSD. The mere wording of this section does nothing more than paint us all as liars – who would create a narrative that fits the picture on the camera. Maybe, as I have invited many of them to do but without any response, Senators should come in and participate in a shoot-don't shoot exercise for 20 minutes in order to get as close as possible to what we go through in stressful situations. Has it occurred to any of you that there are physical and psychological elements involved in use of force incidents? Has anyone ever wondered why an officer involved in a shooting may have no idea how many times he or she shot their weapon? Have any of you ever been in a motor vehicle crash and had no idea what happened? By forcing an officer to write a report based totally on an imperfect memory, further clouded by stress, is unfair. And it leaves no alternative conclusion than the desire to catch an officer in a perceived lie. The only explanation is that your own implicit bias against us leads you to the conclusion that we will lie to fit the video; when in essence it is very often that we have the same response as anyone else; which is based on pure fight or flight to the exclusion of good memory of minute details.

7. **Qualified Immunity**
I will leave this issue mostly alone because there are many more qualified experts to speak about this. But, I will state for the record that qualified immunity is not an issue in MA, and by working language into this bill, the Senate will create more frivolous lawsuits, impeding officers' ability to do their jobs and remain productive in their profession. When I connected with a Senator that voted for the bill and asked about qualified immunity, the exact response I got in writing is: *The qualified immunity piece, which definitely needs to b rewritten in the bill, I totally agree AND it is being worked on, is making qualified immunity qualified vs. total.* How does this make sense? The Senator admits that the piece of legislation, arguably most concerning to law enforcement, is acknowledged to be lacking in its desired effect but was passed anyway. Is this supposed to give any citizen faith in the transparency of our legislative process? Let's look back at

what one of the senators said during the debates as he spoke about qualified immunity. First off, he cites a case from 1991. If we have to go back to 1991 to illustrate a problem, then there is no emergency. Secondly, when he recites the facts of the case with dramatic inflection in his tone, it is hard to remember that the police officer at the time was acting under a search warrant, signed by a Judge or magistrate. There is leading jurisprudence throughout this country that favors warrants and when warrants are issued, any minor questions on the case, whether related to probable cause or ministerial error, will be decided in the officer's favor. Obviously, the fact the defendant was hiding drugs in her body cavity is not a minor or ministerial error and was very likely a material matter of concern to the Judge. The Senator then opines that it is not reasonable to believe the defendant would have been hiding drugs as described in the case but as police officers, I can guarantee that we have seen things not one of you would believe. That is again why we should have had representation during this process. Had this case come up, maybe we could have leant our professional insight to its relevance. To judge the officer from the vantage point of hindsight, with no background as to the case itself, is reckless. And he did so for the strict purpose of causing shock for the members of the public and other Senators who were listening and likely do not understand the basic concept of qualified immunity as it applies to law enforcement. For the Judge or magistrate to have given a search warrant to search that defendant's person – there was probable cause advanced by the officer. Whether you believe it could happen is immaterial. There was obviously information that led the officer to believe there was probable cause and the Judge agreed. How is this on the officer?

Another Senator during this same hearing seems to express concern about officers shooting someone that advance upon them with a pen. Well, as already stated, anything can be a deadly weapon depending on how it is used. And we must remember a police officer may use deadly force when confronted with deadly force; which includes in its definition the possibility of serious bodily injury. Let's ask any corrections officer if a pen can cause serious bodily injury. Her statements on the senate floor were incendiary and misguided and paint a picture that is not realistic. I have yet to meet anyone with real world experience that does not believe a pen could cause at least serious bodily injury.

My last point of contention with this bill is regarding the acquisition of military equipment. Senator Cindy Friedman sent a letter to her constituents explaining why she voted for this bill – and within it she explained that the police in her district are becoming more guardians than warriors. She is not incorrect in her statement. But, to think that the police will no longer ever need to react as warriors is misguided and dangerous.

Why would you put into a bill a stipulation for a public hearing, which puts us at a distinct disadvantage. Let me show why through an example. Assume the fire service was able to acquire military equipment that could defeat a biological terror incident. But, this legislation makes it imperative that they air this equipment and the technology out to the public – allowing anyone to see it and know the intricacies of why they may require it. Well, the by-product of what you've done should be obvious. The ill-intended now know how to change course and defeat this technology; or they at least know to go somewhere else where the technology is not in use. Is this the result we are after? Have

there been incidents in MA that requires such a drastic and draconian provision in this law? See, it is my opinion that this bill has lost its way on some of these measures. We, as police officers, must train for the worst and hope for the best. To do otherwise leads to drastic failure. Just like we carry guns – we do so for that one in tens of thousands of incidents that may require its use. But at least we have it. Why are we so against other equipment and tools that may become necessary? This world has changed and not one of you can honestly deny that it is safer than it was when we were all growing up. Another point that was made was the fact that we, as police officers, are "mean to start with." Well, if we cannot deny the fact that there are evil actors in this world, then why deny the fact that police officers that have command presence and good tactics are the way to defeat these very people?

To sum up my concerns for you I will say that the passage of this Senate bill takes direct aim at every good police officer. Although, as much as they say they support us, the Senate's actions speak to us much louder and clearer than their minimalist attempts at patting us on the back. We have said that we agree the system has some problems that need to be addressed. But, the police are not the system – we are one part of it. Imagine if the police had the ability to make a law that said only members of the legislature need to attend training on lynching and racism. Would it not label each of you as a racist? That is what the Senate is doing and I, on behalf of every police officer, ask you to reconsider this effect. If we truly want to fix a system, then the entirety of the system needs to be involved and in play. If you write the laws that we enforce, and the judges impose the sentences written in the laws, and probation and parole act under their statutory authority, why are the police the only profession requiring this training? The training is not the issue – but the unilateral, paternalistic virtue signaling, employed by the Senate in aiming just at the police is the direct issue. Lead by example.

It is very difficult for me to try to argue some of these points because the Senate has the best of both worlds. They can use the terms "racist" and" racism" as a sword and a shield. If the police try to argue facts, such as black on black crime and the true numbers of white on black police killings, etc, we are labeled racist. If we ask them to consider our point of view, by not labeling every cop a racist, their response has been "If the police can feel they are all lumped into the same category, why can't people of color say the same thing?' Well, the answer of course is that they can. The difference, however, is that they had a seat at the table and were allowed to discuss these issues. When I bring this issue to the forefront, I am told that hearings had already been held on different bills but the topics are being brought forward now – so our voice was heard. Well, I'm sorry to say that inviting public discussion on the data collection portions of the "Hands Free" bill is not the same as this legislation. This bill takes direct aim at every law enforcement officer in this state – and we deserved to be a leading stakeholder in determining its construction.

I will repeat one last time for purposes of getting the point across. The police are not against correcting bad behavior and getting things right. Unlike what some may think, we are not the enemy. We live and work in our communities, raising our children and making sacrifices like everyone else to make ends meet; to send our kids to college; and

be productive members of our communities and good neighbors. It is very hard to defend our positions to people who fail to listen. While we agree we have some changes to make, others must admit it to. When we are called to a scene and it happens to involve a person of color, what are we supposed to do? Has anyone taken into account that maybe the police and the system is not as racists as it seems? I can state as fact that the officers I work with go out of their way to treat people of color with the utmost respect in daily interactions. No one wants to be labeled as racist and it is way too easy to do so. If a caller reports a crime and the person is black, should we not respond? Of course not, but when we do, the leading piece of information necessary to tell the story - the fact a witness actually called the police – is too often left out of the story, which can make it appear that we are acting proactively with a racist motive. This creates an impossible barrier for us to overcome. It is up to you to correct these wrongs and we will work with you. But if we want true reform, then work towards making the correct and lasting changes that have the desired effect on the system; and that means the entire system, not rushing through this legislation that has the possibility of becoming a missed opportunity to keep Massachusetts law enforcement ahead of the curve.

One of my main fears with the passage of this bill is the fact that some officers within this Commonwealth will be paralyzed and will fail to act when it is necessary and proper. The taboo subject that needs to be remembered, and every police officer understands this: a proper use of force is not meant to be pretty – it is meant to be effective and certain. This is a reality. And certain aspects of this bill, due to a complete ignorance of what we are asked to do, is potentially tying our hands to the detriment of officer safety.

In no other profession is it possible to go from the penthouse to the outhouse as quickly as law enforcement – and when the worst in society occurs again – as we all know it will – we will still be here serving with honor and dedication. That is the one thing the Senate cannot take away from us!

Thank you for your time and consideration.

Respectfully,

Thomas P. Browne
Deputy Chief of Police
Burlington Police Department

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
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July 17, 2020

The Honorable Aaron Michlewitz, Chairman
House Ways and Means Committee
State House, Room 243
Boston, MA 02133

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

Dear Chairman Michlewitz and Chairwoman Cronin:

I write to offer testimony on Senate Bill 2820, An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

Thank you for providing this opportunity to provide feedback and testimony to this bill and for opening such opportunity to the public. Hearing, and genuinely listening to, the concerns of the public is a fabric of the legislative process and I am hopeful that the concerns which have been raised to me and I know to all members of the House are addressed in the language of this bill.

First, I must say that there is much in this bill that I am supportive of. These include the creation of a Police Officer Standards and Accreditation Committee to license law enforcement officers and ensure that proper standards are maintained, though the make-up of such committee remains wanting. The bill before us also incorporates a ban on chokeholds as well as a charge for a law enforcement officer to intervene when witnessing excessive force from another officer, these measures I fully support as well. Additionally, the charge for more and varied training to provide our law enforcement officers with the tools and the ability to do their jobs without the use of physical violence is long overdue. I am hopeful that we will not let this moment pass without finding common ground on these areas for good police reform rather than attempting to focus on more controversial items.

In particular, S.2820 includes sever areas that deeply concern me, and which I fear will irreparably alter police work, stripping our good police officers of the ability to do their jobs safely without concern for frivolous lawsuits. This will lead to a dangerous situation for officers on the job, as well as to many early retirements and a dearth of new recruits.

The issues that I remain genuinely concerned about in this bill include:

1- The complete elimination of Police Qualified Immunity. What is not being relayed by the calls to eliminate QU is the fact that currently police are not protected from acts that knowingly violate the civil rights, or that violate the laws or civil rights of others. However, as passed in the Senate, the language removing QI would have wide-ranging implications throughout State and municipal employees. This will lead to an incredible increase of frivolous lawsuits, not just of police officers, and will leave municipalities exposed to monumental financial liability.
2- Completely civilian oversight of licensing and disciplinary matters. While I am in support of POSAC in principal, and support having non-law enforcement play a role in that board, having the make-up of any licensing, certification, and disciplinary board be weighed in favor of those with no law enforcement experience is not acceptable to me. Nearly every other profession faces a licensing and disciplinary board made up of peers, police work should be the same
3- Due Process and collective bargaining. This bill eliminates the right to appeal and to due process for a police officer faced with a disciplinary decision. While admittedly I am not the loudest supporter unions, I firmly oppose us as a Legislature choosing our Police officers as the profession to begin to strip away collective bargaining rights and powers. Police officers, like everyone, deserve to have the right to appeal suspension and discipline. The bill as passed in the Senate does not provide adequate due process to law enforcement officers.
4- Elimination of policing tools and techniques while concurrently and in contradiction mandating de-escalation techniques. I certainly support improved training and the better use of de-escalation techniques. However, this bill seeks to eliminate the very tools necessary to carry out appropriate de-escalation with non-lethal force. Without these tools PO's would only be equipped with their voice and their gun, leaving no room for de-escalation before deadly force is introduced. I do not support taking tools of policing out of the hands of police departments.

I firmly believe that we are acting in response to a national narrative on police brutality that does not exist here in Massachusetts. I have worked closely with the Departments through my district and know them to be made up of genuine and good police officers. While bad officers exist everywhere, they are dealt with appropriately in MA.

Statistics provided at mappingpoliceviolence.org show that we do not have the scope of police brutality and deaths from officer-involved incidents that warrant legislation of this scope to strip our Police Departments of their rights, and the tools they need to keep our communities and themselves safe. Should this bill pass, I fear for the future of policing in the Commonwealth as good officers who feel abandoned by the Legislature will retire, and they will not be replaced by qualified and good recruits.

We have the opportunity before us to pass reasonable reforms providing better training, revised use-of-force standards, and licensing and oversight. I hope that we chose to focus on these attainable goals which will strengthen police work and build a better relationship between the Police and the community. However, this bill targets Police as a malevolent institution in need to reform. If passed as currently drafted it will threaten to further the fear, anger, distrust, and tension that has grown in the past several months between police and the community

Once again I thank you for allowing public comment on this important legislation and am optimistic that by hearing and listening to the stakeholders who reach out, we will be able to pass a balanced and good piece of legislation.

Sincerely,

Joseph McKenna
State Representative
18th Worcester District

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July 17, 2020

Representative Claire Cronin, House Chair, Joint Committee on the Judiciary
Representative Aaron Michlewitz, Chair, House Committee on Ways and Means
Representative Michael Day, Vice Chair, Joint Committee on the Judiciary
Representative Denise Garlick, Vice Chair, House Committee on Ways and Means

Re: Police Accountability Legislation

Dear Representatives Cronin, Michlewitz, Day, and Garlick,

Massachusetts Law Reform Institute (MLRI) submits this letter in support of police reform and accountability measures being considered by the House of Representatives. MLRI is a statewide, non-profit legal services organization whose mission is to advance economic, social and racial justice through legal action and advocacy. Following on the Legislature's important enactment of criminal justice reform in chapter 69 of the acts of 2018, we urge the House to give particular consideration to these three issues, which would further the goals of that law and would also help to eliminate structural racism in our society.

Limit Qualified Immunity. As reflected in House 3277, An Act to Secure Civil Rights through the Courts of the Commonwealth, sponsored by Representative Day, this bill would strengthen existing state law to hold enforcement officials accountable for violation of people's rights by updating the Massachusetts Civil Rights Act to place limits on qualified immunity—a loophole in the law that has made it nearly impossible for citizens whose rights are violated by police misconduct to hold police officers responsible for that wrongdoing..

Institute Use of Force Standards. House Docket 5128, sponsored by Representative Liz Miranda, would establish baseline use of force standards that are now not contained in state law: requiring police to de-escalate and use minimal force; banning extremely violent tactics, such as chokeholds, rubber bullets, attack dogs, tear gas, and other chemical weapons; creating a "duty to intervene" when officers witness an abuse of force; ensuring that police misconduct investigations and outcomes are public record; establishing oversight from the Attorney General for data collection and reporting; and directing the Department of Public Health to promulgate regulations for healthcare providers to report officer-involved injuries and deaths.

Allow for Additional Juvenile Expungement. The overwhelming number of young people who become involved with the juvenile or criminal justice system as an adolescent or young adult grow up and move on with their lives. In order not to burden these young people with onerous criminal records for decades to come, we urge the House to clarify the expungement law to:

- Remove the current limit for expungement to a single charge or incident. Some young people may need more than one opportunity to exit the criminal justice system and the overwhelming majority do without posing a risk to public safety.

- Distinguish between dismissals and convictions. Many young people who are arrested face charges that are later dismissed. Those young people should not have a record to follow them forever.

These changes in the law will remove barriers to employment, education, and housing, and give people of color who are disproportionately represented in the criminal justice system and who disproportionately experience the collateral consequences of a criminal record the opportunity to move on with their lives.

Thank you for your work on these important issues and for your consideration of our views.

Sincerely,

.

/s/

Georgia Katsoulomitis
Executive Director

TOWN OF BRIDGEWATER

POLICE DEPARTMENT

July 17, 2020

Christopher D. Delmonte
Chief of Police

Tel. (508) 697-6118
Fax (508) 697-0917

Hon. Rep. Aaron Michlewitz
Chair, House Committee on Ways and Means
Hon. Rep. Claire D. Cronin
Chair, Joint Committee on the Judiciary
Massachusetts House of Representatives
State House
Boston, MA. 02133

Dear Representatives Michlewitz and Cronin,

I am writing today to offer written comment on Senate Bill 2820 as amended, the so-called police reform bill. I will be brief and will offer an overview of selected sections in the bill.

The murder of George Floyd in Minneapolis, MN at the hands of former law enforcement officers recently was disturbing and shocking. We are angered and disgusted by this incident. As police leaders, one of our primary responsibilities is to serve and protect ALL people in our community. We are in the integrity business and should be held to the highest standards of honor and integrity, with the greatest appreciation for the sanctity of human life. There is always room for improvement in our public profession, but it must be done with careful evaluation and reflection to minimize unintended consequences. Please know we remain committed to this worthy objective.

Respecting everyone's beliefs and experiences may be different, I offer the following observations and concerns about Senate 2820 (where applicable):

SECTION 6: Police officer standards and accreditation committee. Although there is merit in a POST (Peace Officer Standards and Training) certification system, its effectiveness lies in the details. There appears to be an inherent conflict regarding investigations. If this committee independently investigates any incident, most appointing authorities will defer oversight to this committee rather than be proactive with discipline. It will be politically expedient and convenient. This may overwhelm the committee if all municipalities subscribe to this policy. Secondly, law enforcement is unique in that it is the primary governmental entity that goes into private homes or encounters people at the worst times of their lives. A public complaint process or online publication of every complaint, especially since many are the result

of an unfavorable decision or officers' action, will provide an opportunity for persons to "smear" an officer even without corroboration. This will have a chilling effect on officers in performing their duties and will ultimately compromise community safety. Investigative authority should be limited to incidents where death or serious bodily injury have occurred. This section requires more careful consideration and input.

SECTION 10: Qualified Immunity. There is much debate about this issue grounded in concern that any change will have serious consequences. I believe this will have negative impacts to communities having to defend more civil suits in state court regardless of the merits, which will ultimately impact officer's willingness to be proactive or take action unless specifically directed. Clearly, this section should be removed for further study.

SECTION 34 & 40: Local law enforcement and regional Law Enforcement Council application for military-grade controlled property from federal agency. Regional LEC's are a mutual aid collaborative of law enforcement agencies. Not all LEC's have the same structure but are very similar in scope and purpose. Purchase of military-grade property is not a major concern but this list of equipment found in the United States munitions list under 22 C.F.R. 121.1 or the department of commerce control list under 15 C.F.R. 774 may prohibit acquisition of safety equipment or items that could reduce the likelihood use-of-force is required. The principle may be compromised by the overly broad prohibition. We have also been advocating for several years to include all law enforcement council's in the Massachusetts Tort Claims Act.

SECTION 49: School Resource Officer information sharing. Information is the key to solving problems and preventing harm before it happens, particularly with young people. It makes little sense to limit sharing of information for a variety of practical reasons. School Resource Officers provide guidance to students and teachers, are a positive role model, divert children from more serious interactions with the criminal justice system, and also stands watch for potential threats. Information sharing is often what school officials are looking for from a law enforcement agency to help provide appropriate services to a particular student.

SECTION 50: Requiring a School Resource Officer. SRO's are invaluable to the school and to the law enforcement agency for a variety of reasons. However, even with funding, many agencies do not have the personnel to spare as a dedicated SRO. This may be because of budget cuts or not enough officers to cover their primary mission. Either way, it should not be mandated but left to community consensus.

SECTION 52: Racial or other profiling. As stated earlier, race-based policing is unethical, immoral, and illegal. It is something police leaders prohibit and seek to remove from it's practices. However, parts of this section were removed from earlier bills because the language was overly broad and caused confusion. As examples, the language refers to differential treatment based on "perceived race" and "whether intentional or evidenced by

statistically-significant data showing disparate treatment". Data collection is only valuable if accurate data is collected and effectively analyzed. This section further requires "receipt" for any police encounter if a citation or warning is not issued. This may encourage more formal sanction of either a citation or warning. Citations come with fines and warnings can lead to suspension of a license. Both may be unnecessary consequences for minor violations but are encouraged if a receipt must be generated anyway.

SECTION 54: Department of Public Health data collection for law enforcement related injuries and deaths. Data collection regarding death or serious bodily injuries resulting from law enforcement interactions could be valuable but officers file injury reports often for various reasons or suspects frequently claim injury to go to the hospital rather than sit in a jail cell. This needs to be refined for its intended purpose.

SECTION 55: Regulation of physical force by law enforcement officers. As a department we prohibit "choke-holds" as do many other departments. Officers do not prefer or seek to use force. In most cases, de-escalation is inherently preferred.

Section 2.(a) Strict liability - per se violations of this section will impact Qualified Immunity provisions and should be removed.

Sections 2. (e) States ... "use of the vehicle itself shall not constitute imminent harm." When it comes to split-second decisions, all factors must be included in the totality of circumstances in evaluating the threat posed to an officer. It is unreasonable and unrealistic not to consider a vehicle as part of that analysis.

Section 2.(f) Limits use of tear gas or other chemical weapon, rubber pellets, or release of a dog to "influence" persons. This section requires notification to police officer standards and accreditation committee who shall have investigative authority. Review of local police action should be the jurisdiction of the local authority, not an external civilian review board.

SECTION 58: Knock and announce rule should not be changed from it's current constitutional requirements.

SECTION 64: Relating to a "body-camera task force". There is potential value and merit in a standardized body-camera program, but that should not be limited in scope by the legislation but rather the task force itself and should include funding.

SECTION 65: Relating to biometric and facial recognition technologies. This type of data and intelligence could be invaluable for investigative purposes with little or no unwarranted intrusion, particularly if it is collected in public. Private cameras capture voluminous data every day and there is limited expectation of privacy concerns.

SECTION 68: Accreditation should be incentivized for all departments. We are one of the 93 departments already Accredited and believe it is a worthwhile endeavor. However, it requires commitment and allocation of resources to accomplish.

ALTERNATIVE RECOMMENDATIONS FOR POLICE REFORM:

1. Include the regional Law Enforcement Council's in the Massachusetts Tort Claims Act.
2. Promote professional and modern standardized training through creation of 3 regional comprehensive police training academies.
3. Promote accountability grants for programs such as body cameras and in-car video systems.
4. Incentivize and/or require participation in the Accreditation process.
5. Expand Civil Service eligibility list standards (2N + 1).
6. Remove or modify un-reviewable arbitration alternatives in disciplinary matters.

There are other sections of this far reaching bill that are non-controversial or could provide valuable change. Unfortunately, the bill is primarily aimed at police reform while law enforcement represents only part of the criminal justice system. The system must always be thoughtful and deliberate, and so too must reforms to root out injustice. A presumption or stereotype that we harbor an inherent racial bias or support discriminatory police practices or policies is inaccurate. We are imperfect human beings, but we work every day to build trust and earn the confidence of the people we serve demonstrated by our respect and compassion for ALL. A job we will continue to do honorably, ethically, and professionally.

Thank you.

Sincerely,

Christopher D. Delmonte
Chief of Police
President, Southeastern Massachusetts Law Enforcement Council (SEMLEC)

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

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Representative Aaron Michlewitz, Chair
House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

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

July 16, 2020

Dear Chair Michlewitz, and Chair Cronin,

I write to you in consideration of S.2820, *An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color*. It is my intention to reaffirm my commitment to supporting the leadership of our colleagues in the Massachusetts Black and Latino Legislative Caucus in their 10-point plan, including their state-focused policies described in points 5-8 of their plan.

The Massachusetts Black and Latino Legislative Caucus have identified four key policy reforms as their legislative priorities for the Commonwealth. The first concerns the implementation of a statewide Peace Officer's Standards and Training (POST) system as described in H.2146. The second creates an Office of Diversity and Equal Opportunity to create diversity plans for all agencies, and establish a peace officer exam advisory board, as described in H.2292. The third establishes a commission to study the systemic presence of institutional racism, as described in H.1440. The fourth adopts limits on police use of force, establishes a duty to intervene amongst police officers, grants broader reporting investigatory and reporting requirements to the Attorney General's office for officer-involved injuries and deaths, requires de-escalation tactics be attempted before using or increasing force, and updates public records requirements for investigations into police misconduct. These proposed policies can be found in HD.5128. I also support the restrictions on qualified immunity highlighted in H.3277. I support all of these policies and I hope that they can be incorporated into a final bill as the House considers police reform.

I was pleased to see the statement last month from Speaker DeLeo and MBLLC Chair Carlos Gonzalez in support of policies that were called a "first step along the long road to ensuring the promise of equal justice for all the citizens of the Commonwealth." It is my hope that, by continuing to work with the Black and Latino Caucus on their priorities, we continue to ensure that promise to all residents of Massachusetts.

Sincerely,

Ruth B. Balser

July 16, 2020

To: Chair Aaron Michlewitz and Chair Claire Cronin

Re: Police Reform Bill

Dear Sir and Madam:

I have been asked by the most excellent Norman Orrall to provide written testimony on the Police Reform Bill.

First, I am against the Bill in its present form.

I have never offered written testimony for legislation before. I have read the Senate Bill several times but am certainly not holding myself out as an expert on any of the issues contained in the bill. I have however lived a fairly long life, raised a family and run a business. I hope I am as well informed as I can possibly be and try to gather information from multiple sources.

I am also aware that in this time of pervasive social media we have a politically divided, volatile, sometimes violent, COVID-impacted country approaching an absolutely frenzied national election that will have generational consequences. The debate about this Police Reform Bill is not happening in a vacuum. It is marinated in political, social and economic issues.

I am hopeful that our elected representatives will conduct themselves in a sober and judicious manner. I ask that personal political interests be set aside and that the Police Reform Bill be drafted and voted upon after a deep look at history and lengthy consultation with experts and impacted individuals, regardless of race, religion, color, creed, national origin, gender or gender identity. In other words, I ask that our representatives be Patriots. Lives are most certainly at stake here.

My thoughts and questions about the Bill:

-It does not appear to me that adequate public hearings and input have occurred. If I am correct, the legislative session will be concluding very soon. Do not rush this legislation. It's too important. Unforeseen consequences are a natural side effect of shoddy legislation.

-What research has actually been done on the nature and extent of a Policing problem here in the Commonwealth? Let's try to tailor a solution precisely to a defined and actual problem.

-Limiting Qualified Immunity: I am against this. It appears that the proposed change would eliminate a presumption of qualified immunity for a police officer and replace it with the ability of that police officer to proffer qualified immunity as a defense after a finding that "at the time the conduct complained of occurred, no reasonable defendant could have reason to believe that such conduct would violate the law."

If this is the case, it could be much harder for a police officer to resolve a lawsuit in the early stages. It is better public policy to allow the individual police officer to retain qualified immunity. If I am correct, civil suit can still be brought against individual police departments and municipalities. Individual police officers can still be sued if the presumption of qualified immunity is overcome. If I am incorrect in any of this, educate me.

What are the liability insurance ramifications of this? How will this impact state and local budgets?

Most importantly, how will this proposed change impact the mental processes of a police officer defending an innocent citizen in a fast moving life or death confrontation with an alleged criminal perpetrator? Many of us have never been shot at, in a fight, thrown a punch or been smacked in the face. A trained law enforcement officer leaves home every day knowing that she realistically faces the possibility of this danger. A clear mind is needed. A mind filled with worry about possible multiple physically exhausting and financially devastating lawsuits, losing a home and not being able to care for your children EVEN IF YOU DID THE RIGHT THING could cause the good cop to second guess herself at just the wrong time.

Perhaps the best argument against modifying qualified immunity is the fact that no one in our legislature has suggested modifying it FOR MEMBERS OF THE LEGISLATURE. What is good for the goose is good for the gander. Thoughts?

-The Independent Police Officer Standards and Accreditation Committee:

This committee would have the power to revoke the "certification" of a law enforcement officer. I view a "certification" to be analogous with a "license" such as those held by doctors, lawyers, trade professionals, etc. in the Commonwealth. I have not done any research on this matter so I ask this question: Are other licensed occupations in the Commonwealth governed by a committee or board comprised of individuals not also in that occupation? I worry about the politicization of an Independent Police Officer Standards and Accreditation Committee and wonder whether robust debate on this issue is needed. The voices of impacted individuals are of paramount concern and must be taken deeply into consideration on all issues. I am just not certain whether the Independent Police Officer Standards and Accreditation Committee, as presently conceived is the proper vehicle to achieve public safety for all while still protecting the due process rights of an accused law enforcement officer. I am most willing to be educated.

-I believe that education of law enforcement officers (and for that matter, all citizens) on the history, culture, needs and concerns of the residents of this Commonwealth and this nation regardless of race, religion, color, creed, national origin, gender or gender identity is a very good thing.

-I believe that the screening process for new law enforcement officers needs to be intensified. I believe that consistent and regular training in the use of force, de-escalation, self defense and defense of others as well as overall physical fitness training should occur.

-I also believe that the Commonwealth should enact legislation that would educate the public on the very positive things that the law enforcement community, and for that matter, all first responders, do each and every day. It takes a very special person to run into a burning building or to run full speed towards the sound of gunfire. We need to appreciate that kind of person. We need to say Thank You.

Very truly yours,

David P. Cassella
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MAPC
METROPOLITAN AREA PLANNING COUNCIL

SMART GROWTH AND REGIONAL COLLABORATION

July 17, 2020

The Honorable Aaron Michlewitz
Chair, House Committee on Ways & Means
State House, Room 243
Boston, MA 02133

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

RE: S.2820, *An Act to Reform Police Standards and Shift Resources to Build a More Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color*

Dear Chair Michlewitz and Chair Cronin:

The Metropolitan Area Planning Council (MAPC) supports the passage of comprehensive policing reform legislation. We endorsed the passage of such legislation (S.2820) by the Senate but would encourage the House to strengthen it by including provisions that will further improve police recruitment, training, disciplinary processes, and accountability.

S.2820 includes a number of vital reforms that we support, such as the creation of a Police Officer Standards and Accreditation Committee (POSAC), requiring police training to include "history of slavery, lynching, racist legal institutions and racism in the United States," creating a Commission on the Status of African Americans, and adopting clear statutory limits on police use of force. MAPC believes these are all important actions that must be taken, especially the creation of POSAC to standardize, credential and train law enforcement officers in the Commonwealth.

Based on feedback we gathered through a series of discussions with mayors and town managers, we believe that the House can build on S.2820 to ensure cities and towns can shape their police forces and effectively discipline and remove officers that have a track record of misconduct and/or that lose certification by POSAC. Additionally, an independent prosecutor should automatically consider whether criminal charges should be pursued against officers that have been found to have used force illegally, resulting in serious injury or death. Lastly, we would ask that the House enable municipal governments to offer anti-racism training to all their employees, not just police officers; this is important to enable more equitable access to local services. These further reforms are described below.

Enabling Civil Service System Withdrawal

The current civil service recruitment system is a barrier to forming police forces committed to anti-violence and that reflect the diversity of Greater Boston. The use of a single exam to provide a list of potential police recruits is not sufficient to properly vet candidates. Communities that have left the system have found that a more robust and holistic recruitment process can be created outside of it. We therefore encourage the House to add a provision to its legislation that allows any community to take their police departments out of the civil service system by a simple majority vote of their Town Meeting or City Council. That provision should also ensure that leaving the civil service is not considered a working condition change that triggers renegotiation of collective bargaining agreements.

Streamlining the Arbitration Process within Collective Bargaining
The current arbitration and bargaining process makes it very hard for police departments to deal with poor officer performance, including the inappropriate use of force. Under the current system, officers who are repeatedly cited for violent or racist behavior can remain active for years while employment actions go through the protracted arbitration process. Cities and towns should have the ability to address violent or racist misconduct by police officers quickly and effectively. This could include changes to the finding of fact, arbitrator selection, and the opportunity for an arbitrator to substitute judgment. There are some forms of police misconduct that simply cannot be tolerated and should result in discipline and termination.

Making Certification Matter
The creation of a standards and accreditation committee for policing is a necessary step toward improving professional practices. Certification however will not be as meaningful as it should be if after it is revoked by POSAC, it does not lead either to disciplinary measures or termination of de-certified officers by local departments. S.2820 makes certification a condition of appointment for becoming a law enforcement office. It also ensures that revocation is not subject to appeal by the Civil Service Commission. S.2820 is silent on whether discipline or dismissal will follow the loss of certification. Local departments potentially could ignore a revocation or would still have to go through the drawn-out arbitration process to remove a de-certified officer. The bill should address this issue by making it explicit that an officer that has lost certification can no longer actively serve in a law enforcement capacity, or at least, require that a city or town pursue disciplinary action against said officer.

Ensuring Independent Prosecution of Illegal Use of Force
The legislation should establish an independent authority to prosecute cases where use of force by a police officer is in violation of state law (MGL Chapter 147A) and that has resulted in serious bodily harm or death. While the legislation enables POSAC to investigate complaints of such misconduct and revoke certification where a complaint is sustained, it does not ensure that illegal use of force cases are considered for prosecution by an appropriate authority, such as the Attorney General or an independent prosecutor. S.2820 only requires POSAC to notify a District Attorney or the Attorney General of illegal use of force complaints. To improve the legislation, the bill should enable POSAC to refer illegal use of force cases to the AG or an independent prosecutor at any time after a complaint is made. Furthermore, the bill should require that any time POSAC revokes an officer's certification for illegal use of force, it will also refer the case for criminal prosecution to the Attorney General or an independent prosecutor. The AG or an independent prosecutor should then be required to consider the evidence uncovered by the POSAC proceeding and make public whether they are pursuing an indictment. The language in S.2820 allowing the AG to take civil action against police departments with regular patterns of racist abuse or misuse of force is a strong addition to current law, but it is not a substitute for a transparent process that ensures independent prosecution of illegal use of force when appropriate.

Metropolitan Area Planning Council | 60 Temple Place | Boston, Massachusetts 02111 | 617-933-0700 | 617-482-7185 fax | **mapc.org**

Supporting Anti-Racism Training in Municipal Government
MAPC was pleased to see proposals to create a Criminal Justice and Community Support Trust Fund for "community-based jail diversion programs and community policing and behavioral health training initiatives", and the Justice Reinvestment Workforce Development Fund for community members to identify and fund programs that create employment opportunities for historically underserved and formerly incarcerated populations. We ask the House to explore ways to fund municipal programs for anti-racism training and education programs for municipal workforces, including but not limited to law enforcement. While S.2820 does include implicit bias training for police officers, other municipal officials would greatly benefit and need similar trainings and the funding to pay for it. Some communities have the financial flexibility to reallocate existing funding for training, but that is not true in many communities, and we must make sure that every community can afford these critical investments.

We recognize that these are challenging issues but believe these are important and necessary additions to any policing reform legislation. We respectfully ask the House to commit address these issues during upcoming deliberations.

Thank you for your consideration of our recommendations. If you or your staff have any questions, please do not hesitate to contact Lizzi Weyant, MAPC Director of Government Affairs at (617) 933-0703 or eweyant@mapc.org.

Sincerely,

Rebecca Davis
MAPC Deputy Director

MAPC
METROPOLITAN AREA PLANNING COUNCIL

SMART GROWTH AND REGIONAL COLLABORATION

FIVE PRIORITIES FOR STATE ACTION IN REGARD TO ISSUES OF POLICE VIOLENCE

The Metropolitan Area Planning Council (MAPC), in coordination with mayors and managers in our region, has developed the following five priorities for state action in regard to the issue of police violence in our communities:

1. **The civil service recruitment system is a barrier to forming police forces committed to anti-violence.** The use of a single exam to provide a list of potential police recruits is not sufficient to properly vet candidates. We must work together with the Governor and the Legislature to create a more robust and holistic system of recruitment for our departments. We will also pursue legislation that allows any community to leave the civil service system by a simple majority vote of their Town Meeting or City Council, and that ensures leaving the civil service system is not considered a working condition change that triggers renegotiation of collective bargaining agreements.

2. **The current arbitration and bargaining policies and processes that dictate the way our departments deal with poor officer performance, and especially the inappropriate use of force, make it very hard to address police misconduct.** Current arbitration and bargaining procedures mean that officers who are repeatedly cited for violent, biased, inappropriate, or racist behavior can remain in office. This needs to change. Since it will likely require legislation, we will pursue legislative strategies that give cities and towns the flexibility to quickly and effectively address misconduct by police officers. These could include changes to the finding of fact, arbitrator selection, and the opportunity for an arbitrator to substitute judgment.

3. **The state and federal government should provide cities and towns with funding for anti-racism training and education programs for members of the municipal workforces.** Within police departments, this means cities and towns must have the ability to provide ongoing training police officers on implicit bias, racial equity, and non-violent approaches to law enforcement. Some communities have the financial flexibility to reallocate existing funding for training, but that is not true in every community in the Commonwealth, and we must make sure that every community can afford these critical investments for law enforcement agencies, and for other municipal employees.

4. **We support the passage of legislation endorsed by the Massachusetts Black and Latino Legislative Caucus:**

    a. **Peace Officer Standards and Training (POST):** Create a POST system to certify police officers and enable de-certification for misconduct or abuse.

    b. **Civil Service Exam Review and Oversight:** Establish an Office of Diversity and Equal Opportunity that will create guidelines and review diversity plans for all state agencies; establish a Peace Officer Exam Advisory Board to review examinations for appointment and promotion of peace officers.

c. **Commission on Structural Racism**: Create a commission to study how the systemic presence of institutional racism has created a culture of structural racial inequality, which has exacerbated disproportionate minority contact with the criminal justice system in Massachusetts. The Commission must include people from diverse races and represent all parts of the Commonwealth.

d. **Adopt clear statutory limits on police use of force,** including chokeholds and other tactics known to have deadly consequences. Require independent investigation of officer-related deaths, and require data collection and reporting on race, regarding all arrests and police use of force by every department.

5. **Create an independent authority to investigate and prosecute the use of force by officers in all cases that result in emergency medical care, hospitalization, or the death of a civilian.** This independent body would have the authority to determine whether the use of force was justified consistent with state law and would have the power to prosecute cases where such force was not deemed necessary.

Metropolitan Area Planning Council | 60 Temple Place | Boston, Massachusetts 02111 | 617-933-0700 | 617-482-7185 fax | **mapc.org**

July 16, 2020

Chairman Michlewitz
Chairwoman Cronin
Member of the House Committee on Ways and Means
House Members of the Joint Committee on the Judiciary
Boston, MA 02133

RE: S2820 - An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color

House Members,

In the light of recent events, nobody will argue there is need for police reform. I do however take issue with removing Qualified Immunity (QI)for our officers. QI never protected Police Officers from suits over excessive use of force or malicious prosecution. It protected Officers from lawsuits; even if a ticket or case was thrown out, as long as it was in good faith an officer could not be held liable.

This bill as written, without QI opens the door for lawsuits when an Officer writes a ticket for speeding and it's thrown out of court for first offense, or an Officer makes an arrest for a crime and it's dismissed for the victim not showing up to court, which an officer has no control over.

Overnight the State Senate passed the police reform bill, so now it will hit the House, then Governor Baker's desk. Then it is law. "Police Reform" seems to be the new catch phrase, but I wouldn't say this was a reform. This is Police Impairment. Require body cams at every call, go back to two officers at every call. That's reform.

I'm literally disgusted, the nonsupport from some of our senators is appalling and frightening. It serves to undermine police authority, to hinder their ability to do their job. What will happen when officers stop traffic enforcement, community protection and other aspects of their job for fear of being sued by criminals? Anarchy is what will happen!

If this law passes the House as written, it will remove our Officers' QI, resulting in many frivolous lawsuits against police officers and municipalities. All Officers will be at risk of personal lawsuits, more so the proactive Officers. So, an Officer who goes out and actively seeks out criminals will face a greater likelihood of suits, but all Officers, just from their regular day to day call responses will be at risk as well.

Retirements will increase, proactive patrol will decrease, and high-quality candidates will be in low supply resulting in lower quality candidates getting the job. I know many that already are going to retire, and the ones that aren't yet at retirement age will make their side jobs their full-time ones.

Many police and firefighters have side jobs. They have to, especially here in MA, with the cost of living so high. We should be paying them enough, so they don't have to work two jobs. Now

on top of it all, if this gets passed, they are going to have to risk losing their homes, their freedom, their families-for what?

While there is room for improvement and reform is needed in many areas, this bill as written is not the answer. We need to back our Officers. We need to demand respect for our Officers who put their lives on the line every dam day!

I'm all for holding trainings and education as well as required re-certification but as written this is an attack against our Police Officers and I'm absolutely disgusted. We as tax paying citizens should have been given a say. Our Police should have been given a say.

Put this to the voters of the Commonwealth. Let the majority of the people speak for what we want, and you will see that this law is NOT what is wanted.

We owe our dedicated Officers something more than this ill-conceived and politically driven bill. It certainly does not unite us or show any support. In my opinion the bill's main goal and objective was to attack and discredit law enforcement to appease certain groups.

Please do whatever possible to encourage Governor Baker NOT sign this bill into law. We the people and our incredible Officers should be able to have a vote.

Thank you,
Priscilla Giroux
781-223-5030
Bellingham, MA, 02019

Thursday, July 16, 2020

Chairs Michlewitz and Cronin,

Thank you for accepting testimony on this important issue. I write today as the chair of the Issues Committee of Progressive Massachusetts, a statewide grassroots advocacy group with 18 chapters around the state committed to fighting for equity, justice, democracy, and sustainability.

The tragic deaths of George Floyd and Breonna Taylor in late May brought into stark relief the systemic racism and lack of accountability of law enforcement in the United States, something which communities of color have known and experienced for decades. Allowing police officers to violate the rights of civilians with impunity is an attack on the basic values we so often profess as a commonwealth and as a country.

The systemic racism of law enforcement is man-made, and we can undo systemic racism by intentional policy.

S.2820, the police reform and accountability bill passed by the Senate earlier this week, offers a solid foundation on which to build for ensuring that we have a more holistic sense of what public safety means.

The bill strengthens the use of force standards for all law enforcement agents, creates a majority-civilian Police Officer Standards and Accreditation Commission (POSAC) charged with certifying and decertifying law enforcement officers, establishes a Justice Reinvestment Fund to move money away from policing and prisons and into education and workforce development opportunities, places a moratorium on facial surveillance technology, reduces the school-to-prison pipeline by prioritizing student safety over criminalization, removes barriers to expungement of juvenile records, establishes stronger oversight and limitations on the procurement of military equipment by law enforcement, bans racial profiling in law enforcement, creates a commission on the status of African Americans and (as amended) the Latinx community, and requires increased data collection and reporting. It also bans certain practices that are -- absurdly -- not already illegal, e.g., police officers having sex with individuals in custody (something that can obviously never be consensual).

We urge you to *preserve and strengthen* the reforms of the bill by doing the following:

- **Preserving Section 10 on qualified immunity**: The doctrine of qualified immunity has grown perversely over the past half century and often means that law enforcement officials are able to violate people's basic constitutional rights with impunity. The reforms in Section 10 will ensure that individuals whose rights have been violated are able to sue for civil damages. It is low-hanging fruit as a reform, and the Legislature should take the opportunity.

- **Extending the ban on facial surveillance technology**: Facial surveillance technology is notoriously racist. It is good at telling the differences between the faces of white men but abysmal at discerning the differences between women of color—a crystallization of the biases of the technology's creators. But even if the accuracy of such technology could be improved, it would remain a violation of people's right to privacy. The one-year moratorium in the Senate bill is a good first step. A ban, however, is the right way to go.
- **Strengthening the language around the use of force in line with HD.5128:** The Senate bill imposes limitations on the use of tear gas, chokeholds, and no-knock raids, but it does not ban these practices. The tragic cases of George Floyd and Breonna Taylor and the horrific videos of police mistreatment of protesters underscore why limitations are not sufficient: such practices should be banned.
- **Preserving the Justice Reinvestment Fund – but lifting the cap**: The Justice Reinvestment Fund in the Senate bill is an important first step toward the much bigger goal of redirecting our public resources toward the foundations of a humane society and undoing the damages caused by mass incarceration. The House should include it but lift the arbitrary $10 million cap imposed.
- **Ending the school-to-prison pipeline**: The Senate bill ensures that student information will not be passed to law enforcement agencies or ICE, as such information sharing can risk irreparable harm to students or even deportation for undocumented students. The bill also removes the requirement that every school district has a school resource officer, allowing school districts to make their own decisions. Schools should be safe and welcoming spaces for students, and policy is a vital part of that.
- **Maintaining the independence and civilian-majority status of the Police Officer Standards and Accreditation Commission**: For the commission to deliver on the promise of accountability, it must be independent and must contain a civilian majority in composition. Such a body must also be transparent and subject to public records law.
- **Limiting police interactions**: The best way to reduce incidence of police brutality is to limit police interactions. Steps from decriminalizing homelessness to banning pretextual traffic stops to helping municipalities develop alternative response teams for mental health cases are a vital part of this. Legislation that recently passed out of committee such as the Safe Communities Act and the Work and Family Mobility Act would also help encounter this fundamental goal.
- **Embracing a comprehensive approach to the problem at hand:** The Senate bill takes a comprehensive approach, with additional essential measures outlined earlier in this testimony. We encourage you to embrace such measures and such an approach – or even broaden it – rather than seeking to narrow the scope of the bill.

As the end of the session draws near, the House must act with swiftness and urgency to address one of the most defining issues in our present and our history.

Sincerely,

Jonathan Cohn
Chair, Issues Committee
Progressive Massachusetts

Dear Chairpersons Michlewitz and Cronin,

Thank you for taking the time to accept public comment on bill S2820. We were disturbed at the sneaky, and underhanded manner in which the Senate introduced, and then forced through bill S2800 without allowing meaningful inclusion and discussion from community stakeholders directly impacted by this bill. In contrast, I appreciate your openness and transparency in these proceedings.

We are writing to you and your distinguished colleagues today imploring you to vote against this harmful piece of legislation. The Senate bill, as passed and delivered to the House, was built on a foundation of misguided intentions, false narratives, ignorance (willful or otherwise), and dare we say questionable motives.

While much of the Senate bill is disagreeable and distasteful, there are sections which are particularly so. Most notably the elimination of qualified immunity, a protection currently enjoyed by all public employees. This protection does not prevent legal action from being taken against those few officers who dishonor their oath and betray the public trust placed in them. Qualified immunity does protect public officials from frivolous legal action when acting in good faith, in accordance with significant legal precedent. Police Officers are often required to make difficult decisions, under the most trying of conditions, with limited information. These decisions are made daily, with varying end results. Sometimes these decisions need to be made in fractions of a second, and can have permanent ramifications. Qualified immunity provides the protection and peace of mind that when acting in good faith, a public employee will not face frivolous civil action against them after their decision, made under duress, is repeatedly dissected and analyzed over a period of time after the event. In contrast, if a public employee is found to have acted in a manner that goes against the many long standing legal precedents then qualified immunity does not provide any protection. The notion, that somehow qualified immunity insulates a few bad officers from being held responsible for their actions is simply wrong. To promote any other narrative is irresponsible. The elimination of this protection is a slap in the face to the good men and women who serve their communities.

Second, the Senate bill, as voted on, deprives officers of due process rights enjoyed by other public officials. Notably, the POSAC committee being the final authority on an individual's certification and status as a police officer, eliminating the right of appeal, particularly to the Civil Service Commission, in disciplinary actions.

The makeup of the POSAC committee is itself troubling. No other profession is subject to review by political appointees from other professions with little or no law enforcement knowledge and experience. Doctors are reviewed by other doctors, lawyers by other lawyers. The senate proposal that law enforcement officers be reviewed by members of lobby groups, political appointees, and individuals who have no experience in the field is insulting.

The Senate bill, as passed, demonstrates a further lack of understanding of those impacted by the bill. The bill calls for training for officers in dealing with persons with mental illness. One glance at the recruit curriculum, as well as the annual police in-service curriculum for the last several years demonstrates that this training already occurs. The same holds true regarding the standards for the use of force. This is not to imply that there is no longer a need for continued training, it simply demonstrates the rushed and ill-conceived nature of the Senate bill.

Additionally, on the subject of training and certification, police officers have long supported the idea of a POST certification in Massachusetts. Many other states have POST certification for their police officers, which would provide a framework for Massachusetts to build on using these best practices. Repeatedly, these requests have not been funded by the Commonwealth.

The Senate bill contains many other troubling proposals. For example, a curb on the use of crowd control tactics such as tear gas, rubber projectiles, and other means. The senate implies that these tactics are used against peaceful demonstrators exercising their First Amendment rights. Yet as we have seen in our state, this is not the case. These tools and tactics provide means to quell riotous disturbances and to protect lives and property. Recently, we have witnessed peaceful protests in Massachusetts where these tools were not employed. We also witnessed their effectiveness at dispersing crowds who were not engaged in peaceful protest, but gathered with the intent to cause harm to people and property.

The Senate bill proposes an outright ban on so called choke holds. Massachusetts police officers are not trained in choke holds, and do not employ them as a tactic during incidents which require the use of physical force. The only exception to this is would be in a situation where an officer is engaged in a physical fight for their lives and the use of deadly force is warranted. Yet the Senate bill, as passed, bans even this.

The Senate bill proposes a curb on the use of police canines, and implies that the dogs are used regularly to indiscriminately bite people for even the most minor offenses. This again demonstrates the lack of understanding and thought that went into this hastily written bill. Police canines ***save lives***. They save the lives of police officers and of offenders. There are regularly documented incidents where the use of a police canine to apprehend felons has prevented the use of deadly force or has saved the life a police officer. Police canines are incredibly valuable tools that ***save lives***. The Senate's attempt to portray them negatively again demonstrates the flaws in the Senate's bill.

These examples are just some of the many failures with the bill S2820 before the House. We urge you to take the time to do your due diligence in evaluating the ramifications of this bill, as well as the secondary and tertiary effects passing it will have. Do not act in haste, like the members of the Senate, to be perceived as 'taking action' for the sake of taking action. The social ills confronting us today will not be solved by pushing through a hastily written and ill-conceived bill. S2820 will not lead to the desired end state as it is written. It will place members of law enforcement, public service, and the citizens in your communities at greater risk. We respectfully request you vote against this proposed bill and its many flaws.

Respectfully,

David Schneeweis
Catherine Schneeweis
Falmouth, MA

Winthrop Police Union
MCOP Local 421
AFL-CIO

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Winthrop Police Department
3 Metcalf Sq.
Winthrop, MA 02152

July 17, 2020

Chairwoman Cronin
Chairman Michlewitz

RE: Concerns to Senate 2820 as Amended

Honorable Chairpersons:

The Union Body of Winthrop Police Department is writing to express our outrage over the potential stripping of necessary police protections offered through Qualified Immunity.

We respectfully ask that you do not give in to the misinformed perception of many who are the loudest in the public arena and stand strong with good police officers across the Commonwealth who put our lives on the line daily as we try to maintain order. Society as a whole has become litigious and without qualified immunity police officers and municipalities will find themselves defending frivolous lawsuits which will ultimately send the message to police officers not to be proactive within their community. Qualified Immunity is here to protect good proactive police officers who are only interested in using reasonable means to exercise their police discretion.

Respectfully,

Winthrop Police Union
Mass Cop Local 421