Testimony.HWMJudiciary@mahouse.gov
July 16, 2020

Massachusetts House Ways and Means Committee and the Judiciary Committee

Brenda & Paul Juliano
12 Pigeon Lane
Waltham, MA 02452

We are writing to inform you that we are not in favor of eliminating qualified immunity for police officers. Coming from a police family that is serving and has served the citizens of Waltham for a combined years of service of fifty-nine years this change would be disastrous. The elimination of or changing the qualified immunity that has been enjoyed would be detrimental to all officers serving Massachusetts. The Waltham Police Department has always maintained a high level of professionalism achieving Massachusetts Accreditation which requires the department to adhere to rigorous standards of training in all aspects of policing. Without qualified immunity for police officers the exodus from the profession would be immense. The numbers of citizens that are eligible to enter the police profession have been declining over the years. People are reluctant to become a police officer in today's atmosphere in the United States. Qualified immunity does not protect unlawful acts by police officers. Qualified immunity protects police officers who are conducting lawful acts in a lawful manner that could result in unforeseen consequences. We implore you to leave the qualified immunity as it currently stands. Improvement and training in all vocations is helpful, tearing it apart is not the answer.

Thank you,

Brenda & Paul Juliano

July 16, 2020

Dear Chair Michlewitz and Chair Cronin,

My name is Karen Merrill and I live at 9 Stowe Lane Plymouth, MA 02360. I work at Plymouth North High School and am a science teacher. As a constituent, I write to express my opposition to Senate Bill 2800. This legislation is detrimental to police and correction 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 at the hastiness that this bill passed but I welcome the opportunity to tell you how this bill turns its back on 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 statutory policy or constitutional rights. The erasure of this would open up the floodgates 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. Officers are all for de-escalation but if you take away these tools, the amount of injuries and deaths would without a doubt rise.

Civilian Oversight: While officers 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 the collective bargaining agreement? Where are the rights to due process? What is the appeal process? These are things that have never been heard or explained to officers. 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 officers 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,
Karen Merrill

MORE THAN WORDS

ISSUE & POLICY PRIORITIES

RAISE THE AGE ON THE JUVENILE JUSTICE SYSTEM

More Than Words endorses moving emerging adults, ages 18-20, out of the adult justice system and into the more developmentally appropriate juvenile system. This will align with brain science research, extend effective diversion strategies and services, increase public safety, and advance equity.

Young people's brains continue to mature until their early-to-mid-20s:

- Adolescents' brains are measurably different from adults. Adolescents are more likely to be influenced by peers, and engage in risky and impulsive behaviors.
- Courts, agencies and practitioners should use this knowledge to ensure a developmentally appropriate response.

An overly punitive approach leads to more offending:

- Toxic environments, like adult jails and prisons, increase problematic behaviors and recidivism.
- Teens and young adults incarcerated in Massachusetts' adult correctional facilities have a 55% re-conviction rate, compared to a similar profile of non-incarcerated teens whose re-conviction rate is 22%.

Massachusetts' young men of color bear the harshest brunt of these policies:

- 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.
- Black and Latino young adults are 3.2 and 1.7 times as likely to be imprisoned as their white peers.

It will build an educated workforce, increase opportunity, and save the Commonwealth money:

- Young people detained or committed to 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.
- An adult record creates a barrier for employment, education, professional licensure, and service in the armed forces.
- There is a strong relationship between dropping out of school and criminal involvement: 40% of people in state prison and 47% in jails have not completed high school. A single dropout would cost taxpayers $292,000.

It will align services for emerging adults with child- and adolescent-serving agencies:

- Emerging adults 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 system involvement is a serious impediment for continuity of connections to service providers and mentors.

More Than Words (MTW) is nonprofit social enterprise that empowers youth ages 16-24 who are in the foster care system, court involved, homeless, or out of school to take charge of their lives by taking charge of a business. At locations in Boston and Waltham, MTW serves 380 of our most vulnerable youth each year. Youth run a $3.7M business, working paid jobs ~20 hours per week and learning critical skills, while simultaneously working a paid "YOU" job learning life skills and making progress in education, work, and life. After 6-12 months youth continue to receive proactive support in a Career Services Program for 2 years to secure jobs in the community, complete their high school diploma or equivalent, pursue post-secondary credentials, and advance along their career pathway.

CAPE AND ISLAND POLICE CHIEFS ASSOCIATION

July 17, 2020

Statement from the Cape Cod and Islands Police Chiefs Association
Massachusetts House of Representatives – Bill 2820

Thank you for the opportunity to provide you with written testimony regarding the Senate Bill 2820. This is an extremely important bill that will shape and change not only police services in the Commonwealth, but will impact public safety in all of our communities. We understand there is a critical need to address issues pertaining to race and police accountability. In reviewing this important piece of legislation, however, we have a number of concerns. Only a few are outlined below.

Section 6- Establishment of POST/POSAC In regards to Police Officer Certification and Accreditation, the concept is sound. However the decertification board and investigation process lacks labor representation and is overly bureaucratic. Any board make up must be fair and unbiased. Otherwise there will be questionable objectivity, mistrust and the potential for unjust decisions.

Section 10C Qualified Immunity This will change qualified immunity for police officers that will be far reaching and have serious implications for both the police and the citizens of the Commonwealth. Qualified immunity, unfortunately, has been mistakenly portrayed to alleviate police and public officials of all responsibility and accountability. It has also been confused with absolute immunity. Qualified immunity is what allows officers, who are acting in good faith and have not violated any clearly established constitutional rights or statutes, to perform their challenging jobs, often working under extremely difficult situations, having only seconds to act or react and often dealing with violent individuals. Police officers do not have the luxury of looking back and being able to review over and over their response to an incident. If qualified immunity is substantially compromised, it will make hiring, retention, and promotions of police officers even more dire than it is now. For veteran officers, they will be far less willing to engage in any type of crime prevention, traffic control, or other enforcement activities because they now have to be concerned about losing their homes, their savings and their families. The overall impact will result in public safety being compromised in every community in the Commonwealth and will add inconsistency in the law since the federal standard for qualified immunity will remain unchanged, while Massachusetts will allow for state actions. The change will serve to further erode confidence in the system.

Section 49 -**School Resource Officers (SROs) Communications** – Ending communication between School Officials and SRO's will have serious ramifications for school safety. There have been nearly 400 students and teachers killed in schools over the past 10 years. This loss of life is staggering. The positive piece in this is SROs have made a huge difference. There have been very few incidents of school shootings that have had police officers assigned to the schools. And of the few cases, the loss of life was minimized greatly because of the SRO's intervention in stopping the violent act. But the positives do not end there. SROs have worked closely with school officials, through information sharing, to positively impact the lives and families of students. Students that have trouble in the school, often have troubles at home. In many cases, SROs have been able to connect with other family members and parents, outside of the school environment, to assist those students and families. Further, there have been countless instances of SROs heading off violent interactions between students, outside of school, because of information

shared by school officials with the police. What happens at school spills over into the community and vice-versa. Shutting off communication between the police and school officials will hurt all of our communities.

Section 52 -Data Collection This section requires a daunting amount of data collection. The data collection requirements will be extremely burdensome, especially for smaller police departments that have little or no support staff. The bill requires significant financial and technology support in order for departments to collate, prepare and report this staggering amount of data. If enacted sufficient funding must be provided by the Commonwealth. It seems like yesterday that we resolved this issue with the passing of the "Hands Free" driving bill earlier this year.

In conclusion, we were expecting reforms that will have a positive impact on policing and our communities across the Commonwealth. Instead, only a few of the measures included in this bill may have a positive impact on policing. It is imperative that whatever changes are made do not become a hindrance to public safety and damaging to our communities. Our hope is this bill will improve policing in Massachusetts and support our goal to provide the best law enforcement in the country. As it stands now, this bill needs to be scrutinized and modified so it will be a change and a reform for the good of our communities, not a quick and short-sighted response to a horrible tragedy that occurred half way across the country. We urge you to respectfully consider these and other points very carefully in your future deliberations on this extremely important matter. Thank you for your full consideration and thoughtfulness.

If there is any other information needed, please let me know. My cell is 508-294-2403 and my email is ffrederickson@yarmouth.ma.us .

Respectfully,

Frank G. Frederickson

Cape & Island Chiefs of Police President

Yarmouth Chief of Police

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

KENNETH I. GORDON
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21st MIDDLESEX DISTRICT

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July 17, 2020

RE: S2820; Mass. G.L c. 12, Qualified Immunity

Chairs Michlewitz and Cronin,

Please accept this letter as my testimony concerning S.2820, which includes important and necessary policies that make Massachusetts more inclusive, welcoming and safe for all of our citizens and residents. I appreciate that the House has taken the time to consider public testimony, and I have made my constituents aware of their opportunity to share their views. I am mindful that the vast majority of our police officers and departments operate in a respectful, professional manner, but I have heard from constituents and others among the Black, Latino and Native communities that their experience with law enforcement is not the same as those of white residents. With few exceptions, we have not experienced the horrific episodes we have seen around the country, but we are not insulated from them.

I am especially interested in supporting the issues of improved training and oversight of police officers, and the creation of an advisory board that will help advise on any disparate impact on policing on any marginalized group. I am also supportive of certification consistent with the police officer standards and accreditation committee, including certification and ramification for municipalities that do not ensure proper compliance of police officers. Of course, we should ban the use of excessive force, choke holds as defined in S.2820, and limit the use of non-lethal weapons unless absolutely necessary.

However, I am concerned that we weaken the concept of "Qualified Immunity" (hereinafter ("QI"), because doing so would chill an officer's ability to make split-second decisions, and because QI has been so rarely used as a defense in Massachusetts or elsewhere that I do not think it poses an impediment to good policing or to victims of bad policing obtaining civil remedies if they are harmed.

QI was fully adopted in Massachusetts when the Supreme Judicial Court, in *Gonzalez v. Furtado*, 410 Mass. 878 (1991) held that the standard of qualified immunity concerning those acting under color of law in a case brought under section 1983 would apply to a case brought under the Massachusetts Civil Rights Act (c. 12, Sect. 11I). The *Furtado* court, relying on language from the U.S. Supreme Court in *Harlow v. Fitzgerald*, described the principle of QI this way: "government officials performing discretionary functions, generally are shielded 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." S.2820 proposes to codify QI, essentially codifying the language of Furtado but shifting the burden of proof to the defendant and adding an additional, albeit quite confusing, legal standard.

I recommend that we amend the language of S.2820 from lines 570-573, and replace it with language borrowed from Furtado: "In an action under this section, a government official performing discretionary functions shall be immune if, and only if, their conduct at the time of the act complained of occurred did not violate clearly established statutory or constitutional rights of which a reasonable person would have known." If we must bring forward the standard included in S.2820, then at least I recommend that we strike the language "could have had reason to believe" and replace it with "believe."

The "no reason to believe" standard is confusing, vague and should not be carried forward to the House language. This test is used in limited instances in Massachusetts statute, it is uncommon and would call upon government officials to engage in an impossible exercise at a time of crisis. Our office has reviewed the 159 cases in Massachusetts courts in the last 20 years when the QI defense was raised. It was raised by police officers only 45 times, as the majority of cases involved other government workers such as teachers, social workers, and others. Of those 45 instances, it was rarely, if ever, successful.

The admirable training, oversight, certification and disciplinary measures proposed in S.2820 will help protect our residents from poor policing. Adding a layer of personal civil liability is so indirect that I do not see how it would add any greater incentive for an officer. In most cases, an officer would be indemnified by the employer anyway. Academic research from UCLA School of Law finds that this is the case in most instances. From the point of view of a victim, that person already has an avenue for civil redress with the municipality that employs the police officer.

I also point out that beginning on line 876, Section 2IIIII, S.2820 creates a jail diversion and restoration trust fund. This fund would be crucial in allowing centers that reduce jail populations and properly treat many people who have interactions with police in a fair and productive manner. I hope this section is carried forward to our bill.

I know you will consider the voluminous testimony you will receive this week and I hope I did not unjustly add to your work. The responsibility of this Committee is vast and the effect it will have on the Commonwealth immense. With the amendment I propose to these specific lines, I believe we will produce a historic piece of legislation.

Thank you for taking the time to consider my testimony.

Respectfully,

Ken Gordon

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

MICHAEL J. SOTER
STATE REPRESENTATIVE
8TH WORCESTER DISTRICT

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07/16/2020

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,

First, I would like to commend House leadership, the House Committee on Ways and Means, and the House members on the Joint Committee on the Judiciary for their commitment to a fair and equitable public hearing process.

In my role as State Representative, I'm committed to serving those who put me here.

This bill has the potential to drastically alter the way society is run in the Commonwealth. While I genuinely appreciate the house opening this bill up to a public hearing, there is no getting around the fact that this is a rushed piece of legislation. Those colleagues in the Senate who called for this bill to slow down and be reviewed by a diverse group of individuals and organizations are not off base with their request. Creating a commission to study the bill is the most sensible way to proceed with this piece of legislation.

I'm astounded and disappointed in the way the Senate handled the debate of this bill. I believe we have a leadership opportunity here to slow down the process and restore faith within our constituencies, proving to them that we're not here to push through ill-considered legislation. We have the opportunity to show our constituents that the government works for them and we have the best interests of all parties at heart.

While this bill is far from perfect, there are many aspects that should be included in a police reform bill for Massachusetts. However, the good does not outweigh the bad. It is not wise for the Commonwealth to begin to pull back their support for law enforcement officers and leave

them out to dry in the legal system. Those who protect, serve, and find themselves in the most intense situations should not have to second guess every action they take during the most intense moments of the job. We need to continue to provide our officers with the tools they need to keep the men, women, and children safe within our communities.

To that point, our law enforcement officers need to be well equipped with the most up to date and comprehensive training possible. This, in turn, will allow our cops to diffuse hostile and stress inducing situations most effectively without the concern of further escalation. Proposed changes to our Police Officer Standards and Accreditation Committee has the opportunity to risk the effectiveness and further development of such training.

I ask that this bill not be reported favorably, and a Commission set up to study the impacts of this bill and to outline the real needs of this state in regard to police reform.

Sincerely,

Michael J. Soter
State Representative
8th Worcester District

July 15, 2020

Testimony in Support of Police Accountability in S.2820

Dear Rep. Cronin, Rep. Michlewitz, and members of the Committee,

I write in strong support of the accountability measures in S.2820. Above all, I urge you to **retain or strengthen the modification to qualified immunity and the bans on use of force, including chokeholds, tear gas, and no-knock warrants, as well as the moratorium on facial recognition software**.

I also strongly support repealing the state mandate to have police officers in schools and the expungement of criminal records for youth.

We in Massachusetts are not immune to police brutality, as the US Department of Justice exposure of Springfield most recently demonstrated. Police brutality and racist harassment can happen anywhere (the latter happened in Arlington, where I live.)

We need to correct the flaws in the state's qualified immunity bill so that the courts can rule on cases presenting new situations. No woman should ever fear that she will be forcibly taken by the police to a hospital for an invasive search of her vagina only to have her claims of redress denied.

While I strongly support these provisions to increase accountability in the Senate bill, I have concerns that I hope the House will be able to address:

1) Review of police misconduct and possible decertification should be removed from the Police Officer Standards and Accreditation Committee and vested in an independent civilian review board. The current set-up, as I understand it, has the Committee making decisions about whether to decertify officers, and the Committee has 6 of 14 members from law enforcement. **Successful civilian review boards need to be independent from law enforcement.**
2) The evidence on whether body cameras improve the outcomes of police-civilian encounters is lacking. The millions of dollars anticipated for body cameras would be better spent in the community reinvestment fund.

Thank you for your attention to this testimony. ***I hope that the Legislature will pass strong police accountability measures this session***.

Sincerely,

Rachel Roth
Arlington MA

Cc: Rep. Dave Rogers, Rep. Carlos Gonzalez (Chair of Black and Latino Caucus)

References:

On police misconduct that escaped review under Massachusetts qualified immunity standards, see *Rodriques v. Furtado*, 575 N.E.2d 1124 (Mass. 1991).

On overall concerns with police reform proposals, see the Massachusetts chapter of the National Association of Social Workers: https://www.naswma.org/news/516947/Statement-Social-Work-Response-and-Recommendations-on-Police-Reforms.htm

On the lack of evidence for police-worn body cameras, see the American Public Health Associaiton: https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/29/law-enforcement-violence

Excerpt:

"Increased funding for body-mounted cameras is often put forth as a measure to reduce law enforcement violence because of the presumed increase in transparency and accountability offered by these devices. An oft-cited example of body cameras' success is in Rialto, California, where reports of use of force by law enforcement dropped by 50% in the first year of body camera implementation and citizen complaints dropped by 88%. However, more representative studies have shown harmful associations of use of force with body camera use or no associations at all. A national study of more than 2,000 departments revealed a statistically significant association between wearable body cameras and a 3.6% increase in fatal police shootings of civilians and no significant association with use of dash cameras. The largest and most rigorous randomized controlled trial on the use of body cameras, conducted by the District of Columbia's Metropolitan Police Department, showed that wearing body cameras had no statistically significant effect on use of force, civilian complaints, officer discretion, whether a case was prosecuted, or disposition.

Issues related to policy, protocol, and intentional sabotage raise additional questions about the efficacy of body- and dashboard-mounted cameras in decreasing law enforcement violence or increasing accountability for perpetrated violence. One third of police departments using body cameras do so without written policies, which may give officers discretion over their use and lead to selective recording. Most existing policies on body cameras do not guarantee that law enforcement agencies must make footage publicly accessible, and many other policies are inconsistent or unclear. Recordings may also be deleted by police; in Chicago, 80% of dash-camera video footage was missing sound due to error and "intentional destruction." Even when key events are recorded, these videos do not necessarily increase accountability because of the cultural, institutional, and structural barriers described above."

(Research is cited in the endnotes to the APHA document linked above.)

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jalsa
JEWISH ALLIANCE FOR
LAW & SOCIAL ACTION

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

Dear Chairs Michlewitz and Cronin,

On behalf of the Jewish Alliance for Law and Social Action (JALSA), I write in support of S. 2820. JALSA is a membership-based non-profit organization based in Boston, with many hundreds of members and supporters statewide. We are dedicated to being a strong, progressive, inter-generational voice, inspired by Jewish teachings and values, for social justice, civil rights, and civil liberties. We are devoted to the defense of civil rights, the preservation of constitutional liberties, and the passionate pursuit of social, economic, racial, and environmental justice for all.

Last month, Chasidic Jews in Brooklyn held a Black Lives Matter rally at which an organizer declared that the ability for police to kill citizens was a violation of Jewish divine law that should "call out to every Jew." We agree. Yet the solution to this terribly important issue—the answer to this call—must come not through divine intervention through changes to Massachusetts law. Specifically, the legislature must impose serious limits on officer use of force, limit qualified immunity, prohibit face surveillance technology, and allow individuals without lawful immigration status to obtain driver's licenses.

Law enforcement officers should not be allowed to strangle, shoot, or maim citizens as they choose. Officers, instead, should be required to de-escalate encounters, and use only the amount of force that is proportionate to the situation. But the lack of strict limitations on the use of force does not exist in a vacuum: the doctrine of qualified immunity essentially operates to deny accountability by shielding officers from liability for use of force, even when that force is egregious, leading to serious injury or death. Massachusetts citizens who suffer harm so serious should be entitled to their day in court.

We also ask that the House include a ban on surveillance technology in its bill. Face surveillance technology is known to be racially biased and less accurate at matching Black faces. Black people have been wrongfully arrested based on incorrect facial matches, an injustice we cannot allow to continue in this Commonwealth.

Finally, we ask that the House include the Work and Family Mobility Act (H. 3012), which would allow Massachusetts residents to obtain a driver's license, regardless of immigration status. If they are driving without a license, Black and Brown immigrants can be funneled into the criminal justice system and ultimately deported away from their families—a process that can begin with a simple, racially biased police stop. Passing this legislation is critical to allow Black and Brown immigrants to stay out of the criminal justice and deportation systems and to participate more fully in the life of the Commonwealth.

We urge you to adopt this legislation without delay.

Sincerely,

Cindy Rowe
Executive Director
Jewish Alliance for Law and Social Action
617-227-3000

LGC

LEONARD G. CROSSMAN LAW OFFICE

131 West Main St., Suite 331 Orange, Massachusetts 01364

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July 17, 2020

Massachusetts House of Representatives
State House
24 Beacon Street, Room 540
Boston, MA 02133

Dear Representatives:

I am writing today, as a constituent of the Commonwealth, to express my opposition to certain provisions contained in Bill S.2800, specifically the elimination of qualified immunity for law enforcement officers.

To provide some background, I am a retired police chief and currently serve as a professor of criminal justice and as a bar advocate who represents indigent criminal defendants. As such, I feel that I have a unique perspective of our criminal justice system and have the education and experience to view such a bill from many different perspectives

I acknowledging that law enforcement officers hold a great degree of power to deprive individuals of life and liberty and I acknowledge that there are times that law enforcement intentionally and unintentionally abuse their authority and deprive individuals of their constitutional rights. I also feel that a large majority of law enforcement officers act with good faith and to their best of their ability given their education, training, and experience.

With that said, I do not feel that eliminating qualified immunity to a proper or effective solution to this societal issue.

First, law enforcement officers are not lawyers and they do not receive sufficient legal education. Even lawyers, who have the benefit of extensive education and time to conduct legal research cannot possibly familiarize themselves with all of the various interpretations of the laws and the constitution. Eliminating qualified immunity would create an expectation that officers know all of the countless interpretations of the law and constitution and know them at a split-second while, at the same time, experiencing stress and danger. This is an unrealistic expectation.

Second, eliminating qualified immunity would result is staffing issues for law enforcement agencies as it would deter otherwise qualified candidates from applying for the position. The hiring standards for law enforcement officers is currently a very high standard and agencies are already having difficulty securing qualified candidates. Creating a smaller candidate pool would cause more hiring challenges which would ultimately lead to lesser quality police recruits. In addition, many experienced police officers would seek other employment.

Third, eliminating qualified immunity is simply not fair to the officers and their families. Qualified immunity only protects officers when they act in good faith and in accordance with the laws and procedure which a reasonable officer is aware. When considering whether a reasonable officer is aware of an existing law or procedure, a court will look to what a reasonable officer in that geographical area should have known. Law enforcement officers in Massachusetts are arguably the most highly educated and best trained officers in the world. This sets a high standard as it is; Creating a higher and unachievable standard by eliminating qualified immunity is quite frankly unreasonable. Law enforcement

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officers work very hard each and every day working off hours, overtime, holidays, etc. Many times, officers are working while being very tired, stressed, and exposed to danger. Holding them civilly accountable for errors made in good faith is not fair to them or their families.

Fourth, there are many other avenues to improve law enforcement accountability which have not been explored. For example, where a defense attorney files a motion to suppress unlawfully obtained information, that information is not generally relayed to the police chief who is in a position track patterns of behavior, order remedial training, or take disciplinary action. I feel that a better system of communication and problem resolution between state agencies is a more appropriate remedy to police misconduct than court action. There are many other available strategies that I would be happy to discuss if given the opportunity.

Finally, eliminating qualified immunity would likely cause the courts to be flooded with civil complaints, some of which are justified and some of which are frivolous. This would overwhelmingly burden the court system. Defense attorney's, especially bar advocates, would, by default serve as conduits for initiating such civil proceedings when they file motions to suppress evidence. This is not the intention of such motions.

In summary, I care deeply about my community, law enforcement, our constitution, and our criminal justice system. Eliminating qualified immunity would not improve law enforcement, but would likely deteriorate the profession to the point where social issues become more prevalent.

Thank you for your time and consideration.

Respectfully,

Leonard G. Crossman

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The Commonwealth of Massachusetts
House of Representatives

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July 17, 2020

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

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

Dear Chairs Michlewitz and Cronin,

I am writing to you today in support of bills **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***.

Tragically, the recent murders of George Floyd, Breonna Taylor, Ahmaud Arbery, Tony McDade, Nina Pop, and Sean Reed, among countless others, have once again brought into sharp relief the pervasive, deep-seeded, deadly, and systemic racism that exist in our Commonwealth and our country. And though I do not think the reforms offered in this bill will deliver us the solution to the centuries of police violence, discrimination, and disinvestment in most cases perpetrated consciously and intentionally against Black communities, I believe the provisions and accountability measures incorporated therein will prove an critical first step in reducing harm and saving lives.

In particular, I want to highlight my support for priority provisions of my colleagues of color, including:

- The establishment of the **Police Officer Standards and Accreditation Committee**, along with certification and decertification requirements and procedures. While we know that police violence is not simply an issue of "bad apples," I believe this new system will help remove some of our most egregious offenders, as well as contribute to a culture shift as officers face more substantive repercussions for violations.

- The strengthening of **use of force rules**, including increased training and use requirements for **de-escalation tactics,** a **requirement to intercede** to prevent an unreasonable use of force, and the banning of **choke holds**.

- Increasing **transparency** through the establishment of public databases listing certification information for officers, as well as all complaints made against officers.

- The limitations on **qualified immunity**, which provide greater recourse to individuals whose rights have been violated by law enforcement professionals.

- The restrictions on procurement of **military-grade weapons and equipment** for our local police departments.

Additionally, there are a few provisions which have been mentioned, but which I believe should be strengthened, including:

- An outright **ban on the use of tear gas and chemical weapons** against individuals and groups in the Commonwealth, rather than restricted use. These devices have been banned from use during combat since 1925, which was reaffirmed in the UN Chemical Weapons Convention of 1997, and have no place in our communities.

- An outright **ban on so-called "no-knock warrants,"** rather than restricted use and increased requirements. A relic of the disastrous War on Drugs, use of this type of warrant has increased 30-fold since the 1980's, and with Florida and Oregon having successfully outlawed the use of such warrants, their necessity is dubious, and the harms inflicted, often on innocent individuals, is clear.

- I believe the inclusion of the **Justice Reinvestment Workforce Development Fund**, which reinvest savings from criminal justice system reforms directly into evidence-based programming and communities most impacted by police violence and mass incarceration is one of the most important provisions of this bill. It is this type of work in divesting from programs and institutions that bring harm to our communities of color, and investing instead in programs and institutions that will build-up and support these same communities, that I believe will bring the greatest long-term benefit and make the greatest impact on the dismantling of racist institutions and systemic racism more broadly. However, the **$10 million cap** included in this bill is wholly insufficient to meet the needs and redress the harms in these communities, especially when taken in comparison to the proposed FY'21 DOC budget of $674 million. This ratio must be rapidly reversed, and eliminating the cap to this fund will provide a first step in that fight.

I am thankful to you both for your commitment to responding to this moment in our nation's history, and to the demands for change brought by our constituents. I hope that this bill will be brought to the floor for a vote as quickly as possible. More importantly, however, I hope that the House will see this bill as a starting point, as a means of reducing harm in the near-term as we examine the root causes of these injustices and inequalities, and develop policies and institutions that will dismantle the structural racism endemic to life in the Commonwealth and in our country. I hope we will strive to find ways to center justice, particularly racial justice, in all of our work in the legislature, especially as we look forward toward urgently needed environmental, healthcare, and housing reforms. And, as LGBTQ+ people of color as well as other individuals with multiple and intersecting oppressed identities are among those most likely to fall victim to police violence and structural racism more broadly, I hope we will do so in a way that is intersectional.

Thank you for the opportunity to provide testimony on this critical bill, and I look forward to uplifting the work of my colleagues of color and collaborating with you on this and future legislation addressing structural racism in Massachusetts in the months and years to come. As always, do not hesitate to reach out with any additional questions or for additional information.

Sincerely,

Jack Patrick Lewis
State Representative
7th Middlesex District

GREATER BOSTON LEGAL SERVICES
...and justice for all

July 17, 2020

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

Representative Claire D. 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, Chair Cronin, and committee members:

We are writing on behalf of the Greater Boston Legal Services (GBLS) CORI and Re-Entry Project to urge your support for key provisions 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*. We assist about 800 people per year from low income communities of color with criminal record sealing matters and other legal barriers to employment, occupational licensing, training, and other opportunities related to their criminal justice system involvement.

Juvenile expungement should be expanded to include more than one charge as well any charges that ended favorably in dismissals or other favorable dispositions

The current juvenile expungement law is unworkable and only permits a person with a single charge to expunge the records. Likewise, many types of felony offenses are excluded from expungement even if the case resulted in a not-guilty finding or a similar favorable disposition. We have screened clients for eligibility for juvenile expungement for almost two years since the new law took effect and not a single person has qualified for juvenile expungement. Police routinely file multiple charges against a defendant for a single incident, and many juveniles have multiple encounters with police. Law enforcement is also more likely to initiate contact with and arrest young people of color.[1] As a result, juveniles from overpoliced communities of color are more likely to have juvenile records. Charges that are ineligible for expungement, however, can permanently tarnish a young person's employment opportunities and prevent a young person pursuing careers they may be passionate about or obtaining federally funded jobs.

[1] Bureau of Justice Statistics, *Contacts Between Police and the Public, 2015*, U.S. DEPARTMENT OF JUSTICE, 9-10 https://www.bjs.gov/content/pub/pdf/cpp15.pdf (2018).

S.2820's juvenile expungement provisions in Section 61 would expand eligibility to encompass multiple charges for offenses that occurred before age 21 as well as charges that ended in dismissal or non-conviction dispositions. Removing these barriers to juvenile expungement would allow the law to accomplish its purpose and prevent collateral consequences related to mistakes made when people were still children or emerging adults.

The Legislature should end qualified immunity rather than merely limiting it

The doctrine of qualified immunity shields police officers who violate people's rights from any accountability. This is unacceptable and harmful in many instances. Other professions have boards and certification systems that are much stricter than those established by S.2820, and also are not given any immunity. Lawyers and people in licensed occupations, for example, have no such immunity and often deal with a high volume of clients or customers. In such professions, bad actors who disregard professional standards are held accountable, but competent professionals generally are not anxious about liability exposure.

Historically, police departments and cities have struggled to hold officers accountable when they do not meet high professional standards. Eliminating or at least limiting immunity from liability for the police would be a positive wake-up call and provide an incentive for avoidance of misconduct and unprofessionalism. Eliminating immunity will hold bad actors accountable if they disregard professional standards, but it should not make competent law enforcement officers anxious about liability exposure when they are acting professionally. The legislature should not allow law enforcement to act carelessly with impunity and should hold them accountable as they do with other professionals in positions of public trust.

Other Vital reforms in the Senate Bill should be preserved and expanded

These important proposed changes in the Senate bill should be adopted, and strengthened in some instances, to include the following:

- Creating an independent certification/decertification body, but mandate a **civilian majority** without ties to police, corrections, probation, or prosecutorial bodies, and that is representative of communities with high rates of incarceration and poverty;
- Establishing a Justice Reinvestment Fund to move money away from policing and prisons, and into job and education opportunities and community programs in locations with high incarceration and poverty;

- Banning racial profiling by law enforcement and prohibiting police and corrections officers from having sex with those in custody;
- Strengthening use of force standards, e.g., by outright banning of all chokeholds and tear gas;
- Fully prohibiting facial surveillance technology;
- Removing police from schools;
- Lifting the unnecessary cap on the Justice Reinvestment Fund;
- Demilitarize the police and require transparency on military equipment acquisitions and require civilian authorization of military equipment acquisitions; and

- Requiring racial data collection for all police stops.

The Legislature Should Extend Its Session Beyond July 31, 2020.

Finally, the legislature should extend its formal session this year beyond July. The unprecedented pandemic has made it understandably difficult for the Senate and House of Representatives to conduct regular business, but a lot of work was done before COVID-19 by legislators and countless members of the public. Justice delayed is justice denied. Starting all over again next years on bills that were carefully considered and favorably reported is very inefficient when the same meritorious bills could be simply enacted into the law. Legislators then could be proud of these accomplishments and would be freed up to work on a greater number of new bills. Extending the session would allow the legislature to avoid replicating its work and provide justice to constituents and communities.

Conclusion

We urge the House of Representatives and Senate to ultimately pass a bill that includes at a minimum the key provisions of S.2820 aimed at deterring police misconduct, restoring public trust in the law enforcement, and providing for expungement of juvenile records.

Sincerely,

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THE COMMONWEALTH OF MASSACHUSETTS COMMISSION ON LGBTQ YOUTH

July 17, 2020

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

The Massachusetts Commission on LGBTQ Youth writes to provide our perspective on LGBTQ youth and the juvenile justice system as the Joint Committees considers S.2820 to address racial justice and police accountability. The Commission on LGBTQ Youth is an independent state agency tasked by the Legislature with providing expert advice and policy recommendations to the Commonwealth of Massachusetts on how to improve services and decrease inequities facing LGBTQ Youth.

There is overwhelming evidence that over-policing of predominantly Black and Latinx communities and schools has led to devastating outcomes for these youth, from their educational outcomes to their trajectory towards involvement in the justice system. This over-policing has also led to stark disparities facing LGBTQ youth with respect to their involvement in the justice system, particularly LGBTQ youth of color. This is because—as discussed in detail below—LGBTQ youth in Massachusetts face many increased risk factors for involvement of the justice system, including roughly three times the rate of experiencing homelessness, up to four times the rate of having serious mental health issues, two times the rate of being involved in violence at school, and over three times the rate of truancy.

As the House begins deliberation on its version of a police reform bill, we ask that you also consider additional policies for inclusion, many of which directly impact LGBTQ youth and would help lessen the disparities faced by this population with respect to justice system involvement:

- **Expand the use of force protections by imposing limits on police use of force with children and by school police officers;**
- **Abolish qualified immunity;**
- **Data transparency in the juvenile justice system;**
- **End the automatic prosecution of older teenagers as adults;**
- **Expand eligibility for expungement to rectify the over-criminalization of Black and Latinx youth.**

Disparities Facing LGBTQ Youth in the Juvenile Justice System

For a variety of reasons—including higher rates of homelessness and foster care involvement—LGBTQ youth are twice as likely to enter the juvenile justice system as their non-LGBTQ peers.[1] A survey of seven juvenile justice facilities nationwide showed that 20% of youth in these facilities identified as LGBTQ, which makes these youth doubly represented in the criminal justice system given that they comprise only about 10% of the general population.[2]

Further research shows that 50% of LGBTQ youth are at risk of entering the juvenile justice system due to the risk factors they face.[3] Over two-thirds of justice-involved youth have histories of adversity related to interpersonal trauma and most are disproportionately burdened by discrimination on several levels of social identity: race, ethnicity, gender identity, sexual orientation, disability status, etc.[4] These disparities transfer to adulthood, with 58% of respondents in a 2015 survey of incarcerated LGBTQ adults reporting that their first experience in a justice facility had been before the age of 18.[5] In total, LGB people nationally are three times more likely to be incarcerated than the general population.[6]

The overrepresentation of LGBTQ youth of color in the juvenile and criminal justice systems also reflects the racial disparities faced by all people, regardless of LGBTQ identity, involved in these systems. One national study found that as compared to white youth, Black youth are four times more likely to be incarcerated, Native American youth nearly three times as likely, and Latinx youth 1.5 times as likely.[7] It is therefore deeply troubling, though not surprising, that an estimated 85% of LGBTQ youth in the justice system are youth of color.[8] Experiences of discrimination that disproportionately affect and result in justice involvement for LGBTQ youth, particularly LGBTQ youth of color, parallel vulnerabilities that result in victimization, abuse, and further trauma within the justice system.[9] Transgender and gender-nonconforming youth face even starker disparities within the juvenile justice system. A recent study found that transgender and gender-nonconforming individuals are nearly twice as likely to have been

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[1] Vallas, R., & Dietrich, S. (2014). One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Juvenile Records. *Center for American Progress*.
[2] Mallory, C., et al. (2014). Ensuring Access to Mentoring Programs for LGBTQ Youth. *The Williams Institute*. Retrieved from http://www.nwnetwork.org/wp-content/uploads/2014/04/TWI-Access- toMentoring-Programs.pdf
[3] Wilson, B. D. M., et al. (2017). "Disproportionality and Disparities among Sexual Minority Youth in Custody," *Journal of Youth & Adolescence, 46*(7): 1547–1561.
[4] Lyndon, J., Carington, K., Low, H., Miller, R., & Yazdy, M. (2015). Coming out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey. Black and Pink. Retrieved from http://www.blackandpink.org/wp-content/upLoads/Coming-Out-of-Concrete-Closets.-Black-and-Pink.-October-21-2015.pdf
[5] *Ibid.*
[6] Meyer, I.H., Flores, A.R., Stemple, L., Romero, A.P., et al. (2017). Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012. *Am J Public Health, 107:* 234-240.
[7] Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration & Strategies for Change. (2016). The W. Haywood Burns Institute. Retrieved from http://www.burnsinstitute.org/wp-content/uploads/2016/05/Stemming-the-Rising-Tide_FINAL.pdf
[8] Wilson, B. D. M., et al. (2017).
[9] Brockman, B., Cahill S., Henry, V., & Wang, T (2018). Emerging Best Practices for the Management and Treatment of Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex Youth in Juvenile Justice Settings. The Fenway Institute and The Center for Prisoner Health and Human Rights. Retrieved from: https://fenwayhealth.org/wp-content/uploads/TFIP-21_BestPracticesForLGBTYouthInJuvenileJustice_Brief_web.pdf

incarcerated as other LGBQ people, with transgender people of color reporting a rate of past incarceration four times higher than other LGBQ people.[10]

While the disparities facing LGBTQ youth explain why the Commission is itself involved in this issue, it also shines light at how factors beyond youths' control—such as getting kicked out of their homes or not coming to school because they feel unsafe—end up entrapping youth in a system that too often operates based on underlying biases and serves only to further isolate rather than rehabilitate the youth involved.

Pathways to Involvement in the Justice System for LGBTQ Youth

Various forces contribute to the overrepresentation of LGBTQ youth in the juvenile justice system. One perspective is that discrimination and stigma increase the number of incidents of harassment and violence against LGBTQ youth. LGBTQ youth may cope with these traumatic experiences by engaging in criminalize compensatory behaviors and survival economies. Discrimination and stigma may also result in policies and policing strategies that disproportionately target LGBTQ youth, especially youth of color. Traumatic experiences such as interactions with the criminal justice system can have lifelong repercussions, particularly when they occur during adolescence, a critical period of brain development.[11]

A major pathway through which LGBTQ youth enter the juvenile and criminal justice systems is homelessness and compensatory behaviors originating from abuse and rejection in their home and social environments. Various factors may contribute to increased family instability and rejection of LGBTQ youth, including poverty. According to 2015 U.S. Census data, more than 1 in 5 American children (21.1%) live in poverty, and multiple studies indicate that LGBTQ people experience higher rates of poverty than the general population.[12] Many LGBTQ youth also end up in the foster care system or homeless due to unsafe conditions at home. Youth in foster homes or who have aged out of the foster care system have been shown to have higher criminal justice involvement than others.[13] The situation is no better for youth who experience homelessness, of whom one study found 78% had at least one prior police interaction; 62% had been arrested or detained; and 44% had been in a juvenile detention center, jail, or prison.[14]

The climate that many LGBTQ students face in school also contributes to their overrepresentation in the juvenile justice system. More than two in five (42%) of LGBTQ high school students in Massachusetts experienced discrimination of some form in their school, according to the 2015 National School Climate Survey.[15] According to the latest Massachusetts Youth Risk Behavior Survey (MYRBS), LGBTQ were more likely to experience bullying, be involved in fights, skip school due to feeling unsafe, or be threatened or injured with a weapon at

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[10] Lambda Legal. (2016). Protected and Served? Jails and Prisons.
[11] Steinberg, L. (2015). *Age of Opportunity: Lessons from the New Science of Adolescence*. New York: An Eamon Dolan Book.
[12] DeNavas-Walt, C., & Proctor, B. D. (2015). Income and Poverty in the United States: 2014. Retrieved from https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf
[13] Cusick, G. R., Courtney, M. E., Havlicek, J. & Hess, N. (2010). Crime during the Transition to Adulthood: How Youth Fare as They Leave Out-of-Home Care. Research report submitted to the U.S. Department of Justice. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/grants/229666.pdf
[14] Pilnik L., Maury, M., Sickmund, M., Smoot, N., & Szanyi, J. (2017). Addressing the Intersection of Juvenile Justice Involvement and Youth Homelessness: Principles for Change. *Coalition for Juvenile Justice.* Retrieved from http://www.csh.org/wp-content/uploads/2017/03/Principles_FINAL.pdf
[15] GLSEN. (2015). "School Climates in Massachusetts." 2015 National School Climate Survey. https://www.glsen.org/sites/default/files/Massachusetts%20State%20Snapshot%20-%20NSCS.pdf

school—all indicators for being disciplined within school or via the juvenile or criminal justice system.[16] Given the high rates of abuse and harassment, and the lack of social support, it is no surprise that LGBTQ students in Massachusetts, compared to their non-LGBTQ peers, were twice as likely to engage in fights at school in the past year (9.4% vs. 5.1%), three times as likely to carry a weapon to school (6.1% vs. 2.8%), and six times as likely to have used heroin in their lifetime (6.7% vs. 1.0%).[17] All of these behaviors can lead to arrest, especially considering that LGBTQ youth nationally are three times as likely to experience harsh discipline at school when compared to their non-LGBTQ peers.[18]

Use of Force Standards

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. We further urge that this legislation include protections for children during interactions with law enforcement. These protections should include a prohibition on restraining minor children in a prone or hog-tie position, a mandate that developmentally appropriate de-escalation techniques be utilized, and a requirement that law enforcement be trained in these techniques. This legislation should also include school resource officers, constables, and special service officers in the definition of law enforcement officers subject to these use of force standards.

Qualified Immunity

Massachusetts must abolish the dangerous doctrine of qualified immunity, which 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.

Data Transparency

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. Data collection and reporting on sexual orientation and gender

[16] Massachusetts Commission on Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth. (2019). *Massachusetts Commission on LGBTQ Youth: 2020 Report and Recommendations*, 20. Retrieved from https://www.mass.gov/annual-recommendations
[17] *Ibid.*
[18] Himmelstein, K. E. W., & Brückner, H. (2011). Criminal-Justice and School Sanctions Against Non-heterosexual Youth: A National Longitudinal Study. *Pediatrics, 127(*1): 49-57.

identity and expression (SOGIE) data is also severely lacking in the juvenile and adult justice systems in Massachusetts. While the Commission has begun collaborating with the Juvenile Justice Policy and Data Board to inform them of best and promising practices around SOGIE data collection and reporting, much work remains to be done, particularly in the adult system. This legislation should include data transparency measures that gather key demographic data at major decision points in the justice system.

End the Automatic Prosecution of Massachusetts' Oldest Teenagers as Adults

Massachusetts treats similar teenagers very differently in the justice system, which leads to different and devastating outcomes as they transition into adulthood. In 2013, Massachusetts ended the automatic prosecution of 17-year-olds as adults. Since that reform, the juvenile justice system's caseload is lower than before the introduction of 17-year-olds. While the Commission's work focuses in part on 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%[19] re-conviction rate, compared to a similar profile of teens who remained in the juvenile system whose re-conviction rate is 22%.[20] The Department of Youth Services 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.

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. For these reasons we urge the House to include provisions in this legislation to end the automatic prosecution of older teenagers as adults.

Expand Eligibility for Expungement

Expungement is an important tool to allow individuals to completely re-integrate into society without the burden of a criminal record. Research has shown that the existence of a criminal record is not a good indicator of someone's likelihood to reoffend. The risk of re-offending for individuals whose last arrest was a youth, and who did not get re-arrested within the subsequent four years, is equal to those with no prior record at all. Importantly, expanding access to

[19] 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/

[20] 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

expungement can be an important tool to rectify the well-documented systemic racism perpetrated against Black and Latinx youth at every point in the criminal justice system.

In 2018, Massachusetts passed legislation that created an opportunity to expunge juvenile and adult criminal records for individuals whose offense was charged prior to their 21st birthday. While this is a tremendous step forward, the law limited eligibility for expungement to individuals with only one charge on their record. We urge the legislature to rectify the over-policing and disparate treatment of people of color by expanding eligibility for expungement.

The Commission on LGBTQ Youth is committed to working for a Commonwealth where all youth thrive. The Commission thanks the Members of the House Ways and Means and Judiciary Committees for its consideration of this issue and urges it to consider the needs of LGBTQ youth when deliberating S.2820. The Commission would happily provide further advice to members of the Committee with respect to this issue.

Respectfully,

Corey Prachniak-Rincón
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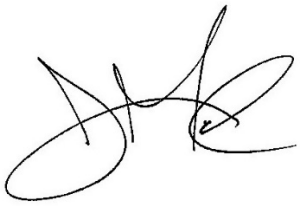

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July 17, 2020

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

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

I write to you today to offer my testimony 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.* As you lead the House's efforts in crafting historic police reform and racial equity legislation, I know you have many important choices before you. This letter will focus on my recommendations for refining and building upon the language of S.2820. My requests center around three crucial issues that disproportionately impact Black and Brown communities: **closing the custodial sexual assault loophole, updating the youth expungement statue, and raising the age of criminal majority to 19.**

No one measure can dismantle systemic racism in our society. However, our national reckoning around race and police brutality is calling upon us as leaders to initiate bold and necessary policies to make the Commonwealth a just and equitable place for communities of color. For these reasons, I respectfully request the inclusion of my three recommendations in legislation put forward by the House.

Thank you for your consideration of my suggestions. I have great confidence in your leadership and would welcome the opportunity to speak with you directly about these issues.

Sincerely,

Kay Khan

Kay Khan
State Representative
11th Middlesex District

Custodial Sexual Assault:

I strongly urge the inclusion of language similar to H.1483 (see attached) to close to custodial sexual assault loophole in any police reform bill drafted by the House Committee on Ways and Means. Shamefully, Massachusetts is one of 35 states in which the law allows police officers to claim that sexual relations with people in their custody were consensual (see map attached). That is why I, along with Representative Marjorie Decker, introduced H.1483, *An Act promoting the safety of individuals in custody*, and welcomed the strong support of former Salem police chief Representative Paul Tucker.

The proposed language would close an existing statutory loophole by prohibiting public safety personnel who have arrest and detention powers from engaging in sexual conduct with those in their custody, supervision or with whom they interact in their professional capacity. **The bill closely mirrors existing law (M.G.L. c. 268 § 21A) already in place for penal and correctional officers, which indicates that a person shall be deemed incapable of consent to sexual relations with officers in those circumstances.** H.1483 is also modeled after the federal Prison Rape Elimination Act (2003), which established a zero-tolerance policy for sexual relations between employees of correctional institutions and inmates.

The current language of the bill was strengthened from last session's version (H.4472, *An Act prohibiting police officers from engaging in sexual relations while on duty*), to incorporate recommendations offered by former Suffolk District Attorney Daniel Conley. **The new language ensures that this legislation would apply to all public safety personnel whose position of authority could render an arrestee, defendant, prisoner, or detainees incapable of consent.** In addition to police officers, such personnel include court officers, parole and probation officers, deputy sheriffs, and campus and hospital police officers.

While I am glad the Senate engrossed legislation to classify sexual intercourse with people in custody as rape (Sec. 57c), it is important to note that this bill ***does not*** include indecent assault and battery. Sexual intercourse is not the only kind of sexual violence experienced by individuals in custody. Those who commit acts of sexual touching with people in their custody who cannot consent must also be held accountable under the law. In order to adequately close this loophole, **it is critical the House strengthen the Senate's proposal by criminalizing both sexual intercourse AND indecent assault and battery committed by public safety personnel while on duty. The bill should also include appropriate criminal penalties for those convicted of such crimes.**

Without a custodial sexual assault law on the books, we will continue to fail survivors. Alarmingly, there have been several recent cases of custodial sexual assaults in Massachusetts. Here are some publicized examples:

- Presently, a former Lowell police officer is facing rape charges following alleged sexual assaults on a teen girl who was experiencing homelessness.[1]
- In 2017, a court officer assigned to the Lawrence District Court who testified that he engaged in sexual conduct with a female defendant while she was in his custody was acquitted of rape under the existing law.[2]
- In 2012 rape charges were dropped against a court officer assigned to the Center Division of the Boston Municipal Court, who admitted to engaging in sexual contact with two female inmates, one of whom was shackled and handcuffed at the time.[3]
- In Salem, Massachusetts, a police officer defended rape charges on the grounds that his sexual activity with a detainee was consensual. While this officer was found guilty of indecent assault and battery, he was cleared of rape.[4] The verdict rendered in this case clearly did not reflect the power and authority he over his victim at the time of the assault.

According to a 2015 Cato Institute study of police misconduct throughout the United States, sexual offenses were second only to excessive use of force complaints.[5] Sexual assault by law enforcement is a complex matter on many levels. When the law allows police to defend sexual relations with individuals in their custody as consensual acts, how can any survivor, let alone a Black or Brown person, feel safe reporting that assault to the police? As Michelle Jacobs aptly notes in *The Violent State: Black Women's Invisible Struggle Against Police*: "the realities of community relationships formed with the police dramatically impact a Black woman's ability to gain legal protection when her rapist is a cop." [6] Considerable research also demonstrates that prosecutors may be reluctant to take a case of rape forward where the victim is a Black woman.[7] It is clear our justice system's reactions to Black sexual assault survivors is deeply connected to this issue.

It is incumbent upon the Commonwealth to enact a custodial sexual assault law that would eliminate any ambiguity around issues of consent, hold abusers accountable, and help sexual assault survivors feel more empowered to come forward.

1 CBS Boston. (2019, June 28). Lowell Police Officer Charged With Raping 16-Year-Old Homeless Girl. Retrived from https://boston.cbslocal.com/2019/06/27/lowell-police-officer-rape-arrest-kevin-garneau/

2 BREAKING: Court Officer Acquitted on Rape, Indecent Assault Charges but Convicted of Withholding Evidence." *Eagle*, 4 Apr. 2017, www.eagletribune.com/news/breaking-court-officer-acquitted-on-rape-indecent-assault-charges-but/article_a97d13a4-1942-11e7-ac83-6fc7f766abe9.html

3 *Commonwealth v. Michael J. Rubino*

4 Croteau, Scott. "Court Finds Former Police Officer Brian Butler Sexually Assaulted, but Didn't Rape Prisoner and Should Serve Three Years in Prison." *Masslive.com*, Masslive.com, 26 June 2018, www.masslive.com/news/2018/06/former_police_officer_brian_bu.html.

5 Jacobs, Michelle. *The Violent State: Black Women's Invisible Struggle Against Police Violence*. 2017. Retrieved from https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1462&context=wmjowl

6 Jacobs, Michelle. *The Violent State: Black Women's Invisible Struggle Against Police Violence*. 2017. Retrieved from https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1462&context=wmjowl

7 Jacobs, Michelle. *The Violent State: Black Women's Invisible Struggle Against Police Violence*. 2017. Retrieved from https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1462&context=wmjowl

Raising the Age & Expungement:

H.3420/S.825, *An Act To Promote Public Safety and Better Outcomes for Young Adults,* that I filed this session with Representative O'Day, and H.1386/S.900, *An Act Relative To Expungement, Sealing and Criminal Records Provisions*, that I filed with Representative Decker, are two critical ways to promote public safety, better outcomes for youth and tackle racial disparities in the juvenile justice system. There is overwhelming evidence that the over-policing of predominantly Black and Latinx communities and schools has devastating consequences on the educational outcomes of children and youth and also on their trajectory into the school to prison pipeline. According to the Sentencing Project, Massachusetts has the sixth worst Black-White disparity in youth incarceration, with Black youth 10 times more likely to be incarcerated than White youth. Additionally, LGBTQ youth, those who are girls, transgender youth and/or youth of color are overrepresented in the juvenile justice system.[8]

In 2017, the Departments of Youth Service (DYS) and Probation partnered 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?"*

They 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. [9] Youth of color have double the recidivism rate of similar teens in the juvenile system. Youth of color exiting the adult criminal legal system are not only burdened by a public criminal record limiting their educational and economic opportunities, the adult system's lack of focus and expertise on positive youth development, the crux of the juvenile justice system, means that they are less likely to engage in rehabilitative programming while incarcerated. Moreover, young people in the adult system have the worst outcomes of any age group in our legal system; a 55% re-conviction rate compared to 22% for a similar profile of teens in the juvenile system.

In 2013, Massachusetts ended the automatic prosecution of 17-year-olds as adults. We have since learned that the state's cost estimate for this change was 37% above the actual costs and the juvenile justice system's caseload is now lower than before the introduction of 17-year-olds.[10] DYS has been successful in reducing its recidivism rate with almost four decades of reforms emphasizing treatment and focusing on ensuring a young people's positive development into adulthood. **With this in mind, we respectfully ask that you end the automatic prosecution of Massachusetts' older teens as adults and adopt the first section of H.3420 that would raise the age of**

8 Himmelstein, K. &. (2011). Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study. Journal of Pediatrics, 127(1), 48-56; Massachusetts Commission on Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth. FY 2021 Report and Recommendations (July 1, 2020 - June 30, 2021).

9 https://www.cfjj.org/s/Detention-Utilization-Study-RED-Excerpt.pdf.

10 Court Capacity. (n.d.). from https://www.raisetheagema.org/court-capacity

“criminal majority” to the youth’s 19th birthday thereby encompassing a full cohort of high school age peers.

I also support the expungement expansion language included in S.2820, and hope to see it in the House bill. Updating the expungement statute is vital to rectifying the collateral consequences of a criminal record and over-policing communities of color. Expungement allows individuals to fully re-integrate into society. In 2018, Massachusetts passed legislation that created an opportunity to expunge juvenile and adult criminal records for individuals whose offense was charged prior to their 21st birthday, but the law created a significant limit. It only allows for one charge on the record.

The current law also makes no distinction between expungement eligibility for charges that result in a conviction or a non-conviction. The mere presence of a court record is neither an indication of guilt nor a public safety risk. The risk of re-offending of individuals whose last arrest was as a youth, and who did not get re-arrested within the subsequent four years, is equal to those with no prior record according to Citizens for Juvenile Justice. Therefore, I ask that the expungement statute be amended to allow expungement for multiple records and for cases that ended in a non-conviction.

CC: Speaker Robert DeLeo
Representative Marjorie Decker
Representative James O’Day

The Commonwealth of Massachusetts
House of Representatives
24 Beacon Street, Boston, MA 02133

Nika Elugardo
State Representative
15th Suffolk Communities in Mission Hill • Jamaica Plain • Roslindale • Brookline

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Chairman Michlewitz
Joint Committee on House Ways and Means
Massachusetts State House
24 Beacon St., Room 243
Boston, MA, 02133

Chairwoman Cronin
Joint Committee on Judiciary
Massachusetts State House
24 Beacon St., Room 136
Boston, MA, 02133

Friday, July 17th, 2020

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, Chair Cronin, and esteemed members of the Joint Committees on House Ways and Means and Judiciary,

Thank you for hosting the hearing on S2820. While it is no secret that I was deeply disappointed by the approach the Senate took to drafting and releasing their bill, it does, of course, have some important elements I would like to see in our House bill. **I recommend we pass it favorably with redrafted language.** I know you are receiving hundreds of suggestions on exactly what to redraft. For the purposes of this testimony, I will focus on what I perceive to be lower hanging fruit-- those elements of policing and broader reform that pertain directly to the MA Elected of Color Ten Point Plan and other priorities that the Speaker and the Caucus discussed at length.

I am grateful to Chair Cronin for all the time you've given to members of the MBLLC, and to me personally, to develop the following ideas.

- **POST:** This is priority number one for the Caucus. The Senate language improved upon the Governor's bill, for example eliminating bonus payments to officers for training. Amendment 54, however is seriously problematic in my view. Among other things, it raised the evidentiary standard to decertify an officer from "preponderance of the evidence" to "clear and convincing evidence." Even with video evidence, "clear and convincing" is an exceedingly high bar. **I ask that use the governor's "preponderance of the evidence" standard, also found in the original S.2800.**
- **Use of Force: Liz Miranda's bill, HD5128**, is strong and the Senate bill had many elements of it. Additionally I know the Speaker and Chair Cronin were advocating for

duty to intervene, which I strongly agree should remain from S2820. I defer to Chairs Cronin, Naughton and Rep Miranda to determine the course in the House that gets to the best use of force language in the country. The Commonwealth is poised to lead on this and should. Banning tear gas is important and practical, given it isn't used by major departments across the Commonwealth. **I ask that we keep the Senate language here, but will support redrafted language Chairs Cronin or Naughton developed in conjunction with MBLLC members.**

- **Civil Service Review Commission:** Here the Senate bill is silent. I ask that in the House we maintain our Speaker's commitment to address all four MBLLC priorities in our bill in some fashion. I know Rep Holmes has expressed that converting his bill language to a Commission would be a laudable start, and I agree. **I ask that the House redraft of S.2820 include a Civil Service Review Commission** to determine the best course of action to ensure that people of color and veterans have meaningful and demonstrable access to civil service jobs, especially people local to the communities they wish to serve.
- **Commission on Structural Racism:** Chair Cronin worked with me extensively as I developed language to **redraft Rep Holmes original bill H1440.** I also worked with Undersecretary Peck and incarcerated activists. The language we developed was given to the House and Senate at the same time. The Senate adopted this language as Am #16 with some changes. I leave it to the discretion of Chair Cronin as to which language works best. As you know, it is based on work I am already doing with the Undersecretary and we are flexible on the structure as long as it enables us to work closely with incarcerated persons and COs to plan development of a permanent entity to address structural racism at and impacting the DOC, and provided the appointments produce sufficient diversity in experience for working groups to focus on programing, policy, and legislation respectively. **The language I reviewed with Chair Cronin's General Counsel on July 8th does this well, and I ask that it be included in an S.2820 redraft**.

While the above are the priorities of the MBLLC and, therefore, my top priorities, **Caucus members have discussed our individual support for a range of issues. I want to highlight two for which I will be strongly advocating: Student Privacy (see attached red line of Senate language that I am discussing with juvenile justice advocates) and Expungement**. On the latter, **Reps Decker and Khan have already developed strong language in H1386,** and I support its inclusion in the House redraft of S.2820. My career prior to becoming a legislator exposed me to the profound possibilities of transformation for youth engaged in crime and also to the unnecessarily deleterious and far-reaching ripple effects of tracking "problem youth" or "hot spots." Gang databases are one of several examples of well-intended policy that causes more damage than good. The Senate language begins to address that, but I think we can do a better job using some of the language in the attached. I am not sure whether we have the votes in the House for raising the age of juvenile jurisdiction, but I will support that given an opportunity.

The above represent those of my priorities that I believe we have the votes for and could advocate with the Governor to avoid veto (with the possible exception of raising the age). I will make quick mention here of Qualified Immunity. After an extended conversation with Police Association lawyers and a follow up, equally intensive, conversation with Senator Brownsberger, my assessment, for what it's worth, is as follows:

- **Section 10c of S.2820** eliminates the second prong of the QI test, the presence of "clearly established law." The reasonableness element of the test, the first prong under common law, is tweaked but that tweak will result in little change relative to current law. The new cases allowed to go to trial based on S.2820 language will be largely edge cases with uncommon facts. This is good for the evolution of constitutional law, but will have little impact on communities or police. The types of cases that we in black and brown communities currently find most upsetting are those where brutality was deemed "reasonable" under the law, like in the Ferguson case. **S.2820 is a positive change for jurisprudence, and I support it, but it does not change this fundamental flaw in our system.** Any excessive force not deemed "necessary" (versus not deemed reasonable) should be subject to litigation for the violation of Fourth Amendment rights. This is because "reasonableness" is based on factors including historic expectations of what is normal and even law and policy that are rife with structural racism. **S.2820 will also NOT materially impact the types of cases with "willful and wanton" behavior on the part of officers that involve punitive damages that will NOT be indemnified. Even within the realm of indemnifiable behaviors, the number of additional QI denials as a result of S.2820 likely will be very small.** As it stands only about 3% of cases are currently granted dismissal on the basis of QI. Reducing this number by a fraction will not materially impact municipal budgets. And where it does, there will have been a finding of a civil rights violation (better to pay than to leave members of the community without compensation as happens now). Over many years these new edge cases may more substantially impact liability as they become part of common law. We don't really know. Even so, this potential added cost to municipalities of indemnifying civil rights violations will be remote, far in the future, and worth it to prevent even a small number of miscarriages of injustice. **In summary, S.2820 Section 10c will be good law and we should include it, but in the near future it will materially impact NEITHER officers, NOR members of the community, NOR, municipal budgets.**
- Section 10c has a lot of issues that are potentially too complex to settle in under a week. I agree with the Police Association concern that it will open the floodgates to state litigation. While this is not inherently problematic, we need more information as to the probable impacts of this and whether those impacts are in the interest of black and brown communities and of Commonwealth communities generally. Furthemore, my constituents working in civil rights law have concerns that the language is ambiguous and rife with unintended negative consequences regarding their payment and other matters. **I recommend we keep Section 10c and study 10b further.**

Thank you for your kind attention to my concerns. For the above reasons I respectfully ask that Bill S.2820 be reported favorably out of Committee with the changes I suggest above.

Sincerely,

Representative Nika Elugardo

July 17, 2020

Massachusetts State House
24 Beacon St. Room 36
Boston, MA 02133

ATTN: Speaker Robert A. DeLeo
RE: S.2820

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,

George Sennott
36 Bowdoin St.
Winthrop, MA 02152

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 in support of Section 78 of S.2820 ("Critical Incident Stress Management and Peer Support Programs").

In reading Senate 2820, it has become clear to me that the many of your colleagues are unaware of the toll that being involved in a critical incident (e.g. an officer involved shooting) takes on an officer's physical/mental health. Sadly, it seems that some of you have been led to believe that when an officer is forced to take a life (in defense of themselves or others) they feel either nothing or worse yet that they receive some kind of pleasure from it. Having been personally involved in an OIS (Officer Involved Shooting), I can assure you that nothing could be further from the truth.

On May 10, 2016, while off duty and enjoying a night out with my wife I was involved in a critical incident. That evening, I was forced to discharge my firearm in order to stop an assailant from brutally stabbing a waitress in the Bertucci's restaurant at the Taunton Galleria Mall. While many people are familiar with the events of that day, most are not aware of the role that critical incident stress debriefing and peer support played in my recovery. Immediately following the shooting, I contacted my direct supervisor (Capt. M. Correia) by telephone and I informed him of what had transpired. Subsequently, Captain Correia contacted Taunton PD Officer Robert Swartz (now a Detective) and he requested that the SEMLEC Critical Incident Stress Team be activated.

Once the scene of the shooting was secured, my wife Laura and I were transported to Taunton Police headquarters. Upon our arrival at the PD, we were placed in a small interview room to await the arrival of TPD detectives. While we waited in that room we began calling our families to let them know what had occurred and to tell them that we were both physically ok. During this time, reality began to set in and our stress levels were very high.

Thankfully, Detective Swartz arrived at the PD within the hour and took us to a more comfortable and private space where we could talk. At that time, Detective Swartz explained to us that we should go to the hospital to be evaluated for stress and he persuaded me to make an appointment for Laura and I to meet with a peer support counselor from the Boston Police Peer Support Unit later that week.

There is a false perception in the general public that police officers simply return to work and go on with their duties as if nothing happened immediately following an OIS. Consequently, I feel that it is my duty to share my story in order to educate people and put an end to that myth. The morning after my OIS, our home was filled with family and friends who came by to offer my wife and I support in our time of need. However, once our guests left, I spent the majority of that day lying on my bathroom floor doubled over in pain due to severe cramping and fatigue. Since that time, I have learned that those symptoms were a direct result of my body producing a surge of adrenaline as part of its fight or flight response the previous night.

On the Friday following the OIS, Laura and I traveled to Boston and we had our first (of many) meetings with a Peer Support Counselor from the Boston Police Department Peer Support Unit. As a typical type A personality, I was skeptical of meeting with the counselor and discussing my feelings in the open. However, once we arrived at the Peer Support building we were met by a Boston Police Officer who had been in an officer involved shooting several years prior along with a counselor (social worker). The counselor began our session by having the officer introduce himself and tell us about his experience. This set me at ease and allowed me to begin to trust the process. Once we left our first session, I felt like a massive weight had been lifted from my shoulders and for the first time in several days my adrenaline began to return to a normal level.

The assistance I received from both the SEMLEC Critical incident Stress Team and the Boston Police Peer Support Unit was critical in helping me adjust back to my normal life and ultimately return to work. Therefore, I respectfully ask that Section 78 of S.2820 (“Critical Incident Stress Management and Peer Support Programs”) be included in the final draft of this legislation, so that we can work together to ensure that all officers involved in critical incidents receive the help that they so desperately need.

Thank you for taking the time to listen my concerns. If you have any questions, I would be happy to meet with you or your colleagues to discuss them at your convenience. I look forward to your response.

Sincerely,

James M. Creed

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(781)718-5227

THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

July 17, 2020

The Honorable Aaron Michlewitz, Chair
House Ways & Means Committee
State House, Rm. 243
Boston, MA 02133

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

Dear Chairpersons Michlewitz and Cronin,

I know that I am taking an unusual step in offering testimony to House Chairs on a bill that has already been debated and engrossed in the Senate, however I have concerns about particular sections of the legislation that I hope can be addressed in the process that is underway in the House. I am writing to offer brief testimony on S2800, 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.

There is no doubt that we are in a moment in history that requires our attention, our focus and our immediate action. In fact, we would not be fulfilling our duty as legislators and representatives of the people of the Commonwealth, if we do not act swiftly to do our part to address racism, use of force, police accountability and training, and the methods and procedures employed by police officers in our municipalities and our Commonwealth. The actions we take and how we get there however matter greatly if we wish to enact true reform that keep our communities safe and protect the lives of Black and Brown people. Simply, the problem is real, it exists, and we must act.

I am particularly proud of many of the provisions we adopted in S2800 that I believe lead us to becoming a better Commonwealth. Standardized and proactive police training, use of force standards, a system of licensing that is in place across the Country, mental health intervention,

duty to intervene by police officers in cases of abuse of force, steps toward police department accreditation and overall accountability measures for police officers are the hallmark of this legislation and should be passed immediately and celebrated by everyone upon passage. S2800 however, even with 90 percent of the bill being agreeable and composed of the language I noted, has a particular shortfall that I fear will have unintended consequences for many public workers, police officers and ultimately the passage and enactment of the legislation itself.

There is no doubt that the Qualified Immunity doctrine requires a deeper look throughout the Country. There tends to be a general mis-understanding on what the doctrine is and how it is applied. I have also learned throughout the last week the scope and intent of Qualified Immunity, not just as it relates to law enforcement officers, but every other public employee and public official. As a legislature, we should look seriously at the impact of changing the standard in cases of Qualified Immunity to ensure that the protections remain for the overwhelming majority of good and decent public workers that require insulation from frivolous lawsuits. At the same time, we must ensure that Qualified Immunity or any similar doctrine or statutory protection should exist for officers or other public workers that knowingly, brazenly, or carelessly violate the rights of citizens or commit illegal acts. To do that however, to take the steps necessary to fully vet this complicated issue and decades long jurisprudence, we must be deliberate in our approach. I believe the best course of action is to create a commission of legal experts and stakeholders to dig deep into this issue and report back to the legislature with recommendations that we should swiftly enact.

Additionally, we need to ensure that the POSAC system of certification and investigation is one that provides officers with their right to due-process. A system that is independent of disciplinary hearings, arbitration and appeals is fundamentally flawed and runs counter to the principles we embrace for all workers. We must have a system that provides accountability through a certification process, however we must not trample on labor rights to accomplish it. I believe that

we can have a system that swiftly roots out the officers that don't deserve to wear the badge, while offering basic labor rights afforded to workers throughout this Country.

I am also cognizant of the problem that exists in this Country and even right here in Massachusetts. The report released by U.S. Attorney General Barr about the actions of the Springfield Police Department is alarming. The disturbing behavior and regular use of excessive force that was outlined in that report is atrocious. From George Floyd to Breonna Taylor, we cannot let ourselves bury our heads in the sand when it comes to excessive use of force and racism among those sworn to protect lives, not take them. They say that a movement is made up of a series of moments. Unfortunately, the moments that have led to the movement for change we are engaged in now are deeply painful and steeped in loss of life and loss of dignity. We must respond, we must act and we must do so now.

Finally, I am blessed to represent a district with some of the best law enforcement officers in the Country. The Men and Women that serve the communities of Medfield, Walpole, Sharon, Foxborough, Mansfield, Norton, Attleboro, Seekonk & Rehoboth are dedicated and well-trained. In fact, I consult with the Chiefs of many of those departments from time to time to understand the best-practices and professional methods and procedures that they use to police our communities. I have frequently held up these departments as a model for the way policing should be conducted in the 21st century and candidly, I'm proud of them and how they perform their duty to our cities and towns in the challenging time we find ourselves in today.

I urge you to do what you have always done; listen to stakeholders, respect the frames of reference of each person and craft legislation that meets the moment. Let's pass a bill that embraces so much of the needed change required in policing, while uniting and building bridges

THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

within our communities and let's commit to examining the issue of qualified immunity in the months ahead, while protecting all public workers like firefighters and nurses, DPW workers and teachers, and the fundamental rights afforded them. I thank you for your time and consideration and I look forward to working with you on this legislation and in the future.

With Every Good Wish,

Paul R. Feeney

Paul R. Feeney
State Senator - Bristol & Norfolk District

As your constituent, and on behalf of the NEPBA Local 185, 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, and the countless number of police officers across the state 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 our 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 of us who protect and serve our 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 we deserve.

Thank you,

Ryan Maltais

Ryan Maltais
President, NEPBA Local 185
rmaltais@lakevillema.org
508-989-1312

The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR WALTER F. TIMILTY
NORFOLK, BRISTOL AND PLYMOUTH DISTRICT

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CHAIR
JOINT COMMITTEE ON VETERANS AND FEDERAL AFFAIRS

VICE CHAIR
JOINT COMMITTEE ON ENVIRONMENT, NATURAL RESOURCES AND AGRICULTURE

JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND EMERGING TECHNOLOGIES

JOINT COMMITTEE ON MENTAL HEALTH, SUBSTANCE USE AND RECOVERY

JOINT COMMITTEE ON PUBLIC SERVICE

SENATE COMMITTEE ON BODING, CAPITAL EXPENDITURES AND STATE ASSETS

July 17, 2020

The Honorable Aaron Michelwitz
Chair, House Committee on Ways and Means
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 Michelwitz and Chair Cronin,

I am writing today to express my concerns with 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***. Specifically, I believe the changes to qualified immunity were rushed, not properly vetted and ultimately are detrimental to law enforcement. I am also concerned that these changes may have unintended consequences on our public workforce.

I believe the nationwide discussions surrounding police, race, and community relations offers a unique opportunity for lawmakers to focus on improving police training and standards. I believe that the portions of S2820 that focus on standardized procedures and protocols, the promotion of diversity, and independent certification are well intentioned and will be a benefit to our communities.

However, the changes made to qualified immunity in S2820 would drastically lower the standards under which a civil action could be brought against a public official. Unchanged, qualified immunity is not absolute immunity from a civil lawsuit. Current law allows for civil actions against public officials who use force, intimidation, or coercion to interfere with Constitutional or statutory rights.

Whether they are intentional or not, the consequences of S2820 are far reaching across Massachusetts, for all public employees. By removing qualified immunity, the Senate has created an inherent conflict for all those that serve in the public sector. For example, a nurse performing CPR on a frail patient, must now balance their professional responsibilities of saving that patient's life with the threat that in doing so, they may break some of the patient's ribs and therefore possibly be sued for their life-saving actions.

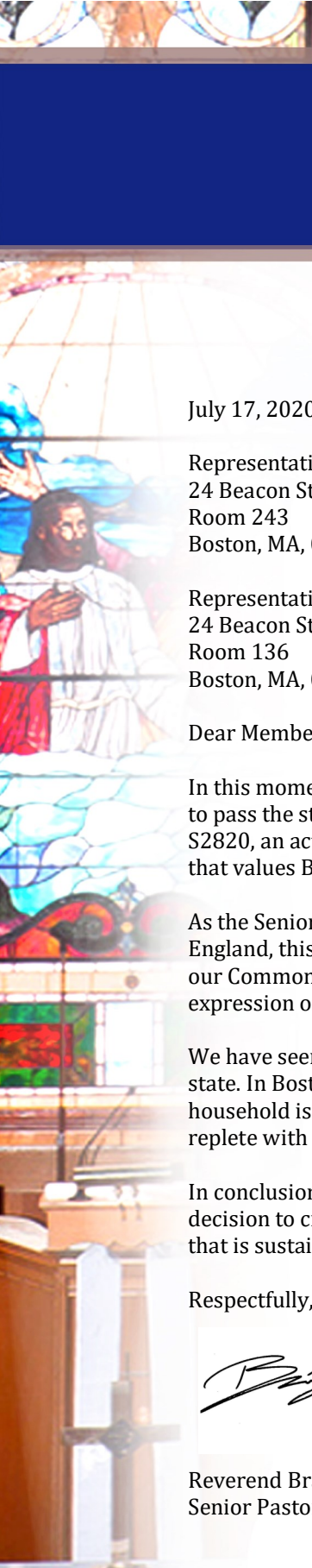
Across the Commonwealth, our dedicated law enforcement officers, firefighters and all our public servants are now faced with the impossible burden that in carrying out their professional responsibilities, they are leaving themselves open to lawsuits that could derail their careers and endanger their families. As legislators, our professional responsibility is to enact laws that protect everyone in the Commonwealth. During debate on the Senate floor, I supported amendments that were designed to address these issues with qualified immunity. Unfortunately, these amendments were not adopted. Therefore, it is my strong belief that the elimination of qualified immunity as contained in S2820 is flawed and does not protect all of the Commonwealth's citizens.

I respectfully request that as you develop the House of Representative's version of this legislation, you consider language that would create a commission of experts to study qualified immunity and make an informed and educated recommendation on how it is best used to ensure due process for everyone in Massachusetts.

Thank you for your time and please, do not hesitate to contact me with any questions or concerns that you may have.

Sincerely,

Senator Walter F. Timilty
Norfolk, Bristol and Plymouth



July 17, 2020

Representative Aaron Michlewitz (D - 3rd Suffolk)
24 Beacon St.
Room 243
Boston, MA, 02133

Representative Claire D. Cronin (S - 11th Plymouth)
24 Beacon St.
Room 136
Boston, MA, 02133

Dear Members of the Committee,

In this moment of unprecedented citizen activism and worldwide acknowledgement of Black anguish, we must act to pass the strongest bills that ensure police accountability and antiracist policies. To this end, we must pass 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.

As the Senior Pastor of the historic Myrtle Baptist Church, one of the oldest African American congregations in New England, this issue is not only a matter of politics; this is a matter of moral urgency. In order to redeem the soul of our Commonwealth, antiracism must be the guiding principle of our public policy. Therefore, S2820 is a legislative expression of the moral claim that Black Lives Matter.

We have seen how Black Lives have been abused, targeted, incarcerated and economically exploited in our own state. In Boston, the median net worth of a white household is $247,500, while the median net worth of a Black household is $8. If we do not address this issue by passing bills such as S2820, we will perpetuate a system that is replete with great inequity.

In conclusion, I urge you to pass S2820 because the lives of Black children matter. Massachusetts faces a moral decision to create a more just and equitable world for those coming after us. We must do that by passing legislation that is sustainable into the next generation. To pass S2820 is a moral decision to stand on the right side of history.

Respectfully,

Reverend Brandon Thomas Crowley, PhD
Senior Pastor, The Historic Myrtle Baptist Church of West Newton

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NAHANT POLICE DEPARTMENT
198 NAHANT ROAD, NAHANT, MA 01908-1298
Robert C. Dwyer, Chief

TEL. 781-581-1212
FAX 781-581-1907
www.nahantpolice.org

July 17, 2020

Re: Concerns to Senate 2820 as Amended

Dear Chairwomen 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" submitted to the House on July 15, 2020.

I stand against S2820 as presented. The senate version of the bill as written seriously undermines public safety by limiting police officer's ability to do their jobs.

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,

Robert C. Dwyer

Robert C. Dwyer
Chief of Police

NAHANT POLICE DEPARTMENT

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Testimony for expungement in S.2820

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

My name is Jose PIzzini and I live in Lawrence.

The Massachusetts Senate's passage of a sweeping racial justice and police reform bill includes a critical clarification to the existing expungement law that would create additional opportunities for people like me to expunge their past life. Thousands of people like me miss out on opportunities for success because they are judged based on past criminal records -- even when the charges on those records have long been dismissed -- and this bill can change that

A criminal record should not be a lifelong sentence that defines who we are as people and creates consistent barriers to education, housing, and employment. The charges against me have all been dismissed, yet I was just rejected from a job that I have been dreaming about because my background check still brings them up.

The Senate bill makes the important distinction allowing for multiple court appearances and differentiates between dismissals and convictions. The bill also recognizes this expansion as a matter of racial justice -- in Massachusetts, Black youth are three times as likely to get arrested than their white peers and Black individuals are six times more likely to go to jail than white people, despite making up just 7.5% of our population.

Young people are often racially targeted, from arrest to sentencing, and expungement is the second chance that so many of us deserve. As we near the end of a busy legislative session, I urge the House to take up this issue.

Jose Pizzini is an Organizer at UTEC Inc. and lives in Lawrence, MA

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

MARIA DUAIME ROBINSON
STATE REPRESENTATIVE
6TH MIDDLESEX DISTRICT
FRAMINGHAM

Committees:
Technology and Intergovernmental Affairs
Cannabis Policy
Export Development
State Administration and Regulatory Oversight

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Chair Aaron Michlewitz
Room 243, State House
Boston, MA 02133

Chair Claire D. Cronin
Room 136, State House
Boston, MA 02133

Dear Chairs Michlewitz and Cronin,

Thank you for holding open the opportunity to submit testimony on S.2820. It has been a turbulent few weeks for us as legislators, being close to our communities who are demanding change -- even if they are not 100% sure what that change looks like. In Framingham, we have a difficult history that involves nationally known no-knock warrant cases such as the case of Antoinette Callahan and the fatal shooting of Eurie Stamps Sr., who died needlessly during a drug raid targeting another person.[1]

As we reckon with issues such as the naming of an after Woodrow Wilson and rethinking of the use of Student Resource Officers in the schools, we at the state level are left to tackle these larger issues. I have seen a significant evolution of the Framingham Police Department over the years, with the addition of the state's first juvenile jail diversion program, which is a model being used across the Commonwealth. Our community recognizes that across the state policing is imperfect but many individual departments have worked hard to seek improvement.

That being said, we're faced with a moment in time when it has become clear that the most violent actions of officers are not held to account. While we in Massachusetts often pride ourselves on being better than most other places in the country, we recognize that these awful actions have and will take place here. The goal for me and for many others is to hold misconduct accountable.

Listening to Leaders of Color

On June 2, I had the privilege of standing with Black and Latino leaders of color from across the state as they rolled out the 10-point plan for Massachusetts, focusing on discrete actions to be taken at each level

1 https://www.washingtonpost.com/news/the-watch/wp/2015/01/06/still-waiting-for-justice-after-swat-team-member-kills-innocent-grandfather/

of government. With other members of the Framingham delegation, I publicly committed to supporting the four points aimed at the legislative level. I maintain this firm commitment to the four pillars originally announced that day:

1) I was encouraged to see the POST standards commission set up even more thoroughly than what was originally drafted in H.2146. I support maintaining this language in the House version of the bill, especially with the commission makeup as currently proposed.
2) The civil service review commission as proposed by Representative Holmes should be included in the House version of the bill. Regarding civil service, my own City of Framingham intends to remove itself from civil service for hiring for the Department of Police in part because of the limitations associated with civil service, particularly around diversity in hiring.
3) The commission on structural racism should be included in the initial House version of the bill as opposed to being added via amendment. I defer to Representative Elugardo who has worked on this section extensively.
4) Representative Miranda's HD.5128 should be included in full, including strengthening the S.2820 language around fully banning chokeholds and tear gas. Over the past two months, I have heard from many constituents and friends about how harmful tear gas is. Many participated in peaceful protests across the country and found the experience of being tear gassed to being treated as inhuman. I strongly recommend the committee consider banning teargas and chokeholds entirely, beyond what S.2820 suggests and more aligned with Rep. Miranda's language.

Establishing Duty-to-Intervene:

For many of us, one of the most despicable parts of the George Floyd video was watching the other officers stand by while the victim was clearly in distress from the fatal use of force being used. As an Asian American, it was especially disturbing to watch a person of color stand by and do absolutely nothing to stop the action. As with any position, there is a certain amount of expected support and collegiality, whether in a police force, a school building, an office, or even in our own Legislature. While we often defer to trusted colleagues' own decision making, we must make it so that any clear violation of an oath of office taken by a public servant should be stopped and reported. We have this in inspector generals and whistleblowing in other professions, but we need to make it especially clear in policing.

Banning No-Knock Warrants:

This is a common sense policy to enact from both sides of the aisle. It is such a straightforward policy that both Rand Paul and U.S. House Democrats introduced language at the federal level to ban no-knock warrants.[2]

Public Records:

There are many professions where workplace mistakes could be a life or death situation; I think specifically about the NECC compounding pharmacy scandal here in Framingham from about a decade ago that led to a fatal meningitis outbreak. We want to ensure that the people involved in that case no longer can practice in the pharmaceutical industry; we should hold our public servants to the same

[2] https://www.paul.senate.gov/news/sen-rand-paul-introduces-justice-breonna-taylor-act; https://www.nbcnews.com/politics/congress/pelosi-top-democrats-unveil-police-reform-bill-n1227376

standard. However, police officers' records from previous positions are not readily available and in this concealment reduces transparency of previous transgressions. When an officer that was dismissed from a department in one part of the state wants to be re-hired in another part of the state, all involved parties, including the public, should be made aware of any previous issues.

Justice Reinvestment Workforce Fund:
Covid-19 has exacerbated the issues we see in our correctional facilities; here in Framingham, we hear from families begging for their loved ones to be released for fear of infection. However, the larger struggle is where the formerly incarcerated can go, even if they are granted release. The Justice Reinvestment Workforce Fund will provide much needed supports to allow the formerly incarcerated to successfully re-enter society and find solid work opportunities, reducing recidivism.

Facial Recognition Ban:
While potentially not within the scope of the House's bill, I fully support a lasting ban on facial recognition technology.

Banning Sexual Intercourse with People Held in Custody:
I strongly support Rep. Khan's bill that is generally included in Section 57 of S.2820 to ban any law enforcement professional from having any kind of sexual relationship with a person in their custody. This is a straightforward issue that Massachusetts is behind on and should be able to fix easily. In 2020, we better understand that any sexual relationship happening with an extremely skewed power dynamic is not consensual. I hope to see this section included in the House bill.

Qualified Immunity:
Caveat: I am neither a lawyer nor an expert in 4th Amendment issues. I have heard a great deal on both sides from my district about qualified immunity. My understanding is this: right now, we as the Legislature could pass the strongest laws in the country around use of force, yet we may not be able to actually prosecute those in violation of the laws because of our existing statutes around qualified immunity. To be clear, I am not interested in taking away specific indemnity for any public servant (a conversation to be had at the local level anyway). I am not interested in frivolous lawsuits or the ability to take away a public servant's personal possessions. I have heard from folks in my district who believe the qualified immunity language in S.2820 would do that, but lawyers I speak with indicate that as long as the indemnity stays in place (as it does in S.2820), that will not happen. What can happen is that by removing the "clearly established" prong of the qualified immunity doctrine, unusual cases involving use of force would no longer be thrown out of court because there was no exact case law precedent. To me, that means justice could be served -- assuming that the person in question is actually found guilty in said civil suit. By adopting the S.2820 language, nearly exactly what Representative Day had filed earlier in session that was given a hearing and passed successfully out of committee, we would simply be moving to the reasonableness standard and away from the clearly established test, which would allow civil rights prosecution to move forward in some of the most egregious and unusual cases. Assuming I am correctly portraying the effects of the language, I would support keeping the S.2820 language around qualified immunity.

The Eurie Stamps Sr. case I referenced earlier is a rare situation where a request for qualified immunity was denied,[3] but it makes the strong case for banning no-knock warrants.[4] Ultimately the family was given a settlement by the then-town, but it is a poor substitute for a loving family member lost too soon. I am confident that other communities throughout the Commonwealth have experienced similar trauma as the Stamps family, and many more families have experienced trauma that may not have resulted in fatalities. Regardless, we as the Legislature need to tackle these issues head on to improve all of our communities. Our constituents deserve equity and the ability to stay safe from those sworn to protect them. I have great faith in your leadership to help get us there, and I respectfully ask that you consider my views when crafting the House version of this bill.

Best,

Maria D. Robinson
State Representative
6th Middlesex District

[3] https://caselaw.findlaw.com/us-1st-circuit/1725054.html

[4] https://www.patriotledger.com/news/20160929/family-of-framingham-man-killed-by-police-receives-375-million-settlement

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

NATALIE HIGGINS
STATE REPRESENTATIVE
4TH WORCESTER DISTRICT

Vice Chair
Committee on Personnel and Administration

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Joint Committee on Health Care Financing
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July 17, 2020

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

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

Written Testimony 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

Chairs Cronin & Michlewitz,

Thank you for opening up a public comment period on this important legislation. I look forward to debating and passing bold legislation that will result in systemic change. First and foremost, I urge you to include language addressing the four state-level priorities of the Massachusetts Elected Officials of Color:

(1) Implement a statewide Peace Officers Standards and Training (POST) system that certifies police officers and enables de-certification for misconduct and abuse (inspired by H2146 - Reps. Holmes & Vieira);
(2) Establish an Office of Diversity and Equal Opportunity to establish guidelines and review for diversity plans for all state agencies and establish a peace officer exam advisory board to review examinations for appointment and promotion of peace officers (H2292 - Rep. Holmes);
(3) Establish 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 (H1440 - Rep. Holmes); and
(4) Adopt clear statutory limits on police use of force, including choke-holds 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 (HD5128 - Liz Miranda)

Further, in order to ensure the above policies create their intended systemic change, we must reform qualified immunity to ensure that people have recourse when their constitutional rights are violated by police. We know of many egregious cases right here in the Commonwealth, where Massachusetts residents have been denied an opportunity to seek justice. It is our duty to pass legislation to ensure their voices are heard. I look forward to working with you and your staff on passing this legislation in the House next week.

Sincerely,

Natalie Higgins

Natalie Higgins

Before the
House Committee on Ways & Means
House Committee on the Judiciary

Testimony of the Massachusetts Newspaper Publishers Association and Boston Globe Media Partners, LLC Concerning S. 2820

True police reform is impossible without transparency. The provisions in the Senate bill that attempt to shed light on police misconduct investigations, while laudable, are insufficient to this moment. The House should seize the opportunity to ensure the utmost transparency around issues of police misconduct in the Commonwealth.

The Commonwealth's record on transparency surrounding police misconduct is woeful. Not long ago, the national organization Investigative Reporters and Editors gave the Massachusetts State Police its "Golden Padlock Award," which it provides every year to the most secretive U.S. agency or individual. In March 2020, the Supreme Judicial Court ruled that *The Boston Globe* was entitled to incident reports concerning the arrests of police officers who allegedly drove drunk—but only after the *Globe* was required to litigate the matter in court for five years. *Boston Globe Media Partners v. Dept. of Criminal Justice Information Services*, 484 Mass. 279 (2020). For nearly two years, the *Worcester Telegram & Gazette* has been forced to pursue a lawsuit against the City of Worcester for police misconduct investigation records, notwithstanding strong caselaw deeming such records to be public.

In this context, we offer suggested modifications to the Senate bill, attached to this testimony as redlines. The revisions seek to address the following shortcomings.

1. Section 6 of the Senate bill requires the certification authority to create new databases of misconduct investigations concerning specific law enforcement officers. However, those databases include only complaints that are "sustained" by the appointing authority or certification authority. Police departments routinely dismiss misconduct complaints that they deem insufficiently supported. A police department's decision to dismiss a police misconduct complaint is itself a matter of public interest that warrants public oversight and accountability. The public has a right to know whether particular officers have a history of complaints against them. Access to such information will not only ensure that the public can quickly identify potential problem officers, but will allow the public to determine whether appointing authorities are aggressively policing their own officers.

Our proposed revision to Section 6, Section 222 (d) would include in the database not just sustained complaints, but all complaints in which a determination has been reached.

2. The proposal in Section 6 for an anonymized database listing all complaints against officers is insufficient. Especially in large police forces, such as those in Boston or Worcester, anonymous complaint information will frustrate accountability and public safety. As the Supreme Judicial Court ruled earlier this year, law enforcement officials have "significantly diminished" privacy interests with respect to information relevant to the conduct of their office because they are sworn to serve the public and obey the law. *Boston Globe Media Partners,* 484 Mass. 279. Any alleged interest in officer "privacy" cannot overcome the public's right to know about allegations of police misconduct.

Our proposed revisions would provide additional details designed to strengthen accountability and public safety.

3. Police departments routinely destroy records of misconduct investigations, sometimes in as little as seven years. This troubling practice prevents the public from learning the details of older complaints, which may provide early warning of problems to come. With the widespread availability of electronic storage, there is no valid reason for these records to be destroyed. Accordingly, we suggest an additional provision in Section 6 of the bill to address this problem, which we have inserted after Section 223(e).

4. A right of access to information is worth little without an enforcement mechanism. Accordingly, we propose that Section 6 of the Senate bill provide that the Superior Court may enforce the transparency requirements of the bill in a case brought by the Attorney General or any interested resident. We have inserted suggested language after Section 223(e).

5. Section 2 of the Senate bill modifies exemption (c) to the public records law, Gen. Laws. C. 4, § 7, cl. 26(c), which exempts from disclosure "personnel" records and records that unreasonably invade privacy. We believe this modification should be broadened to make clear that exemption (c) does not apply to any disciplinary measures imposed on a law enforcement officer as a result of a misconduct investigation.

The current draft states only that it does not apply to the "disposition" of such investigations, which could be interpreted to mean only the finding as to whether the complaint is sustained or otherwise disposed of. Current caselaw recognizes that most police misconduct investigation records are not "personnel" records, because a police misconduct proceeding is fundamentally unlike an ordinary personnel review. The public has a substantial interest in knowing not just whether an officer was found responsible for misconduct, but what disciplinary measures the appointing authority took as a result.

The attached redlined version of S. 2820 contains our specific recommendations as to revisions that would further the goals of enhancing police accountability and ensuring the public's right to know. For all of these reasons, we respectfully ask that you incorporate our recommendations in the House legislation and in any final bill that emerges from this process.

Respectfully Submitted,

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July 17, 2020

SB2820: Redlined Revisions of The Boston Globe and the Massachusetts Newspaper Publishers Association

SECTION 1. Chapter 3 of the General Laws is hereby amended by adding the following 2 sections:-

Section 72. (a) There shall be a permanent commission on the status of African Americans. The commission shall consist of: 3 persons appointed by the governor from a list of not less than 5 nominees provided by the New England Area Conference of the National Association for the Advancement of Colored People; 3 persons appointed by the president of the senate from a list of not less than 5 nominees from the Massachusetts Black & Latino Legislative Caucus; 3 persons appointed by the speaker of the house of representatives from a list of not less than 5 nominees provided by the Massachusetts Black and Latino Legislative Caucus; 1 person appointed by the minority leader of the senate from a list of not less than 5 nominees from the Massachusetts branches of the National Association for the Advancement of Colored People New England Area Conference and the Massachusetts Black and Latino Legislative Caucus; and 1 person appointed by the minority leader of the house of representatives from a list of not less than 5 nominees from the Massachusetts branches of the National Association for the Advancement of Colored People New England Area Conference and the Massachusetts Black and Latino Legislative Caucus. Members of the commission shall be residents of the commonwealth who have demonstrated a commitment to the African American community. Members shall be considered special state employees for purposes of chapter 268A.

(b) Members shall serve terms of 3 years and until their successors are appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority for the balance of the unexpired term.

(c) The commission shall annually elect from among its members a chair, a vice chair, a treasurer and any other officers it considers necessary. The members of the commission shall receive no compensation for their services; provided, however, that members shall be reimbursed for any usual and customary expenses incurred in the performance of their duties.

(d) The commission shall be a resource to the commonwealth on issues affecting African Americans. It shall be a primary function of the commission to make policy recommendations, based on research and analysis, to the general court and executive agencies that: (i) ensure African Americans equitably benefit from and have access to government services in the same manner as other citizens of the commonwealth; (ii) amend laws, policies and practices that have benefited citizens of the commonwealth to the exclusion of African Americans; and (iii) promote solutions that address the impact of discrimination against African Americans. Further, the commission shall: (A) promote research and be a clearinghouse and source of information on issues pertaining to African Americans in the commonwealth; (B) inform the public and leaders of business, education, human services, health care, judiciary, state and local governments and the media of the historical and current implications of systemic racism on the African American community across the commonwealth and the unique cultural, social, ethnic, economic and educational issues affecting African Americans in the commonwealth; (C) serve as a liaison between government and private interest groups with regard to matters of unique interest and concern to African Americans in the commonwealth; (D) identify and recommend qualified African Americans for appointive positions at all levels of government, including boards and commissions; (E) assess programs and practices in all state agencies as they affect African Americans using a racial equity framework; (F) advise executive agencies and the general court on the potential

effect on African Americans of proposed legislation and regulations using a racial equity framework; (G) monitor executive and legislative action purported to eliminate systemic racism for its impact on African Americans using a racial equity framework; and (H) generally undertake activities designed to enable the commonwealth to realize the full benefit of the skills, talents and cultural heritage of African Americans in the commonwealth.

(e) Annually, not later than June 2, the commission shall report the results of its findings and activities of the preceding year and its recommendations to the governor and to the clerks of the senate and house of representatives.

(f) The powers of the commission shall include, but not be limited to: (i) directing a staff to perform its duties; (ii) holding regular, public meetings and fact-finding hearings and other public forums as necessary; (iii) using the voluntary and uncompensated services of private individuals, agencies and organizations that may from time to time be offered and needed, including provision of meeting places and refreshments; (iv) establishing and maintaining offices that it considers necessary, subject to appropriation; (v) enacting by-laws for its own governance; (vi) contract or collaborate with academic institutions, private sector consultants or other professionals for research and analysis; and (vii) recommending policies and making recommendations to agencies and officers of the state and local subdivisions of government to effectuate the purposes of subsection (d).

(g) The commission may request information and assistance from state agencies as the commission requires.

(h) The commission may accept and solicit funds, including any gifts, donations, grants or bequests or any federal funds for any of the purposes of this section. The commission shall receive settlement funds payable to the commonwealth related to matters involving racial discrimination or other bias toward African Americans; provided, however, that the commission shall not receive more than $2,000,000 in settlement funds in any single fiscal year or cumulatively more than $2,500,000 in settlement funds in any period of 5 fiscal years. Funds received under this subsection shall be deposited in a separate account with the state treasurer, received by the treasurer on behalf of the commonwealth and expended by the commission in accordance with law.

(i) The commission staff shall consist of an executive director, employees and consultants and unpaid volunteers who assist the commission in effectuating its statutory duties. The commission shall appoint the executive director for a term of 3 years.

Section 73. (a) There shall be a permanent commission on the status of Latinxs. The commission shall consist of: 3 persons appointed by the governor; 3 persons appointed by the president of the senate from a list of not less than 5 nominees from the Massachusetts Black & Latino Legislative Caucus; and 3 persons appointed by the speaker of the house of representatives from a list of not less than 5 nominees from the Massachusetts Black and Latino Legislative Caucus. Members of the commission shall be residents of the commonwealth who have demonstrated a commitment to the Latinx community. Members shall be considered special state employees for purposes of chapter 268A.

(b) Members shall serve terms of 3 years and until their successors are appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority for the balance of the unexpired term. Nominations for members shall be solicited by the appointing authorities between August 1 and September 16 of each year in which the term of a member appointed by the appointing

authority is set to expire through an open application process using a uniform application that is widely distributed throughout the state.

(c) The commission shall annually elect from among its members a chair, a vice chair, a treasurer and any other officers it considers necessary. The members of the commission shall receive no compensation for their services; provided, however, that members shall be reimbursed for any usual and customary expenses incurred in the performance of their duties.

(d) The commission shall be a resource to the commonwealth on issues affecting Latinx communities. It shall be a primary function of the commission to make policy recommendations, based on research and analysis, to the general court and executive agencies that: (i) ensure Latinxs equitably benefit from and have access to government services in the same manner as other citizens of the commonwealth; (ii) amend laws, policies and practices that have benefited citizens of the commonwealth to the exclusion of Latinxs; and (iii) promote solutions that address the impact of discrimination against Latinxs. Further, the commission shall:

(A) promote research and be a clearinghouse and source of information on issues pertaining to Latinxs in the commonwealth;

(B) inform the public and leaders of business, education, human services, health care, the judiciary, state and local governments and the communications media of the unique cultural, social, ethnic, economic and educational issues affecting Latinxs in the commonwealth;

(C) foster unity among Latinx communities and organizations in the commonwealth by promoting cooperation and sharing of information and encouraging collaboration and joint activities;

(D) serve as a liaison between government and private interest groups with regard to matters of unique interest and concern to Latinxs in the commonwealth;

(E) identify and recommend qualified Latinxs for appointive positions at all levels of government, including boards and commissions, as the commission considers necessary and appropriate;

(F) assess programs and practices in all state agencies as they affect Latinxs, as the commission considers necessary and appropriate;

(G) advise executive agencies and the general court on the potential effect on Latinxs of proposed legislation, as the commission considers necessary and appropriate; and

(H) generally undertake activities designed to enable the commonwealth to realize the full benefit of the skills, talents and cultural heritage of Latinxs in the commonwealth.

(e) Annually, not later than June 2, the commission shall report the results of its findings and activities of the preceding year and its recommendations to the governor and the clerks of the senate and house of representatives.

(f) The powers of the commission shall include, but not be limited, to:

(i) using the voluntary and uncompensated services of private individuals, agencies and organizations

that may from time to time be offered and needed, including provision of meeting places and refreshments;

(ii) holding regular, public meetings and fact-finding hearings and other public forums as it considers necessary;

(ii) directing a staff to perform its duties;

(iv) establishing and maintaining offices that it considers necessary, subject to appropriation;

(v) enacting by-laws for its own governance; and

(vi) recommending policies and making recommendations to agencies and officers of the state and local subdivisions of the commonwealth to effectuate the purposes of subsection (d).

(g) The commission may request information and assistance from state agencies as the commission requires.

(h) The commission may accept and solicit funds, including any gifts, donations, grants or bequests or federal funds, for the purposes of this section. The funds shall be deposited into a separate account with the state treasurer, received by the treasurer on behalf of the commonwealth and expended by the commission in accordance with law.

(i) The commission staff shall consist of an executive director, employees and volunteers who assist the commission in executing its statutory duties. The commission shall appoint the executive director for a term of 3 years.

SECTION 2. Clause twenty-sixth of section 7 of chapter 4 of the General Laws is hereby amended by striking out subclause (c), as appearing in the 2018 Official Edition, and inserting in place thereof the following subclause:-

(c) personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to the information contained in the database required under subsection (c) of section 223 of chapter 6 or to the disposition of a law enforcement misconduct investigations or resulting discipline.

SECTION 3. Section 116 of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following 6 paragraphs:-

The committee shall set policies and standards for the training of: (i) municipal police officers, and candidates for such appointment; (ii) police officers in the Massachusetts bay transportation authority police force, and candidates for such appointment; (iii) police officers of the office of law enforcement within the executive office of environmental affairs, and candidates for such appointment; (iv) University of Massachusetts police officers, and candidates for such appointment; (v) campus police officers attending committee-approved academies or training programs; and (vi) deputy sheriffs, appointed pursuant to section 3 of chapter 37, performing police duties and functions. The policies and standards shall be in accordance with applicable laws and regulations, including the training mandated

by section 36C of chapter 40, sections 96B and 97B of chapter 41, section 24M of chapter 90 and sections 116A to 116E, inclusive, 116G, 116H and 116I of this chapter.

The committee shall set policies and standards for background investigations for all persons appointed to committee-certified municipal police training schools and initial appointments of those persons; provided, however, that, at a minimum, background investigations shall require verification against the National Decertification Index, as defined in section 220, and the database maintained by the police officer standards and accreditation committee, as described in subsection (c) of section 223.

The committee shall maintain an electronic database of all trainings, including trainings that are not mandated by law, completed by an officer for which it establishes training policies and standards under this section, issue confirmation of satisfactory completion of training, provide for extensions of training requirements for good cause if a reasonable plan of remediation is provided and maintain records of any such extension and the reason for such extension. An appointing authority that offers in-service training to an officer shall track the completed trainings for the officer through the committee's database. The committee may waive a training requirement if the officer can demonstrate current competence based on commensurate prior training. The committee shall provide records of completion of training to the police officer standards and accreditation committee pursuant to subsection (c) of section 223.

The committee shall establish training requirements and develop guidance for meeting the requirements through trainings provided by the committee or other independent educational entities.

The committee shall review and recommend to the secretary of public safety and security an annual appropriation for the administration of the committee, the operations of a headquarters and regional training centers and the delivery of standardized training at the centers.

The committee may promulgate regulations in accordance with chapter 30A as necessary to implement sections 116 to 118, inclusive.

Annually, not later than December 31, the committee shall file a report with the secretary of administration and finance, the state auditor and the senate and house committees on ways and means. The report shall account for the expenditures of the committee during the prior fiscal year and shall include, but not be limited to, the: (i) total funds spent on training for new police officer candidates; (ii) total funds spent on in-service training for existing officers; and (iii) percentage of existing municipal police officers who have completed their required annual in-service training requirements. Upon the request of the secretary of administration and finance, the state auditor, the chair of the senate committee on ways and means or the chair of the house committee on ways and means, the committee shall provide the data used to develop the report in a de-identified form.

Not less than once every 3 years, the municipal police training committee shall complete a review of its curriculum, training materials and practices. The review shall be conducted in collaboration with the commission on the status of African Americans, established in section 72 of chapter 3, at least 1 person affiliated with an academic institution in the commonwealth who has experience with, or expertise in, law enforcement practice and training, criminal law, civil rights law, the criminal justice system or social science fields related to race or bias and any other persons or entities the committee deems appropriate. Not more than 30 days after the completion of a review under this section, a summary of the review shall be filed with the clerks of senate and house of representatives, the joint committee on public safety and homeland security and the secretary of public safety and security.

SECTION 4. Subsection (b) of section 116G of said chapter 6, as so appearing, is hereby amended by striking out clauses (ii) and (iii) and inserting in place thereof the following 5 clauses:-

(ii) practices and techniques for law enforcement officers in civilian interaction and to promote procedural justice, which shall emphasize de-escalation and disengagement tactics and techniques and procedures, including developmentally appropriate de-escalation and disengagement tactics, techniques and procedures and other alternatives to the use of force for minor children, that build community trust and maintain community confidence;

(iii) handling emergencies and complaints, including, but not limited to, those involving victims, witnesses or suspects with mental illness, substance use disorder, trauma history or developmental or intellectual disabilities, which shall include training related to common behavior and actions exhibited by such individuals, strategies law enforcement officers may use for reducing or preventing the risk of harm and strategies that involve the least intrusive means of addressing such incidences and individuals while protecting the safety of the law enforcement officer and other persons; provided, however, that training presenters shall include certified mental health practitioners with expertise in the delivery of direct services to individuals, including victims, witnesses or suspects with mental illness, substance use disorder, trauma history or developmental or intellectual disabilities in emergency situations;

(iv) practices and techniques related to responding to mass gatherings or protests that shall emphasize de-escalation and minimizing the necessity for use of force;

(v) the history of slavery, lynching, racist legal institutions and racism in the United States; and

(vi) practice and techniques for law enforcement officers for stress management and mental health.

SECTION 5. Said chapter 6 is hereby further amended by inserting after section 116G the following 2 sections:-

Section 116H. The municipal police training committee, in consultation with the executive office of public safety and security, shall establish and develop basic and in-service training programs designed to train officers on the regulation of physical force under section 4 of chapter 147A. Such programs shall be included in basic and in-service training for all officers for which the committee establishes training policies and standards under section 116 and in the training programs prescribed by chapter 22C.

Section 116I. (a) The municipal police training committee shall establish and develop an in-service training program designed to train school resource officers, as defined in section 37P of chapter 71. The program shall include training on: (i) the ways in which legal standards regarding police interaction and arrest procedures differ for juveniles compared to adults; (ii) child and adolescent cognitive development, which shall include instruction on common child and adolescent behaviors, actions and reactions, as well as the impact of trauma, mental illness and developmental disabilities on child and adolescent development and behavior; (iii) engagement and de-escalation tactics that are specifically effective with youth; and (iv) strategies for resolving conflict and diverting youth in lieu of making an arrest.

(b) The course of instruction, the learning and performance objectives and the standards for training developed pursuant to this section shall be developed in consultation with experts on child and

adolescent development and child trauma and with educators and attorneys experienced in juvenile and education law.

SECTION 6. Said chapter 6 is hereby further amended by adding the following 6 sections:-

Section 220. For the purposes of sections 220 to 225, inclusive, the following words shall have the following meanings unless the context clearly requires otherwise:

“Appointing authority”, the person or agency with authority to appoint a law enforcement officer.

“Law enforcement officer” or “officer”, a person performing police functions or duties and appointed to: (i) a municipal police department; (ii) the department of state police; (iii) the office of law enforcement within the executive office of environmental affairs; (iv) the Massachusetts bay transportation authority police force; (v) the University of Massachusetts system police force; (vi) serve as a special state police officer pursuant to sections 56 to 68, inclusive, of chapter 22C; (vii) serve as a deputy sheriff pursuant to section 3 of chapter 37; or (viii) serve as a campus police officer employed by a public or private institution of higher education.

“Municipal police training committee”, the committee established in section 116.

“National Decertification Index”, the national registry of certificate or license revocation actions related to officer misconduct as reported by participating state government agencies.

“Police officer standards and accreditation committee”, the committee established in section 221.

“Sustained complaint of misconduct”, a finding by an appointing authority or the committee, after the exhaustion of all rights to appeal within the appointing authority or the committee, that an officer has violated the appointing authority’s rules, policy or procedure or committed other misconduct or improper action, including, but not limited to, a violation of chapter 147A, based upon findings of fact resulting from an investigation conducted pursuant to the appointing authority’s formal process of internal control and discipline or an independent investigation by the committee.

Section 221. There shall be an independent police officer standards and accreditation committee within the executive office of public safety and security consisting of: 14 members appointed by the governor, 1 of whom shall be nominated by the colonel of the state police, 1 of whom shall be nominated by the commissioner of the Massachusetts bay transportation authority police force, 1 of whom shall be nominated by the commissioner of police of the city of Boston, 1 of whom shall be a chief of police of a police department outside of the Boston metropolitan area nominated by the Massachusetts Chiefs of Police Association Incorporated, 1 of whom shall be a law enforcement officer nominated by the Massachusetts Association of Minority Law Enforcement Officers, Inc., 1 of whom shall be a law enforcement officer below the rank of sergeant, 1 of whom shall be nominated by the American Civil Liberties Union of Massachusetts, Inc., 2 of whom shall be nominated by the New England Area Conference of the National Association for the Advancement of Colored People, 1 of whom shall be nominated by the Lawyers for Civil Rights, Inc., 1 of whom shall have been personally involved in or impacted by the criminal justice system, 1 of whom shall be a retired judge and 2 of whom may be selected from a list of not less than 5 non-law enforcement individuals nominated by the Massachusetts Black and Latino Legislative Caucus; and 1 member appointed by the attorney general who is affiliated with an organization that advocates on behalf of communities that have disproportionately high

instances of police interaction; provided, however, that non-law enforcement members shall have experience with or expertise in law enforcement practice and training, criminal law, civil rights law, the criminal justice system or social science fields related to race or bias. Appointments to the police officer standards and accreditation committee shall be for terms of 3 years and until their successors are appointed. Vacancies in the membership of the committee shall be filled by the original appointing authority for the balance of the unexpired term. Members of the police officer standards and accreditation committee shall be compensated for work performed for the police officer standards and accreditation committee at such rate as the secretary of administration and finance shall determine and shall be reimbursed for their expenses necessarily incurred in the performance of their duties.

The governor shall appoint a chair of the committee. The police officer standards and accreditation committee shall appoint an executive director of the committee. The position of executive director shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The police officer standards and accreditation committee shall employ such attorneys, investigators and support staff as are reasonably necessary to accomplish its duties.

Section 222. The police officer standards and accreditation committee shall have the power to certify, renew, revoke or otherwise modify the certification of any law enforcement officer pursuant to sections 223 to 225, inclusive. The police officer standards and accreditation committee shall have the power to issue an additional certification for an individual acting, or intending to act, as a school resource officer, as defined in section 37P of chapter 71. The police officer standards and accreditation committee shall have the power to receive complaints of officer misconduct from any person, request an officer’s appointing authority to conduct an investigation of a complaint of officer misconduct and conduct independent investigations and adjudications of complaints of officer misconduct to certify, renew, revoke or otherwise modify the certification of a law enforcement officer. An investigation by the police officer standards and accreditation committee shall not preclude an investigation by the officer's appointing authority. The police officer standards and accreditation committee shall have the power to promulgate regulations pursuant to chapter 30A as necessary to implement said sections 223 to 225, inclusive.

Section 223. (a) A person shall not be appointed as a law enforcement officer unless certified by the police officer standards and accreditation committee. A person shall not be appointed as a school resource officer, as defined in section 37P of chapter 71, unless specially certified as such by the police officer standards and accreditation committee.

(b) A person who completes an academy or training program certified by the municipal police training committee or the training programs prescribed by chapter 22C shall be certified by the police officer standards and accreditation committee. A person who completes a training program as prescribed by section 116I of chapter 6 shall be certified by the police officer standards and accreditation committee as a school resource officer.

(c) The police officer standards and accreditation committee shall maintain a database containing, for each certified law enforcement officer: (i) the dates of certification, renewal of certification, decertification, suspension of certification or reprimand; (ii) records of completion of municipal police training schools or training programs prescribed by chapter 22C; (iii) the date of any separation from employment from an appointing authority and the nature of the separation including, but not limited to, suspension, resignation, retirement or termination; (iv) the reason for any separation from employment

including, but not limited to, whether the separation was based on misconduct or occurred while the appointing authority was conducting an investigation of the certified individual for a violation of an appointing authority's rules, policy or procedure or other misconduct or improper action; (v) any criminal conviction and the date thereof; and (vi) any ~~sustained~~ complaint of misconduct and the date thereof. The information in the database shall be made available to an appointing authority for the purpose of a background investigation of a candidate for appointment as a law enforcement officer. The committee shall set standards for background investigations for appointments subsequent to the initial appointment. Notwithstanding any general or special law to the contrary, ~~T~~the information in the database shall be made available to any person upon request within ten business days of such request, and shall be produced in any reasonably available electronic form as such person may specify. ~~a public record as defined in clause twenty-sixth of section 7 of chapter 4.~~ The municipal police training committee and the department of state police shall report to the police officer standards and accreditation committee the information required in clause (ii) and each appointing authority shall report to the police officer standards and accreditation committee the information required in clauses (iii) to (vi), inclusive. The police officer standards and accreditation committee shall prescribe the manner, form and frequency with which the information shall be provided to the police officer standards and accreditation committee.

(d) The police officer standards and accreditation committee shall maintain a searchable database of officers accessible to the public that shall include: (i) the officer's appointing authority; (ii) the date of the officer's initial certification and the officer's current certification status; and (iii) any ~~sustained~~ complaint of misconduct as to which a determination has been reached ~~resulting in decertification, suspension of certification or reprimand and the date thereof~~; provided, however, that information shall not be included in the database that would allow the public to ascertain the home address of an officer or another person; provided further, that information regarding an officer's or another person's family member shall not be included in the database. The police officer standards and accreditation committee shall make the database publicly available on its website.

(e) The police officer standards and accreditation committee shall maintain a searchable database of all complaints against law enforcement officers. The database shall include: (i) the officer's name, middle initial, rank, hire date, and date of birth; ~~identify each officer by a confidential and anonymous number and include:~~ (i~~i~~) the officer's appointing authority; (i~~ii~~) the date of the incident referenced in the complaint; (iv~~ii~~) the location of the incident; (v) the nature of any misconduct alleged in the complaint; (~~i~~v~~i~~) the race and ethnicity of each officer involved in the incident; (v~~ii~~) the age, gender, race and ethnicity of each person involved in the incident, if known; (vi~~ii~~) whether a person in the complaint was injured, received emergency medical care, was hospitalized or died as a result of the incident; (ix~~vii~~) the agency or other entity assigned to conduct an investigation of the incident; (x~~viii~~) whether the investigation is complete and, if complete, when it was completed; ~~and~~ (~~i~~x~~i~~) ~~whether~~ the disposition of the complaint ~~was sustained; provided, however, that the police officer standards and accreditation committee shall redact or withhold such information as necessary to prevent the disclosure of the identity of an officer~~; (xii) any disciplinary measure imposed on the officer as a result of the disposition of the compliant; and (xiii) except in the case of a complaint alleging that a law enforcement officer committed sexual misconduct or engaged in misconduct while investigating a reported sex offense, the name and address of the complaining person. ~~.~~ The police officer standards and accreditation committee shall make the database publicly available on its website and shall make the database downloadable in a format that can be readily used and sorted in commercially-available database software.~~.~~

Annually, not later than February 1, the police officer standards and accreditation committee shall

report on the number of complaints against law enforcement officers for which investigations are outstanding and not completed, aggregated by appointing authority and classified as to whether the appointing authority or the police officer standards and accreditation committee is conducting the investigation. The report shall differentiate outstanding complaints according to the date on which the complaint was filed. The police officer standards and accreditation committee shall file its report with the clerks of the senate and house of representatives, the joint committee on public safety and security and the senate and house committees on ways and means. The report shall also be made publicly available on the police officer standards and accreditation committee's website.

The superior court shall have jurisdiction to enforce subsections (c), (d), and (e) of this section by way of an action in the nature of mandamus brought by the attorney general or by any resident of the commonwealth. In such an action, the superior court may grant preliminary and permanent injunctive relief, and the failure to maintain and make available the information specified in said subsections shall be deemed to cause irreparable harm to any resident of the commonwealth who alleges a violation of the same. A successful plaintiff in such action shall be entitled to an award of reasonable attorneys' fees and costs.

Notwithstanding any general or special law to the contrary, including but not limited to Mass. Gen. Laws 66, § 8, and notwithstanding any disposal schedule approved by the records conservation board or the supervisor of public records, each agency assigned to investigate complaints against law enforcement officers shall maintain, and shall not destroy, all such complaints and related records, including records concerning the investigation of such complaints, the findings made as a result of such investigations, and any discipline imposed on the law enforcement officer, for a minimum of forty years after the date of the filing of the complaint.

(f) The police officer standards and accreditation committee shall determine the form and manner of issuance of a certification under this section. A certification shall be valid for 3 years from the date of issuance.

(g) A person certified as a law enforcement officer shall renew the certification for an additional 3-year period by demonstrating satisfactory completion, prior to the date of expiration of the current certification, by completing not less than 120 total hours of in-service training approved by the municipal police training committee or prescribed by chapter 22C.

The police officer standards and accreditation committee shall permit a law enforcement officer who has not completed the required in-service training to maintain their certification for good cause shown and upon demonstration by the officer of approval by the municipal police training committee or the department of state police, as applicable, of both a plan for the completion of the in-service training hours and the reasonable amount of time in which the training shall be completed.

(h) Based on nominations made by an agency or person, the police officer standards and accreditation committee shall annually recognize: (i) the appointing authority that has most successfully used de-escalation techniques in the field; (ii) the officer who has most successfully used de-escalation techniques in the field; and (iii) the appointing authority that is most improved in its use of de-escalation techniques in the field.

(i) Not less than twice annually, the police officer standards and accreditation committee and the municipal police training committee shall meet to review and make recommendations to improve

current police officer training standards.

Section 224. (a) An appointing authority shall report a complaint of officer misconduct to the police officer standards and accreditation committee and simultaneously to the officer against whom the complaint is filed within 2 business days of receiving the complaint. The police officer standards and accreditation committee shall report a complaint of officer misconduct to the appointing authority and simultaneously to the officer against whom the complaint is filed not later than 2 business days of receiving the complaint. The police officer standards and accreditation committee shall provide notice to an officer of any complaint against the officer by certified mail.

If the complaint involves serious injury or death, the police officer standards and accreditation committee shall notify the district attorney and the attorney general. The police officer standards and accreditation committee may conduct an independent investigation of a complaint of officer misconduct or it may request that an officer's appointing authority investigate the complaint pursuant to the appointing authority's formal process of internal control and discipline; provided, however, that the police officer standards and accreditation committee shall investigate a complaint of officer misconduct that, if sustained, would result in revocation of certification under subsection (a) of section 225. The initiation of an investigation by the police officer standards and accreditation committee shall not prevent the appointing authority from conducting its own investigation pursuant to the appointing authority's formal process of internal control and discipline. The final disposition of a misconduct investigation by the appointing authority shall be reported to the police officer standards and accreditation committee. The police officer standards and accreditation committee may require an appointing authority to provide any additional information reasonably necessary to determine whether to initiate revocation proceedings.

(b) The police officer standards and accreditation committee shall have the authority to issue subpoenas to obtain all documents, materials and witnesses relevant to a complaint. A subpoena may be issued by the chair or by any 3 committee members acting concurrently.

(c) As part of an independent investigation, the police officer standards and accreditation committee may, on its own initiative or at the request of the law enforcement officer, hold formal hearings. The police officer standards and accreditation committee may conduct a hearing as a committee of the whole, by a subcommittee or by an appointed hearing officer. An officer against whom a complaint is presented shall have the right to be present and to have legal counsel present at any hearing. Regardless of whether a hearing is conducted as a part of the investigation, the officer shall have the right to submit materials or testimony regarding the complaint.

(d) For every complaint investigated by the police officer standards and accreditation committee, the decision as to whether to sustain the complaint, in whole or in part, shall be made by vote of the police officer standards and accreditation committee. The affected law enforcement officer shall have the right to a hearing before the vote of the police officer standards and accreditation committee. If the police officer standards and accreditation committee, by its vote, finds that a law enforcement officer engaged in misconduct or other inappropriate action, the officer shall be subject to discipline pursuant to section 225.

(e) The police officer standards and accreditation committee shall promulgate regulations governing its investigative proceedings in accordance with chapter 30A.

Section 225. (a) The police officer standards and accreditation committee shall revoke an officer's certification if: (i) the certification was issued by administrative error; (ii) the certification was obtained through misrepresentation or fraud; (iii) the officer falsified a document to obtain or renew any certification; (iv) the officer has had a certification or other authorization revoked by another jurisdiction on grounds that would require revocation under this section; (v) the officer is convicted of a felony; (vi) the officer is found not guilty of a felony by reason of lack of criminal responsibility; (vii) the officer is terminated based upon intentional conduct performed under the color of law to: (A) obtain a false confession; (B) make a false arrest; (C) create or use falsified evidence, including false testimony or destroying evidence to create a false impression; (D) engage in conduct that would constitute a hate crime as defined in section 32 of chapter 22C; or (E) directly or indirectly receive a reward, gift or gratuity on account of the officer's official services; (viii) the officer is convicted of a misdemeanor that would render that officer ineligible for a license to carry a firearm under section 131 of chapter 140; or (ix) the officer has a sustained complaint of misconduct based upon conduct consisting of: (A) use of deadly force in violation of chapter 147A; (B) use of force in violation of said chapter 147A resulting in serious bodily injury as defined section 13K of chapter 265; (C) failing to intercede to prevent the use of unreasonable force in violation of section 3 of said chapter 147A; (D) conduct that would constitute a hate crime, as defined in said section 32 of said chapter 22C; (E) intimidation of a witness, as defined in section 13B of chapter 268; (F) tampering with a record for use in an official proceeding, as defined in section 13E of said chapter 268; (G) perjury, as defined in section 1 of chapter 268; or (H) filing a written police report containing a false statement, knowing the statement to be materially false.

(b) The police officer standards and accreditation committee may revoke an officer's certification if: (i) the officer has been convicted of a misdemeanor; or (ii) the officer has repeated sustained complaints of misconduct, for the same or different offenses.

(c) The police officer standards and accreditation committee shall conduct revocation proceedings and hearings and promulgate regulations for such proceedings and hearings in accordance with chapter 30A. The regulations shall provide that if an officer notifies the committee that they wish to suspend decertification proceedings pending the final resolution of a complaint or grievance, including any appeal or arbitration, the committee shall suspend decertification proceedings; provided, however, that the suspension shall not exceed 1 year. Upon notification by the officer that the officer wishes to proceed and resolve the decertification proceedings or 1 year after the suspension was initiated, whichever occurs first, the committee shall resume proceedings and shall consider the results of any proceedings related to the complaint or grievance that occurred during the suspension but shall not be bound by the findings made in such proceedings.

(d) A revocation hearing shall take place before the police officer standards and accreditation committee as a whole or before a hearing panel made up of members of the police officer standards and accreditation committee, the membership of which shall be approved by a vote of the police officer standards and accreditation committee. The law enforcement officer shall have the right to be present with counsel at any revocation proceeding and to be heard. In cases in which the police officer standards and accreditation committee has investigated the complaint, the police officer standards and accreditation committee may consolidate a hearing on the complaint conducted pursuant to subsection (d) of section 224 with the hearing on revocation.

(e) The police officer standards and accreditation committee shall revoke a certification upon a finding by clear and convincing evidence, by majority vote of the hearing panel, of any grounds set forth in clauses (i) to (ix), inclusive, of subsection (a). A decision under this subsection shall be appealable

pursuant to chapter 30A.

(f) The police officer standards and accreditation committee may revoke a certification, upon a finding by clear and convincing evidence, by a majority vote of the hearing panel, of any grounds set forth in subsection (b) and there is good cause to revoke the certification. The police officer standards and accreditation committee may suspend a certification or issue a reprimand, upon a finding by a preponderance of the evidence, by majority vote of the hearing panel, of any grounds set forth in subsection (b) and there is good cause to suspend the certification or to issue a reprimand. The police officer standards and accreditation committee may set conditions including the completion of additional training if a certification is suspended or a reprimand is issued. Any decision under this subsection shall be appealable pursuant to chapter 30A.

(g) An adverse action taken against a certification by the police officer standards and accreditation committee pursuant to this section shall not be appealable to the civil service commission under chapter 31. An employment action taken by an appointing authority that results from a revocation by the committee pursuant to subsection (a) shall not be appealable to the civil service commission under chapter 31.

(h) The police officer standards and accreditation committee shall publish any revocation and findings. The committee shall provide revocation information to the National Decertification Index and to the contributory retirement system in which the officer is a member. An officer shall not be eligible for appointment as a correction officer under chapter 125 or for certification after the officer's certification has been revoked pursuant to this section.

SECTION 7. Section 18 of chapter 6A of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the word "committee," in line 4, the following words:- ; the police officer standards and accreditation committee.

SECTION 8. Section 18½ of said chapter 6A, as so appearing, is hereby amended by inserting after the word "committee,", in line 9, the following words:- the police officer standards and accreditation committee.

SECTION 9. Chapter 12 of the General Laws is hereby amended by inserting after section 11H the following section:

Section 11H½. (a) A governmental authority, or an agent thereof acting on behalf of a governmental authority, shall not engage in a pattern or practice of: (i) conduct by a law enforcement officer that deprives persons of rights secured by the constitution or laws of the United States or the constitution or laws of the commonwealth; or (ii) discrimination on the basis of race, color, religious creed, national origin, ancestry, sex, gender identity, sexual orientation or disability.

(b) If the attorney general has reasonable cause to believe that a violation of subsection (a) has occurred, the attorney general may bring a civil action for injunctive or other appropriate equitable and declaratory relief to eliminate the pattern or practice. The civil action shall be brought in the name of the commonwealth and shall be instituted either in the superior court for the county in which the alleged conduct occurred or in the superior court for Suffolk county.

(c) In a civil action brought under subsection (b), the attorney general may require by subpoena: (i) the

production of all information, documents, reports, answers, records, accounts, papers, video or audio recordings and other data in any medium, including electronically stored information and any tangible thing and documentary evidence; and (ii) the attendance and testimony of witnesses necessary in the performance of the attorney general under said subsection (b). The subpoena, in the case of a refusal to obey, shall be enforceable by court order.

SECTION 10. Said chapter 12 is hereby further amended by striking out section 11I, as appearing in the 2018 Official Edition, and inserting in place thereof the following section: -

Section 11I. (a) A person whose exercise or enjoyment of rights secured by the constitution or laws of the United States or the constitution or laws of the commonwealth has been interfered with, or attempted to be interfered with, as described in section 11H may institute and prosecute in their own name and on their own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section 11H, including the award of compensatory money damages. A person who prevails in an action authorized by this subsection shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be determined by the court.

(b) A person whose exercise or enjoyment of rights secured by the constitution or laws of the United States or the constitution or laws of the commonwealth has been interfered with by a person or entity acting under color of any statute, ordinance, regulation, custom or usage of the commonwealth or, or a subdivisions thereof, may institute and prosecute in their own name and on their own behalf a civil action for injunctive and other appropriate relief, including the award of compensatory monetary damages. An action under this subsection shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person or entity whose conduct complained of resides or has a principal place of business. A person who prevails by obtaining significant relief after the filing of an action under this subsection shall be entitled to an award of the costs of litigation and reasonable attorneys' fees in an amount to be determined by the court.

(c) In an action for monetary damages under this section, qualified immunity shall not apply unless no reasonable defendant could have had reason to believe that such conduct would violate the law at the time the conduct occurred. Nothing in this section shall affect the provisions of chapter 258 with respect to indemnification of public employees.

SECTION 11. Section 11J of said chapter 12, as so appearing, is hereby amended by striking out, in lines 1 and 2, 16 and 34 and 35, each time they appear, the words "eleven H or eleven I" and inserting in place thereof, in each instance, the words:- 11H or subsection (a) of section 11I.

SECTION 12. Said section 11J of said chapter 12, as so appearing, is hereby further amended by striking out, in line 30, the words "eleven H" and inserting in place thereof the following figure:- 11H.

SECTION 13. Section 25 of chapter 19 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the word "police" and inserting in place thereof the following words:- responsive.

SECTION 14. Paragraph (1) of subsection (c) of said section 25 of said chapter 19, as so appearing, is hereby amended by striking out clauses (vi) and (vii) and inserting in place thereof the following 3 clauses:- (vi) assist municipal police departments to cover backfill costs incurred in sending staff to training; provided, however, that reimbursement shall not exceed the actual cost of the sending

department's backfill; (vii) promote the use and adequate resourcing of trained community-based crisis response resources to assist residents when an exclusive police response is not best suited to address the concerns raised or is inappropriate or unnecessary; and (viii) stipulate that each municipal police department receiving reimbursement provide information necessary for the center to evaluate the goals described in paragraph (3), including the percentage of the municipality's police sergeants, lieutenants and other officers who directly oversee patrol officers who have received the center's recommended training and the percentage of the municipality's patrol officers who have received the center's recommended training.

SECTION 15. Paragraph (2) of said subsection (c) of said section 25 of said chapter 19, as so appearing, is hereby amended by striking out clauses (v) and (vi) and inserting in place thereof the following 3 clauses:- (v) best practices, including efforts to prioritize de-escalation tactics and techniques in crisis response situation; (vi) institutional and structural racism, implicit bias and the history, legacy and impact of racism in the United States; (vii) best practices for responding to mass gatherings or protests that shall emphasize de-escalation and minimizing the necessity for use of force; and (viii) community policing principles.

SECTION 16. Said section 25 of said chapter 19 is hereby further amended by striking out subsection (e), as so appearing, and inserting in place thereof the following subsection:-

(e) There shall be a community policing and behavioral health advisory council. The council shall consist of: the secretary of health and human services or the secretary's designee, who shall serve as co-chair of the council; the secretary of public safety and security or the secretary's designee, who shall serve as co-chair of the council; the commissioner of mental health or the commissioner's designee; the commissioner of public health or the commissioner's designee; a person appointed by the office of the child advocate; the colonel of the state police or the colonel’s designee; the commissioner of the Massachusetts bay transportation authority police force or the commissioner’s designee; the executive director of the municipal police training committee; the executive director of the police officer standards and accreditation committee or the executive director's designee; a representative of a campus police organization appointed by the secretary of public safety and security; a municipal police chief or commanding officer appointed by the Massachusetts Chiefs of Police Association Incorporated; a sheriff appointed by the Massachusetts Sheriffs Association, Inc. who has experience developing and implementing a crisis intervention facility model; 1 member appointed by the National Association of Social Workers, Inc.; 1 member appointed by the Massachusetts Organization for Addiction Recovery, Inc.; 1 member appointed by the National Alliance on Mental Illness of Massachusetts, Inc.; 1 member appointed by the Massachusetts Association for Mental Health, Inc.; 1 member appointed by the Association for Behavioral Healthcare, Inc.; 1 member appointed by the Center for Public Representation, Inc.; and 3 members appointed by the secretary of health and human services, 1 of whom shall be a person with experience or expertise with the Massachusetts emergency response system, 1 of whom shall be a person with experience or expertise with domestic violence and 1 of whom shall be a person with expertise in non-police crisis response nominated by the chair of the Black and Latino Legislative Caucus. Members of the council shall be appointed for terms of 3 years and may be reappointed for consecutive 3–year terms. Each member shall be reimbursed by the commonwealth for all expenses incurred in the performance of their official duties. The council shall advise the chairs in directing the activities of the center consistent with subsection (c) and shall receive ongoing reports from the center concerning its activities. The council shall solicit public comment in the area of community policing and behavioral health and may convene public hearings throughout the commonwealth. The council shall hold not less than 2 meetings per year and may convene special

meetings at the call of the chair or a majority of the council.

SECTION 17. Section 3 of chapter 22C of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 and 7, each time it appears, the word “he” and inserting in place thereof, in each instance, the following words:- the colonel.

SECTION 18. Said section 3 of said chapter 22C, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The governor, upon the recommendation of the secretary of public safety and security, shall appoint the colonel, who shall be qualified by training and experience to direct the work of the department. At the time of appointment, the colonel shall have not less than 10 years of full-time experience as a sworn law enforcement officer and not less than 5 years of full-time experience in a senior administrative or supervisory position in a police force or a military body with law enforcement responsibilities. The appointment shall constitute an appointment as a uniformed member of the department and shall qualify the colonel to exercise all powers granted to a uniformed member under this chapter. The colonel shall serve at the pleasure of the governor and shall devote their fulltime during business hours to the duties of the office.

SECTION 19. Section 10 of said chapter 22C, as so appearing, is hereby amended by striking out, in line 27, the words “reached his twenty-first birthday” and inserting in place thereof the following words:- attained the age of 21.

SECTION 20. Said section 10 of said chapter 22C, as so appearing, is hereby further amended by striking out, in line 30, the words “he has reached his thirty-fifth birthday” and inserting in place thereof the following words:- the person has attained the age of 35.

SECTION 21. Said section 10 of said chapter 22C, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

A person shall not be enlisted as a uniformed member of the state police except in accordance with this section and section 11; provided, however, that other than for an appointment made pursuant to section 3, a person employed as a police officer for an agency other than the department of state police, including, but not limited to, an agency of the commonwealth or any political subdivision of the commonwealth, shall not be allowed to transfer into a position as a uniformed member of the state police.

SECTION 22. Said section 10 of said chapter 22C, as so appearing, is hereby further amended by striking out, in lines 3, 40, 52, 54, 61, 63 and 65, each time it appears, the word “he” and inserting in place thereof, in each instance, the following words:- such officer.

SECTION 23. Said section 10 of said chapter 22C, as so appearing, is hereby further amended by striking out, in lines 66 and 71, each time it appears, the word “his” and inserting in place thereof, in each instance, the following words:- such officer’s.

SECTION 24. Said chapter 22C is hereby further amended by inserting after section 10 the following section:-

Section 10A. The colonel may establish a cadet program within the department and may admit as a state police cadet, for a period of full-time on the job training, a citizen resident in the commonwealth who: (i) is not less than 19 years of age and not more than 25 years of age; (ii) would otherwise be found suitable for appointment for initial enlistment as a uniformed member of the state police pursuant to sections 10, 11 and 14, with the exception of the physical fitness standards therein; (iii) has passed a qualifying physical fitness examination, as determined by the colonel; and (iv) has passed a qualifying examination, as determined by the colonel.

The qualifying examination shall be conducted under the direction of the colonel who shall, after consultation with the personnel administrator, determine its form, method and subject matter. The qualifying examination shall fairly test the applicant's knowledge, skills and abilities that can be fairly and reliably measured and that are actually required to perform the primary or dominant duties of the position of state police cadet.

A person who has attained the age of 19 on or before the final date for the filing of applications for the state police cadet program shall be eligible to take the qualifying examination for the state police cadet program. A person who has attained the age of 26 on or before the final date for the filing of applications for the state police cadet program shall not be eligible to take the qualifying examination for the state police cadet program.

Admission as a state police cadet shall not be subject to the civil service law or rules, and a state police cadet shall not be entitled to any benefits of such law or rules. The colonel shall immediately report, in writing, any admission as a state police cadet made pursuant to this section to the secretary of public safety and the personnel administrator. Admission shall be for a term of service of not less than 12 months as determined by the department and may be terminated at any time. A state police cadet's term of service shall be terminated if the state police cadet fails to maintain a passing grade in any course of study required by the colonel. A state police cadet shall be required to meet the physical fitness standards required for appointment for initial enlistment as a uniformed member of the state police within 12 months of the state police cadet's admission to the state police cadet program. A state police cadet shall be an at-will employee. A state police cadet shall receive such compensation and such leave with pay as the colonel shall determine in consultation with the personnel administrator. The colonel shall establish requirements for successful completion of the state police cadet program.

The colonel shall determine the duties and responsibilities of state police cadets. A state police cadet shall not carry arms and shall not have any power of arrest other than that of an ordinary citizen. A state police cadet shall be considered an employee of the commonwealth for the purposes of workers' compensation.

While participating in the state police cadet program, a state police cadet shall not be subject to or entitled to the benefits of any retirement or pension law, nor shall any deduction be made from a state police cadet's compensation for the purpose thereof; provided, however, that a state police cadet who successfully completes the state police cadet program and is appointed to the department of state police pursuant to section 11 or is appointed as a police officer in a municipal police department, the Massachusetts bay transportation authority police force, the office of law enforcement within executive office of energy and environmental affairs or the University of Massachusetts or becomes an employee, as defined in section 1 of chapter 32 shall have any state police cadet service considered as creditable service, as defined in section 1 of chapter 32, for purposes of retirement if the state police cadet pays into the annuity savings fund of the retirement system in 1 sum or in installments, upon such terms and

conditions as the board may prescribe, not later than 1 year after appointment to the department of state police, such amount as the retirement board determines equal to that which the state police cadet would have paid had the state police cadet been a member of the retirement system during the period of training as a state police cadet, together with buyback interest.

SECTION 25. Section 11 of said chapter 22C, as appearing in the 2018 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- An appointment for initial enlistment as a uniformed member of the state police shall be made from a list established as the result of a competitive examination conducted under the direction of the colonel who shall, in consultation with the personnel administrator, determine its form, method and subject matter.

SECTION 26. Said section 11 of said chapter 22C, as so appearing, is hereby further amended by striking out, in lines 19 and 20, each time it appears, the word “his”, and inserting in place thereof, in each instance, the following words:- the uniformed member’s.

SECTION 27. Said section 11 of said chapter 22C, as so appearing, is hereby further amended by inserting after the third paragraph the following paragraph:-

Notwithstanding any provision of this section to the contrary, the colonel may appoint for initial enlistment as a uniformed member of the state police any person who has successfully completed the state police cadet program pursuant to section 10A and who is willing to accept such appointment. Appointment for initial enlistment as a uniformed member of the state police under this paragraph shall terminate that person’s admission as a state police cadet. Not more than 1/3 of the total number of appointments to the state police in any single recruit training troop shall be made pursuant to this paragraph. The colonel shall immediately report, in writing, any appointment made pursuant to this paragraph to the personnel administrator.

SECTION 28. Said chapter 22C is hereby further amended by striking out section 13, as so appearing, and inserting in place thereof the following section:-

Section 13. (a) A uniformed member of the state police who has served for at least 1 year and against whom charges have been preferred shall be tried by a board to be appointed by the colonel or, at the request of the officer, a board consisting of the colonel. A person aggrieved by the finding of the trial board under this subsection may appeal the decision of the trial board under sections 41 to 45, inclusive, of chapter 31. A uniformed officer of the state police who has been dismissed from the state police force after a trial under this subsection, or who resigns while charges to be tried by a trial board are pending against the uniformed officer, shall not be reinstated by the colonel.

(b) Notwithstanding subsection (a), the colonel may administratively suspend without pay a uniformed member who has served for at least 1 year if: (i) the uniformed member had a criminal complaint or indictment issued against them; (ii) the department has referred the uniformed member to a prosecutorial agency for review for prosecution; or (iii) there are reasonable grounds to believe that the uniformed member has engaged in misconduct in the performance of the uniformed member’s duties that violates the public trust.

Prior to such administrative suspension, the department shall provide the uniformed member notice of, and the underlying factual basis for, the administrative suspension. After such notice, the colonel or the colonel’s designee shall hold a departmental hearing at which the uniformed member shall have an

opportunity to respond to the allegations. Following the departmental hearing and upon a finding that there are reasonable grounds for such administrative suspension without pay, the colonel may administratively suspend without pay such uniformed member immediately. The administrative suspension without pay shall not be appealable under sections 41 to 45, inclusive, of chapter 31; provided, however, that the administrative suspension without pay may be appealed as provided in section 43.

A uniformed member who is administratively suspended without pay pursuant to this section may seek a review by the colonel or the colonel's designee of the administrative suspension without pay after 1 year from the date of the administrative suspension and every year thereafter, or sooner if the uniformed member can demonstrate a material change in circumstances. The decision of the colonel or the colonel's designee after such review may be appealed under said sections 41 to 45, inclusive, of said chapter 31.

(c) Notwithstanding subsection (a), the colonel may impose on a uniformed member who has served at least 1 year any permanent discipline that does not involve a suspension of pay, loss of accrued vacation time, loss of rank or seniority or termination without provision for a trial by a trial board under said subsection (a). Prior to imposing such discipline, the department shall provide the uniformed member notice of, and the underlying factual basis for, the discipline. After such notice, the colonel or the colonel's designee shall hold a departmental hearing at which the uniformed member shall have an opportunity to respond to the allegations. Following the departmental hearing and upon a finding that there are reasonable grounds for discipline, the colonel may impose such discipline immediately.

An order imposing discipline pursuant to this subsection shall not be appealable under sections 41 to 45, inclusive, of chapter 31; provided, however, that such order may be appealed as provided in section 43.

SECTION 29. Section 20 of said chapter 22C, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences: - The colonel shall prescribe a training program for persons who shall be enlisted for the first time in the department. No person, except the colonel, shall exercise police powers as a uniformed member of the department until they have been assigned to and satisfactorily completed the training program.

SECTION 30. Said section 20 of said chapter 22C, as so appearing, is hereby further amended by adding the following sentence:- Training prescribed under this section shall include or be equivalent to the training mandated for officers by sections 116A to 116E, inclusive, 116G and 116H of chapter 6, section 36C of chapter 40, section 97B of chapter 41 and section 24M of chapter 90.

SECTION 31. Section 23 of said chapter 22C, as so appearing, is hereby amended by striking out, in line 8, the word "appointments" and inserting in place thereof the following words:- admissions, appointments.

SECTION 32. Said section 23 of said chapter 22C, as so appearing, is hereby further amended by striking out, in line 10, the word "uniformed" and inserting in place thereof the following words:- cadets, uniformed.

SECTION 33. Said chapter 22C is hereby further amended by striking out section 26, as so appearing, and inserting in place thereof the following section:-

Section 26. (a) The colonel may promote uniformed members of the state police who are deemed eligible for promotion by the colonel to the title of noncommissioned officer, lieutenant or captain. A promotion shall be based on the uniformed member's total promotional score, which shall be based on the sum of scores earned on a competitive promotional examination calculated pursuant to subsection (b) and longevity calculated pursuant to subsection (e).

(b) For a uniformed member who is not a veteran, the uniformed member's competitive promotional examination score shall be based on the number of points awarded to the uniformed member for correct answers on such examination divided by the total number of possible points to be earned on the examination, multiplied by 75. For a uniformed member who is a veteran, the uniformed member's competitive promotional examination score shall be based on the number of points awarded to the member for correct answers on such examination divided by the total number of possible points to be earned on the examination, multiplied by 100, plus 2, multiplied by 0.75.

(c) A uniformed member shall not be eligible for promotion unless the uniformed member was awarded not less than 70 per cent of the total number of possible points to be earned on the competitive promotional examination.

(d) Promotional examinations shall be open to a uniformed member who is a: (i) noncommissioned officer who has completed not less than 5 years of service as a uniformed member immediately before the final date for the filing of applications for such examination and who has completed, in the immediately preceding year, 1 full year of service in the next lower rank or title; (ii) lieutenant who has completed at least 1 year of service in the next lower rank or title immediately before the final date for the filing of applications for such examination and who has completed not less than 8 years of service as a uniformed member prior to the final date for filing applications for such examination; or (iii) a captain who has completed at least 1 year of service in the next lower rank or title immediately before the final date for the filing of applications for such examination and who has completed not less than 12 years of service as a uniformed member prior to the final date for filing applications for such examination.

(e) (1) A noncommissioned officer shall be granted 1 longevity point for each full month of service since appointment to the department, up to a maximum of 120 months, computed as of the final date for the filing of applications for such promotion. The member's longevity score shall be the total longevity points granted divided by 120, multiplied by 25.

(2) A lieutenant shall be granted 1 longevity point for each full month of service since appointment to the department, up to a maximum of 180 months, computed as of the final date for the filing of applications for such promotion. The member's longevity score shall be the total longevity points granted divided by 180, multiplied by 25.

(3) A captain shall be granted 1 longevity point for each full month of service since appointment to the department, up to a maximum of 240 months, computed as of the final date for the filing of applications for such promotion. The member's longevity score shall be the total longevity points granted divided by 240, multiplied by 25.

(f) Prior to making any promotions in accordance with this section, the colonel shall publish and distribute in the orders of the department for each title in the department a list of the members who are eligible for promotion to each such title in the order in which each member shall be considered for such promotion; provided, however, that such order shall be based upon the final determination by the

colonel in accordance with subsections (b) and (e). Each eligible list for promotion shall be used by the colonel to fill vacancies for a period of 2 years from the initial date of publication; provided, however, that, if a new eligible list has not been established after such 2-year period, each eligible list shall continue to be used by the colonel for promotions until a new eligible list is established. A promotion to a vacancy occurring in any title for which an examination is conducted in accordance with this section shall be made from the first 3 members on such list who are eligible for the promotion and who are willing to accept such promotion.

SECTION 34. Section 1 of chapter 29 of the General Laws, as so appearing, is hereby amended by inserting after the definition of “Direct debt” the following definition:-

“Federal agency”, a federal military, law enforcement or intelligence agency, department or division.

SECTION 35. Said section 1 of said chapter 29, as so appearing, is hereby further amended by inserting after the definition of “Fund” the following definition:-

"Law enforcement agency", (i) an agency employing a law enforcement officer as defined in section 220 of chapter 6; (ii) a sheriff’s department; (iii) a harbormaster; (iv) a state or county correctional facility or lockup; or (v) a regional law enforcement council, cooperative or other joint task force or entity with authority to enforce the laws of the commonwealth.

SECTION 36. Said section 1 of said chapter 29, as so appearing, is hereby further amended by inserting after the definition of “Line-item” the following 2 definitions:-

“Local legislative body”, the town meeting for the purposes of a town system, the city council subject to the provisions of its charter in a city system, the district meeting in a district system, the county commissioners in a county system, and the governing body of the authority in an authority system.

"Military grade controlled property”, equipment, articles, services and related technical data as enumerated in the United State munitions list under 22 C.F.R. 121.1 or the department of commerce control list under 15 C.F.R. 774.

SECTION 37. Said chapter 29 is hereby further amended by inserting after section 2HHHHH the following 2 sections:-

Section 2IIIII. (a) There shall be a Criminal Justice and Community Support Trust Fund. The fund shall be administered by the commissioner of mental health, in consultation with the executive office of public safety and security. The fund shall consist of amounts credited to the fund from: (i) any appropriations, grants, gifts or other monies authorized by the general court or other parties and specifically designated to be credited to the fund; and (ii) any income derived from the investment of amounts credited to the fund. All amounts credited to the fund shall be used without further appropriation for the purpose of making grants to county and community-based jail diversion programs and community policing and behavioral health training initiatives. The grants shall be for: (A) the support of jail diversion programs for persons suffering from a mental illness or substance use disorder; (B) the development and provision of training for state, county and municipal law enforcement in evidence-based or evidence-informed mental health and substance use crisis response or alternative emergency response; (C) the creation of patient-focused, ongoing community services for individuals who are frequent users of emergency departments and suffer from serious and persistent mental illness or substance use disorder; or (D) the

planning and implementation of restoration centers to divert individuals suffering from mental illness or substance use disorder, who interact with law enforcement or the court system during a pre-arrest investigation or the pre-adjudication process, from lock-up facilities and hospital emergency departments to appropriate treatment. Any unexpended balance in the fund at the close of a fiscal year shall remain in the fund and shall be available for expenditure in subsequent fiscal years.

Annually, not later than March 1, the commissioner of mental health shall issue a report to the clerks of the senate and house of representatives, the joint committee on mental health, substance use and recovery, the joint committee on public safety and homeland security and the senate and house committees on ways and means on the fund's activities, including, but not limited to, amounts credited to the fund, amounts expended from the fund and any unexpended balance.

Section 2JJJJJ. (a) There shall be a Justice Reinvestment Workforce Development Fund. There shall be credited to the fund any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund and any gifts, grants, private contributions, investment income earned on the fund's assets and all other sources. Monies transferred to the fund shall be continuously expended, without regard for fiscal year, exclusively for carrying out the purposes of this section. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund.

(b)(1) For the purposes of this section, the term "target population" shall mean any person who meets not less than 2 of the following characteristics: (i) is under 25 years of age; (ii) is a victim of violence; (iii) is over 18 years of age and does not have a high school diploma; (iv) has been convicted of a felony; (v) has been unemployed or has had family income below 250 per cent of the federal poverty level for not less than 6 months; or (vi) lives in a census tract where over 20 per cent of the population fall below the federal poverty line.

(2) There shall be a board of directors for the fund to consist of 13 members to be appointed by the secretary of housing and economic development, with the approval of the governor. The board of directors shall consist of not less than 6 individuals who are, or have been, members of the target population and a combination of appointees with professional case management experience, entrepreneurial or business management experience, professional youth development experience, experience providing professional or vocational training or experience in labor market analysis. The members shall elect a chair and shall meet not less than bi-annually. Members shall serve without compensation but shall be reimbursed by the fund for expenses necessarily incurred in the performance of their duties. Upon notification by the chair that a vacancy exists, the secretary of housing and economic development shall appoint, with the approval of the governor, another member to fill the unexpired term.

(3) The executive office of housing and economic development shall provide staff support to the board of directors. The total expenditure from the fund for administration, including salaries and benefits of supporting staff, shall not exceed 5 per cent of the total amount disbursed by the fund in any given fiscal year.

(c) (1) Concurrent with the submission of the governor's annual budget, the department of correction shall publish on its website a breakdown of its prior fiscal year spending by functional category, including, but not limited to, food, medical expenses, facility maintenance, administrative costs, correctional personnel, rehabilitative programming, re-entry programming. The department of

correction shall also publish a breakdown of its budget for the upcoming fiscal year as reflected in the governor's annual budget proposal by the same categories and the governor's office shall include a link to this data on its budget website.

Annually, the executive office of public safety and security shall calculate the aggregate annual population of inmates in state correctional facilities and the houses of correction and calculate the average marginal cost rate per inmate among the department of correction and the houses of correction based on the actual marginal cost rates used by the department of correction and the houses of correction for their budgeting purposes. The executive office of public safety and security shall publish this data on its website.

(2) Annually, the secretary of housing and economic development shall determine the difference between the combined population of the department of correction and the houses of correction in fiscal year 2019 multiplied by the rate of total population growth of the commonwealth since fiscal year 2019 and the actual combined population of the department of correction and the houses of correction in that year. The secretary shall multiply the difference by the average marginal cost rate per inmate. Annually, not later than October, the secretary shall report this calculation to the clerks of the senate and house of representatives, the senate and house committees on ways and means and the secretary of administration and finance.

(3) An amount equal to not more than one half of the product of the calculation in paragraph (2), but not more than $10,000,000, shall be transferred, subject to appropriation, to the fund annually.

(d) Money in the fund shall be competitively granted to develop and strengthen communities with a high percentage of individuals in the target population by creating opportunities for job training, job creation and job placement for those who face high barriers to employment.

(e) Eligible grant recipients shall exhibit a model of creating employment opportunities for members of the target population or, in the case of programs serving a target population aged 20 years and under, demonstrate a model of building the skills necessary for future employment within such population. Models shall be supported by research and evaluation and may include transitional employment programs, social enterprise, pre-apprenticeship or other training programs, school-based or community-based high school dropout prevention and re-engagement programs, cooperative and small business development programs and community-based workforce development programs. Components of a successful program may include, but shall not be not limited to, job training in both soft skills and skills identified as lacking in growth industries, stipends or wage subsidies, serving as employer of record with private employers, case management, cognitive behavioral therapy and supports such as child care vouchers or transportation assistance. The fund may give priority to programs that include access to housing stabilization services, addiction treatment and trauma-informed mental health care as relevant to the fund's mission, but such services by themselves shall not be eligible for monies from the fund. Training programs that do not include a strong presumption of full employment by a specific employer or entry into a bona fide apprenticeship program recognized by the commonwealth upon successful completion by each participant shall not be eligible for funding; provided, however, that high school dropout prevention and re-engagement programs shall not need to include such a presumption.

(f) Not less than once every 5 years, the board shall review and, if appropriate, recommend to the legislature changes to the eligibility criteria of the fund, including the services provided by grant applicants.

(g) Annually, not later than October 1, the board shall provide a report of the grants given and a breakdown of expenditures made by the fund. The report shall be posted on the website of the executive office of housing and economic development. SECTION 38. Clause (3) of subsection (a) of section 6B of said chapter 29, as appearing in the 2018 Official Edition, is hereby amended by striking out subclauses (ii) and (iii) and inserting in place thereof the following 3 subclauses:-

(ii) the estimated amount of cash match, in-kind match or other monies to be supplied by the state and any other source from which such match will be required, and a description of the federal allocation formula and matching requirements including whether the grant is distributed to the commonwealth on the basis of a federally specified formula or on the basis of the federal grantor's discretion and a description of the federal constraints placed on the agency's discretion to use the grant;

(iii) the duration of the grant, the number of fiscal years the agency has been receiving assistance and the number of fiscal years in which assistance can be expected to continue under the program and a statement as to the priority of the program alongside other state or federally funded programs, including whether the agency would request that all or part of the program be funded out of the General Fund in the event federal funds are reduced or discontinued; and

(iv) the projected annual maintenance costs of any military grade controlled property transferred or acquired from a federal agency.

SECTION 39. Said section 6B of said chapter 29, as so appearing, is hereby further amended by adding the following subsection:-

(k) The department of state police, the office of law enforcement within the executive office of environmental affairs or the Massachusetts bay transportation authority police force shall not apply for military grade controlled property or related funds or for acquisition by transfer of military grade controlled property from a federal agency unless the department of state police, the office of law enforcement within the executive office of environmental affairs or the Massachusetts bay transportation authority police force obtains approval from the secretary of public safety and security, secretary of energy and environmental affairs or the secretary of transportation, respectively; provided, however, that such approval shall not be granted until the approving agency holds a public hearing and solicits written public comment on the application. The department of state police, the office of law enforcement within the executive office of energy and environmental affairs and the Massachusetts bay transportation authority police force shall file a report on any approval of an application for military grade controlled property or related funds or acquisition by transfer of military grade controlled property from a federal agency, describing the type of military grade controlled property acquired and the amount of funds expended on the acquisition, with the clerks of the senate and house of representatives, the joint committee on ways and means and the joint committee on public safety and homeland security.

SECTION 40. Said chapter 29 is hereby further amended by inserting after section 6B the following section:-

Section 6B½. (a) A local law enforcement agency shall not apply for military grade controlled property or related funds or for acquisition by transfer of military grade controlled property from a federal agency unless: (i) the local law enforcement agency provides notice to the local legislative body of any intended

application, including a detailed list of supplies and equipment sought to be acquired; (ii) the local legislative body advertises and holds a public hearing regarding the prospective application, during which the public shall be allowed the opportunity to testify and comment; (iii) the local law enforcement agency has responded in writing to any questions and matters raised by the local legislative body or residents at such public hearing; and (iv) the local legislative body votes to approve the intended application, including the particular supplies and equipment sought to be acquired. The local law enforcement agency shall include documentation of the local legislative body's approval in its application.

(b) A regional law enforcement council or other multi-jurisdictional law enforcement agency, including those constituted by entities or representatives from multiple agencies, shall not apply for military grade controlled property or related funds or for acquisition by transfer of military grade controlled property from a federal agency unless it has: (i) provided notice to each of the local legislative bodies for the cities and towns participating in the regional or multi-jurisdiction law enforcement agency regarding any prospective application; and (ii) obtained approval from the secretary of public safety and security, who shall take into consideration any information, comments and recommendations from the local legislative bodies for the cities and towns participating in the regional or multi-jurisdiction law enforcement agency. The regional law enforcement council or multi-jurisdiction agency shall include documentation of the approval of the secretary of public safety and security in its application. The regional law enforcement council or other multi-jurisdictional law enforcement agency shall file a report on any approval of an application for military grade controlled property or related funds or the acquisition by transfer of military grade controlled property from a federal agency, describing the type of military grade controlled property acquired and the amount of funds expended on the acquisition, with the clerks of the senate and house of representatives, the joint committee on ways and means and the joint committee on public safety and homeland security.

(c) A sheriff's department shall not apply for military grade controlled property or related funds or for acquisition by transfer of military grade controlled property from a federal agency unless it has obtained approval from the secretary of public safety and security; provided, however, that such approval shall not be granted until the secretary holds a public hearing and solicits written public comment on the application. The sheriff's department shall include documentation of the approval of the secretary of public safety and security in its application. The sheriff's department shall file a report on any approval of an application for military grade controlled property or related funds or the acquisition by transfer of military grade controlled property from a federal agency, describing the type of military grade controlled property acquired and the amount of funds expended on the acquisition, with the clerks of the senate and house of representatives, the joint committee on ways and means and the joint committee on public safety and homeland security.

SECTION 41. Section 2 of chapter 31 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out, in line 49, the words "eight of chapter thirty-one A" and inserting in place thereof the following words:- 8 of chapter 31A; provided, however, that the commission shall not have jurisdiction to hear an appeal of a decision by the police officer standards and accreditation committee to take adverse action against a law enforcement officer under subsections (e) or subsection (f) of section 225 of chapter 6.

SECTION 42. The first paragraph of section 42 of said chapter 31, as so appearing, is hereby amended by adding the following sentence:- This section shall not apply to a person who is the subject of disciplinary action or other employment-related consequences by an appointing authority, as defined in section 220

of chapter 6, that results from decertification under subsection (e) or subsection (f) of section 225 of said chapter 6.

SECTION 43. Section 43 of said chapter 31, as so appearing, is hereby amended by adding the following paragraph:- This section shall not apply to a person who is the subject of disciplinary action or employment-related consequences by an appointing authority, as defined in section 220 of chapter 6, that results from decertification under subsection (e) or subsection (f) of section 225 of said chapter 6.

SECTION 44. Section 96B of chapter 41 of the General Laws, as so appearing, is hereby amended by striking out, in lines 24 and 34, the word “his”, each time it appears, and inserting in place thereof, in each instance, the following words:- the person’s.

SECTION 45. Said section 96B of said chapter 41, as so appearing, is hereby further amended by striking out, in line 30, the words “department of criminal justice training” and inserting in place thereof the following words:- municipal police training committee.

SECTION 46. Said section 96B of said chapter 41, as so appearing, is hereby further amended by striking out, in line 2, 10, 12 and 32, the word “he” and inserting in place thereof the following words:- the person.

SECTION 47. Said section 96B of said chapter 41, as so appearing, is hereby further amended by striking out, in lines 39 and 43, the word “his”, each time it appears, and inserting in place thereof, in each instance, the following words:- the appointed person’s.

SECTION 48. Said chapter 41 is hereby further amended by inserting after section 98G the following section:-

Section 98H. An agency employing a law enforcement officer, as defined section 220 of chapter 6, shall not include or permit the inclusion of a nondisclosure, non-disparagement or other similar clause in a settlement agreement between the agency and a complainant; provided, however, that such settlement may include, but not be limited to, a provision that prevents the agency from disclosing the identity of the complainant and all facts that could lead to the discovery of the complainant’s identity if such provision is requested and approved by the complaint.

SECTION 49. Section 37L of chapter 71 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the third paragraph the following paragraph:-

School department personnel and school resource officers, as defined in section 37P, shall not disclose to a law enforcement officer or agency, including local, municipal, regional, county, state and federal law enforcement, through an official report or unofficial channels, including, but not limited to text, phone, email, database and in-person communication, or submit to a the Commonwealth Fusion Center, the Boston Regional Intelligence Center or any other database or system that tracks gang affiliation or involvement any information relating to a student or a student’s family member from its databases or other record-keeping systems including, but not limited to: (i) immigration status; (ii) citizenship; (iii) neighborhood of residence; (iv) religion; (v) national origin; (vi) ethnicity; (vii) native or spoken language; (viii) suspected, alleged or confirmed gang affiliation, association or membership; (ix) participation in school activities, extracurricular activities both inside and outside of school, sports teams or school clubs or organizations; (x) degrees, honors or awards; and (xi) post-high school plans. Nothing in this

paragraph shall prohibit the sharing of information for the purposes of completing a report pursuant to sections 51A or 57 of chapter 119 or filing a weapon report with the local chief of police pursuant to this section.

SECTION 50. Subsection (b) of section 37P of said chapter 71, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: -

A chief of police, at the request of the superintendent and subject to appropriation, shall assign at least 1 school resource officer to serve the city, town, commonwealth charter school, regional school district or county agricultural school. In the case of a regional school district, commonwealth charter school or county agriculture school, the chief of police of the city or town in which the school is located shall, at the request of the superintendent, assign the school resource officer who may be the same officer for all schools in the city or town, subject to annual approval by public vote of the relevant school committee. Annually, not later than August 1, the superintendent shall report to the department of elementary and secondary education and publicly present to the relevant school committee: (i) the cost to the school district of assigning a school resource officer; (ii) a description of the proposed budget for mental, social or emotional health support personnel for the school; and (iii) the number of school-based arrests, citations and court referrals made in the previous year disaggregated as required by the department of elementary and secondary education.

SECTION 51. Said section 37P of said chapter 71, as so appearing, is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) The department of elementary and secondary education shall collect data on the number of mental and social emotional health support personnel and the number of school resource officers employed by each local education agency and shall publish a report of the data on its website.

SECTION 52. Chapter 90 of the General Laws is hereby amended by striking out section 63, as added by section 10 of chapter 122 of the acts of 2019, and inserting in place thereof the following section:-

Section 63. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Law enforcement officer”, a law enforcement officer as defined in section 220 of chapter 6.

“Racial or other profiling”, differential treatment by a law enforcement officer based on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, religion, gender, gender identity or sexual orientation in conducting a law enforcement action, whether intentional or evidenced by statistically-significant data showing disparate treatment; provided, however, that “racial or other profiling” shall not include the use of such characteristics, in combination with other factors, to apprehend a specific suspect based on a description that is individualized, timely and reliable.

“Frisk”, a pat-down of a person’s body to locate a weapon or contraband.

“Secretary”, the secretary of public safety and security.

(b) A law enforcement entity shall not engage in racial or other profiling. The attorney general may bring a civil action in the superior court for injunctive or other equitable relief to enforce this subsection.

(c) The registry of motor vehicles shall collect data from any issued Massachusetts Uniform Citation regarding: (i) identifying characteristics of the individuals who receive a warning or citation or who are arrested, including the age, race and gender of the individual; (ii) the traffic infraction; (iii) the date and time of the offense and the municipality in which the offense was committed; (iv) whether a search was initiated as a result of the stop; and (v) whether the stop resulted in a warning, citation or arrest. The registry of motor vehicles shall maintain statistical information on the data required by this section and shall report that information annually to the secretary of public safety and security.

(d)(1) If a law enforcement officer stops a vehicle or stops and frisks or searches a person, regardless of whether the frisk or search was consensual, the law enforcement officer shall record: (i) reason for the stop; (ii) the date, time and duration of the encounter; (iii) the street address or approximate location of the encounter; (iv) the number of occupants of the vehicle, if the incident included a vehicle stop; (v) identifying characteristics of the individuals, including the perceived age, race, ethnicity and gender of the individual; (vi) whether any investigatory action was initiated, including a frisk or a search of an individual or vehicle, and whether any such investigatory action was conducted with consent; (vii) whether contraband was found or any materials were seized; (viii) whether the stop resulted in a warning, citation, arrest or no subsequent action; and (ix) the name and badge number of the officer initiating the stop.

(2) The secretary shall create and update as appropriate an instrument to be used by law enforcement officers to record the statistical data required in this subsection. The secretary shall give due regard to census figures and definitions when setting forth the race and ethnicity categories in the instrument; provided, however, that, in all cases, the method of identification of such data specified by the secretary must be the same across all law enforcement entities.

(3) If the law enforcement officer conducting a stop under this subsection does not issue a citation or warning, the officer shall provide a receipt to the person at the conclusion of the stop. The receipt shall be a record of the stop and shall include, but not be limited to: (i) the reason for the stop; (ii) the date, time and duration of the stop; (iii) the street address or approximate location of the stop; (iv) the name and badge number of the officer initiating the stop; (v) information about how to register commendations or complaints regarding the incident.

(4) Quarterly, each law enforcement agency shall conduct a review of each officer's stop and search documentation to ensure compliance with this subsection and take appropriate action to remedy any non-compliance.

(5) Semi-annually, each municipal law enforcement department shall: (i) review the entire department's stop and search data collected under this subsection; (ii) analyze any racial or other disparities in the data; (iii) submit a report on the data, which shall include an analysis of the data, to the legislative body of the municipality; and (iv) make the report publicly available on the website of the municipality.

(6) A law enforcement agency shall transmit all data collected pursuant to paragraph (1) to the executive office of public safety and security at intervals and in a manner to be determined by the secretary, but not less than semi-annually.

(7) An electronic system purchased by a law enforcement agency to issue citations or to gather, record, report and study information concerning vehicle accidents, violations, traffic or pedestrian stops or

citations, shall be designed to: (i) collect the data required by paragraph (1); (ii) automatically transmit the data to the executive office of public safety and security; and (iii) electronically generate citations and police encounter receipts required under paragraph (3).

(e) Data or information collected, transmitted or received under this section shall be used only for statistical purposes and shall not contain information that may reveal the identity of any individual who is stopped or any law enforcement officer.

(f) The secretary shall maintain a standardized process to facilitate data collection for law enforcement agencies and procedures for law enforcement officials to collect data under this section. The failure of a law enforcement officer to collect such data shall not affect the validity of the underlying stop.

(g) Annually, the secretary shall transmit the necessary data collected by the registry of motor vehicles under subsection (c) and by the executive office or public safety and security under paragraph (6) of subsection (d) to a university, non-profit organization or institution, whether private or public, in the commonwealth with experience in the analysis of such data for annual preparation of an analysis and report of its findings. Upon receipt, the secretary shall immediately make the annual analysis and report, including any aggregate analysis of the data, publicly available by publishing such annual analysis and report online and shall transmit a copy of such annual analysis and report to the attorney general, the department of state police, the Massachusetts Chiefs of Police Association Incorporated and the clerks of the senate and house of representatives. The secretary shall, in consultation with the attorney general, mandate an appropriate intervention or corrective action if the annual analysis and report suggest that a law enforcement agency appears to have engaged in racial or other profiling.

(h) Notwithstanding any general or special law to the contrary, data collected, transmitted or received pursuant to subsections (c), (d) and (g) shall be stored in a properly secured system in a cryptographically encrypted form and shall only be provided upon the execution of a written confidentiality agreement with the secretary of public safety and security that is protective of privacy and prohibits the further distribution of the data; provided, however, that nothing in the confidentiality agreement shall prohibit the publication of aggregate analysis of the data. Unencrypted data shall not be accessed, copied or otherwise communicated without the active concurrence and the express written approval of the secretary. Any processing of the data collected or received pursuant to this section shall only result in aggregated information that does not reveal the identity of any person or law enforcement officer.

(i) The secretary shall publish an annual public report, derived from the data used for the annual analysis and report prepared under subsection (g), containing aggregate numbers, listed by municipality and law enforcement agency, for the information categories identified in subsections (c) and (d); provided, however, that data concerning age shall be aggregated into categories for persons aged 29 and younger and aged 30 and older; provided further, that data concerning time of day shall be aggregated into categories for offenses committed from 12:01 am to 6:00 am, from 6:01 am to 12:00 pm, from 12:01 pm to 6:00 pm and from 6:01 pm to 12:00 am. The secretary shall take reasonable steps to ensure that any information in the report cannot be used, directly or indirectly, either alone or together with other information, to identify or derive information about any stop made by a particular law enforcement officer or any individual involved in a stop made by a law enforcement officer. The secretary shall make the information contained in the report available to the public online in machine readable format.

(j) Not later than 30 days following the date on which the annual analysis and report under subsection

(g) is received by the secretary of public safety and security, the secretary shall hold not less than 3 public hearings in different regions of the commonwealth to present the annual analysis and report and to accept public testimony regarding the report. The executive office of public safety and security shall provide the public with notice not less than 14 days before the date of each hearing by publishing the hearing date on the executive office's website and any official social media accounts and by providing written notice to the joint committee on public safety and security, the joint committee on the judiciary and the clerks of the senate and house of representatives.

SECTION 53. Section 1 of chapter 111 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the definition of "Inland waters" the following definition:-

"Law enforcement-related injuries and deaths", injuries and deaths caused by a law enforcement officer or correction officer, whether employed by the commonwealth, a county, a municipality or other public or private entity, and occupational fatalities of a law enforcement officer or correction officer.

SECTION 54. Said chapter 111 is hereby further amended by inserting after section 6D the following section:-

Section 6E. The department shall collect and report data on law enforcement-related injuries and deaths. The commissioner shall promulgate regulations necessary to implement this section including, but not limited to, protocols and procedures for the reporting of law enforcement-related injuries and deaths to the department by physicians and other licensed health care professionals.

SECTION 55. The General Laws are hereby amended by inserting after chapter 147 the following chapter:-

CHAPTER 147A.

REGULATION OF PHYSICAL FORCE BY LAW ENFORCEMENT OFFICERS.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Choke hold", the use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow with the intent of or with the result of causing unconsciousness or death.

"Deadly physical force", physical force that can be reasonably expected to cause death or serious physical injury.

"De-escalation tactics and techniques", proactive actions and approaches used by a law enforcement officer to stabilize a situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force, including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the law enforcement officer and a threat and requesting additional resources to resolve the incident including, but not limited to, calling in medical or mental health professionals to address a potential medical or mental health crisis.

“Imminent harm”, serious physical injury or death that is likely to be caused by a person with the present ability, opportunity and apparent intent to immediately cause serious physical injury or death and is a risk that, based on the information available at the time, must be instantly confronted and addressed to prevent serious physical injury or death; provided, however, that “imminent harm” shall not include fear of future serious physical injury or death, .

“Law enforcement officer”, a law enforcement officer as defined in section 220 of chapter 6.

“Necessary”, required due to a lack of an available, effective alternative that was known or should have been known to a reasonable person in the circumstances.

“Totality of the circumstances”, the entire duration of an interaction between a law enforcement officer and a person, from the first contact through the conclusion of the incident, including consideration of contextual factors the law enforcement officer knew or should have known preceding and during such interaction.

Section 2. (a) All persons in the commonwealth shall have a right, including for purposes of sections 11H and 11I of chapter 12, against the use of force prohibited by this section. A violation of this section shall be a per se violation of said sections 11H and 11I of said chapter 12.

(b) A law enforcement officer shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to: (i) effect the lawful arrest of a person; (ii) prevent the escape from custody of a person; or (iii) prevent imminent harm to a person and the amount of force used is proportional to the threat of imminent harm.

(c) A law enforcement officer shall not use deadly physical force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportional to the threat of imminent harm.

(d) A law enforcement officer shall not use a choke hold. A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer’s body on or around a person’s neck in a manner that limits the person’s breathing or blood flow.

(e) A law enforcement officer shall not discharge any firearm into or at a fleeing motor vehicle unless, based on the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and the discharge is proportional to the threat of imminent harm to a person. For purposes of this subsection, use of the vehicle itself shall not constitute imminent harm.

(f) When a police department has advance knowledge of a planned mass demonstration, it shall attempt in good faith to communicate with organizers of the event to discuss logistical plans, strategies to avoid conflict and potential communication needs between police and event participants. The department shall make plans to avoid and de-escalate potential conflicts and designate an officer in charge of de-escalation planning and communication about the plans within the department. A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or

order the discharge of rubber pellets from a propulsion device or release or order the release of a dog to control or influence a person's behavior unless: (i) de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and (ii) the measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or other chemical weapon, rubber pellets or dog is proportionate to the threat of imminent harm. If a law enforcement officer utilizes or orders the use of tear gas or any other chemical weapon, rubber pellets or a dog against a crowd, the law enforcement officer's appointing authority shall file a report with the police office standards and accreditation committee detailing all measures that were taken in advance of the event to reduce the probability of disorder and all measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using the tear gas or other chemical weapon, rubber pellets or dog. The police officer standards and accreditation committee shall review the report and may undertake an additional investigation. After such review and investigation the police officer standards and accreditation committee shall, if applicable, make a finding as to whether the de-escalation efforts taken in advance of the event and at the time of the event were adequate and whether the use of or order to use tear gas or other chemical weapon, rubber pellets or dog was justified.

Section 3. (a) An officer present and observing another officer using physical force, including deadly physical force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.

(b) An officer who observes another officer using physical force, including deadly physical force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with uniform protocols. The officer's written statement shall be included in the supervisor's report.

(c) Any person in the commonwealth shall have a right to the intervention by officers in the circumstances described in this section. An officer who has a duty to intervene and fails to do so may be held liable under sections 11H and 11I of chapter 12 jointly and severally with any officer who used unreasonable force for any injuries or death caused by such officer's unreasonable use of force.

(d) A law enforcement department established pursuant to the General Laws shall develop and implement a policy and procedure for law enforcement personnel to report abuse by other law enforcement personnel without fear of retaliation or actual retaliation.

Section 4. The municipal police training committee shall promulgate detailed use of force regulations to implement this chapter.

SECTION 56. Chapter 231 of the General Laws is hereby amended by inserting after section 85AA the following section:-

Section 85BB. (a) For purposes of this section, a "police officer" shall mean a police officer employed by a state agency or state authority, as those terms are defined in section 1 of chapter 29, or by a city or town.

(b) A police officer who knowingly submits to a state agency, state authority, city or town a false or

fraudulent claim of hours worked for payment and receives payment therefor or knowingly makes, uses or causes to be made or used a false record or statement material to a false or fraudulent claim of hours worked for payment that results in a police officer receiving payment therefor or any person who conspires to commit a violation of this section shall be liable to the state agency, state authority, city or town for a civil penalty of 3 times the amount of damages that the state agency, state authority, city or town sustains because of such violation and shall in addition be liable for the attorney's fees and court costs of the state agency, state authority, city or town.

(c) A civil action for damages under this section may be brought in the superior court.

(d) A civil action for damages under this section shall not be brought more than 4 years after the date when facts material to the right of action are known or reasonably should have been known by an official of the state agency, state authority, city or town who is authorized to approve the initiation of an action for damages and not more than 6 years after the date on which the violation is committed. A civil action for damages under this section may be brought for acts that occurred prior to the effective date of this section, subject to the limitations period set forth in this section.

(e) Notwithstanding any other general or special law, rule of procedure or rule of evidence to the contrary, a final judgment rendered in favor of the commonwealth in a criminal proceeding charging fraud or false statements, whether upon a verdict after trial, a plea of guilty or a continuance without a finding following the defendant's admission to sufficient facts to support a conviction, shall stop the defendant from denying the essential elements of the offense in any action that involves the same act, transaction or occurrence as in the criminal proceedings and that is brought under this section.

(f) In any action brought pursuant to this section, the party bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

SECTION 57. Section 22 of chapter 265 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by adding the following subsection:-

(c) A law enforcement officer who has sexual intercourse with a person in the custody or control of the law enforcement officer shall be found to be in violation of subsection (b); provided, however, that for the purposes of this subsection, "sexual intercourse" shall include vaginal, oral or anal intercourse, including fellatio, cunnilingus or other intrusion of a part of a person's body or an object into the genital or anal opening of another person's body. For the purposes of this paragraph, "law enforcement officer" shall mean a police officer, an auxiliary, intermittent, special, part-time or reserve police officer, a police officer in the employ of a public institution of higher education under section 5 of chapter 15A, a public prosecutor, a municipal or public emergency medical technician, a deputy sheriff, a correction officer, a court officer, a probation officer, a parole officer, an officer of the department of youth services, constables, a campus police officer who holds authority as special state police officer or a person impersonating one of the foregoing.

SECTION 58. Chapter 276 of the General Laws is hereby amended by inserting after section 2C the following section:-

Section 2D. (a) A warrant that does not require a law enforcement officer to knock and announce their presence and purpose before forcibly entering a residence shall not be issued except by a judge and only if the affidavit supporting the request for the warrant establishes probable cause that if the law

enforcement officer announces their presence their life or the lives of others will be endangered.

(b) A police officer executing a search warrant shall knock and announce their presence and purpose before forcibly entering a residence unless authorized by warrant to enter pursuant to subsection (a).

(c) An officer shall not dispense with the requirements of subsections (a) and (b) except to prevent a credible risk of imminent harm as defined in section 1 of chapter 147A.

(d) Evidence seized or obtained during the execution of a warrant shall be inadmissible if a law enforcement officer violates this section.

(e) The executive office of public safety and security shall promulgate regulations regarding data collection on the execution of any warrant issued pursuant to this section including, but not limited to: (i) the total number of warrants issued; and (ii) for each issued warrant: (A) any alleged offense serving as the basis of the warrant; (B) the date and time of execution of the warrant and the municipality in which the warrant was executed; (C) whether execution of the warrant resulted in the discovery or seizure of any weapons or contraband or resulted in the arrest of any individuals; and (D) whether execution of the warrant resulted in any injuries or deaths. Annually, not later than December 31, the executive office of public safety and security shall file a report of the data collected pursuant to this subsection in an aggregated and de-identified format with the clerks of the senate and house of representatives, the senate and house committees on ways and means, the joint committee on the judiciary and the joint committee on public safety and homeland security.

SECTION 59. Subsection (a) of section 100F of said chapter 276, as appearing in the 2018 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- A petitioner who has a record or records as an adjudicated delinquent or adjudicated youthful offender may, on a form furnished by the commissioner and signed under the penalties of perjury, petition that the commissioner expunge the record or records.

SECTION 60. Subsection (a) of section 100G of said chapter 276, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- A petitioner who has a record or records of conviction may, on a form furnished by the commissioner and signed under the penalties of perjury, petition that the commissioner expunge the record or records.

SECTION 61. Said chapter 276 is hereby further amended by striking out section 100I, as so appearing, and inserting in place thereof the following section:-

100I. A petitioner may seek expungement of a past criminal or juvenile court records and the commissioner shall certify that the records related to any charge, charges, case or cases that are the subject of the petition filed pursuant to sections 100F, 100G or 100H are eligible for expungement; provided, however, that:

(i) the charge, charges, case or cases that are the subject of the petition did not result in a felony conviction or adjudication of a criminal offense included in section 100J;

(ii) the charge, charges, case or cases that are the subject of the petition to expunge the record occurred before the petitioner's twenty-first birthday;

(iii) the charge, charges, case or cases that are the subject of the petition, including any period of incarceration, custody or probation, occurred not less than 7 years before the date on which the petition was filed if the offense that is the subject of the petition is a felony and not less than 3 years before the date on which the petition was filed if the offense that is the subject of the petition is a misdemeanor;

(iv) other than motor vehicle offenses for which the penalty does not exceed a fine of $50 and the offenses that are the subject of the petition to expunge, the petitioner has no record of being found guilty and no record as an adjudicated delinquent or adjudicated youthful offender on file with the commissioner for a felony less than 7 years before the date on which the petition was filed or a misdemeanor less than 3 years before the date on which the petition was filed;

(v) other than motor vehicle offenses for which the penalty does not exceed a fine of $50, the petitioner has no record of being found guilty and no record as an adjudicated delinquent or adjudicated youthful offender on file in any other state, United States possession or in a court of federal jurisdiction for a felony less than 7 years before the date on which the petition was filed or a misdemeanor less than 3 years before the date on which the petition was filed ; and

(vi) the petition includes a certification by the petitioner that, to the petitioner's knowledge, the petitioner is not currently the subject of an active criminal investigation by any criminal justice agency.

Any violation of section 7 of chapter 209A or section 9 of chapter 258E shall be treated as a felony for purposes of this section.

SECTION 62. The executive office of public safety and security shall create and implement a process by which state police details are assigned by a civilian employee or contractor.

SECTION 63. There shall be a commission to review and make recommendations on: (i) improving, modernizing and developing comprehensive protocols for the training of state and county correction officers and juvenile detention officers; (ii) establishing clear limitations on the use of physical force by state and county correction officers and juvenile detention officers; (iii) requiring that an inmate and the inmate’s legally designated representative have the right to obtain a copy of all records relating to any use of force incident involving the inmate including, but not limited to, written reports, investigations, video and audio recordings and photographs; (iv) making a public record, and to what extent, records relating to any use of force incident involving an inmate; and (v) creating an independent body with the power to certify, renew, revoke or otherwise modify the certification of state and county correction officers and juvenile detention officers and the power to receive, investigate and adjudicate complaints of officer misconduct.

The commission shall consist of: a former judge appointed by the chief justice of the supreme judicial court who shall serve as chair; the commissioner of correction or a designee; 1 correctional officer who shall be appointed by the New England Police Benevolent Association, Inc.; the president of the Massachusetts Sheriffs Association, Inc. or a designee; the commissioner of the department of youth services or a designee; 1 correction officer who shall be appointed by the president of the Massachusetts Correction Officers Federated Union; 1 member appointed by American Federation of State, County and Municipal Employees Council 93 who shall be an employee of the department of youth services and who shall have not less than 5 years of experience working in a department of youth services secure facility; the executive director of Citizens for Juvenile Justice, Inc., or a designee; the

executive director of Prisoner's Legal Services or a designee; the president of the New England Area Conference of the National Association for the Advancement of Colored People or a designee; the executive director of Lawyers for Civil Rights, Inc., or a designee; 1 member appointed by the Massachusetts Black and Latino Legislative Caucus who shall not be a member of the caucus; the executive director of the American Civil Liberties Union of Massachusetts, Inc., or a designee; 1 member appointed by Families for Justice as Healing Inc.; and 1 person who shall be appointed by the governor and who shall be a formerly-incarcerated woman. In order to establish clear limitations on the use of physical force by correctional officers, the commission shall collect and analyze data on the use of force against inmates. Further, the department of correction and sheriffs' departments shall provide the commission access to any and all reports written pursuant to 103 CMR 505.13 (1) and (2), or successor provisions. The commission shall ascertain whether the information provided is uniform, standardized and reasonably complete and, if not, shall recommend policies to increase uniformity, standardization and completeness.

The commission shall report and file its findings and recommendations, including any legislation, with the clerks of the senate and house of representatives and the joint committee on public safety and security not later than July 31, 2021.

SECTION 64. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Biometric data", computerized data relating to the physical, physiological or behavioral characteristics of a natural person, which allow or confirm the unique identification of such person, including, but not limited to, facial recognition, fingerprints, palm veins, deoxyribonucleic acid, palm prints, hand geometry or iris recognition.

"Body-worn camera", a portable electronic recording device worn on a law enforcement officer's person that creates, generates, sends, receives, stores, displays and processes audiovisual recordings or records audio and video data of law enforcement-related encounters and activities.

"Facial recognition software", a category of biometric software that maps an individual's facial features mathematically and stores the date as a faceprint.

"Law enforcement agency", an agency with law enforcement officers, including county sheriff's departments or municipal, special district, hospital or institution of higher education police departments.

"Law enforcement officer", a sworn officer employed by a law enforcement agency to exercise police authority.

"Law enforcement-related activities", activities by a law enforcement officer including, but not limited to, traffic stops, pedestrian stops, arrests, searches, interrogations, investigations, pursuits, crowd control, traffic control or non-community caretaking interactions with an individual while on patrol; provided, however, that "law enforcement-related activities" shall not include completion of paperwork alone or only in the presence of other law enforcement officers or civilian law enforcement personnel.

"Recording", the process of capturing data or information stored on a recording medium.

(b) The executive office of public safety and security, in collaboration with the executive office of technology services and security, shall establish the law enforcement body camera taskforce. The taskforce shall propose regulations establishing a uniform code for the procurement and use of body-worn cameras by law enforcement officers to provide consistency throughout the commonwealth. The taskforce shall propose minimum requirements for the storage and transfer of audio and video recordings collected by body-worn cameras. The taskforce shall conduct not less than 5 public hearings in various parts of the commonwealth to hear testimony and comments from the public.

(c) The taskforce shall consist of: the secretary of public safety and security or a designee; the secretary of technology services and security or a designee; the attorney general or a designee; a member appointed by the committee for public counsel services; the president of the Massachusetts District Attorney Association or a designee; a district court judge appointed by the chief justice of the supreme judicial court; the executive director of the American Civil Liberties Union of Massachusetts, Inc., or a designee; the president of the New England Area Conference of the National Association for the Advancement of Colored People or a designee; the colonel of the state police or a designee; the president of the Massachusetts Defense Lawyers Association, Inc., or a designee; 2 members nominated by the Black and Latino Legislative Caucus who shall have expertise in constitutional or civil rights law; and 5 members appointed by the governor, 1 of whom shall be a police chief with a body camera pilot program in a municipality with a population not less than 100,000 people, 1 of whom shall be a police chief with a body camera pilot program in a municipality with a population not more than 50,000 people, 1 of whom shall be an expert on constitutional or privacy law who is employed by a law school in the commonwealth, 1 of whom shall be an elected official in a municipality with a body camera pilot program and 1 of whom shall be a representative of a law enforcement labor organization.

(d) The taskforce shall elect a chair and vice-chair. A meeting of the taskforce may be called by its chair, the vice-chair or any 3 of its members. A quorum for the transaction of business shall consist of 7 members. All members of the taskforce shall serve without compensation. The executive agencies convening the taskforce shall assign administrative personnel to assist the work of the taskforce. The taskforce shall meet not less than 12 times. In addition to taking public testimony, the taskforce shall seek the advice of experts specializing in the fields of criminology, educations, criminal or family law or other related fields, as appropriate.

(e) Not later than January 31, 2022, the taskforce shall, by majority vote, adopt recommended regulations for appropriate executive agencies. The regulations recommended by the taskforce shall include, but not be limited to: (i) standards for the procurement of body-worn cameras and vehicle dashboard cameras by law enforcement agencies, including a requirement that such cameras or associated processing software include technology for redacting the images and voices of victims and bystanders; (ii) regulations regarding the use of facial recognition or other biometric-matching software or other technology to analyze recordings obtained through the use of such cameras; provided, however, that such regulations may prohibit or allow such use subject to requirements based on best practices and protocols; (iii) basic standards for training law enforcement officers in the use of such cameras; (iv) specifications of: (A) the types of law enforcement encounters and interactions that shall be recorded and what notice, if any, is to be given to those being recorded; and (B) when a camera should be activated and when to discontinue recording; (v) a requirement that a camera be equipped with pre-event recording, capable of recording at least the 30 seconds prior to camera activation; (vi) 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; (vii) standards for the identification, retention, storage, maintenance and handling of recordings from body cameras, including

a requirement that recordings be retained for not less than 180 days but not more than 30 months for a recording not relating to a court proceeding or ongoing criminal investigation or for the same period of time that evidence is retained in the normal course of the court's business for a recording related to a court proceeding; (viii) standards pertaining to the recordings of use of force, detention or arrest by a law enforcement officer or pertaining to ongoing investigations and prosecutions to assure that recordings are retained for a period sufficient to meet the needs of all parties with an interest in the recordings; (ix) guidelines for the security of facilities in which recordings are kept; (x) requirements for state procurement of contracts for body-worn cameras and for data storage through which qualified law enforcement agencies may purchase goods and services; (xi) best practice language for contracts with third-party vendors for data storage, which shall provide that recordings from such cameras are the property of the law enforcement agency, are not owned by the vendor and cannot be used by the vendor for any purpose inconsistent with the policies and procedures of the law enforcement agency; (xii) procedures for supervisory internal review and audit; (xiii) sanctions for improper use of cameras, including a requirement that a law enforcement officer who does not activate a body-worn camera in response to a call for assistance shall include that fact in their incident report and note in the case file or record the reason for not activating the camera; (xiv) sanctions for tampering with a camera or recordings and for improper destruction of recordings; (xv) regulations pertaining to handling requests for the release of information recorded by a body-worn camera to the public; (xvi) requirements for reporting by law enforcement agencies utilizing body-worn cameras; (xvii) a retention schedule for recordings to ensure that storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chains of custody and identify potential discovery issues; and (xviii) a process by which body camera footage may be included in the public record.

(f) Not later than January 31, 2021, the taskforce shall file a report on its work product, including its proposed regulations under subsection (e) and any proposed legislation that is necessary to effectuate the regulations, with the clerks of the senate and house of representatives, the joint committee on the judiciary and the joint committee on public safety and homeland security.

SECTION 65. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Biometric surveillance system", computer software that performs facial recognition or other remote biometric recognition.

"Facial recognition", an automated or semi-automated process that assists in identifying an individual or capturing information about an individual based on the physical characteristics of the individual's face or that logs characteristics of an individual's face, head or body to infer emotion, associations, activities or the location of the individual.

"Other remote biometric recognition", an automated or semi-automated process that assists in identifying an individual or capturing information about an individual based on the characteristics of the individual's gait, voice or other immutable characteristic ascertained from a distance or that logs such characteristics to infer emotion, associations, activities or the location of the individual; provided, however, that other remote biometric recognition shall not include recognition based on deoxyribonucleic acid, fingerprints or palm prints.

(b) From the effective date of this act until December 31, 2021, inclusive, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth or a political

subdivision thereof, or any agent, contractor or subcontractor thereof, shall not acquire, possess, access or use any biometric surveillance system or any information derived from a biometric surveillance system operated by another entity; provided, however, that this paragraph shall not apply to the: (i) acquisition, possession or use of facial recognition technology by the registrar of motor vehicles for the purposes of verifying a person's identity when issuing licenses, permits or other documents under chapter 90 of the General Laws; (ii) acquisition or possession of personal electronic devices, such as a cell phone or tablet, that uses facial recognition technology for the sole purpose of user authentication; (iii) acquisition, possession or use of automated video or image redaction software if such software does not have the capability of performing facial recognition or other remote biometric recognition; or (iv) the receipt of evidence related to the investigation of a crime derived from a biometric surveillance system if such evidence was not knowingly solicited by or obtained with the assistance of the agency, executive office, department, board, commission, bureau, division or authority of the commonwealth or a political subdivision thereof, or any agent, contractor or subcontractor thereof.

Except in a judicial proceeding alleging a violation of this subsection, information obtained in violation of this subsection shall not be admissible in any criminal, civil, administrative or other proceeding.

(c) There shall be a special commission to study the use of facial recognition by the department of transportation and law enforcement agencies. The commission shall consist of: the senate and house chairs of the joint committee on the judiciary, who shall serve as co-chairs; 1 member appointed by the speaker of the house of representatives who shall have academic expertise in bias in machine learning; 1 member appointed by the president of the senate who shall have academic expertise in privacy, technology and the law; the secretary of transportation or a designee; the secretary of public safety security or a designee; the attorney general or a designee; the state auditor or a designee; the chief counsel of the committee for public counsel services or a designee; and 5 members appointed by the governor, 1 of whom shall be the executive director of Massachusetts Chiefs of Police Association Incorporated or a designee, 1 of whom shall be the executive director of the American Civil Liberties Union of Massachusetts, Inc., or a designee, 1 of whom shall be the executive director of the New England Innocence Project, Inc., or a designee, 1 of whom shall be the executive director of Jane Doe Inc.: The Massachusetts Coalition against Sexual Assault and Domestic Violence or a designee, and a representative of the New England chapter of the American Immigration Lawyer Association.

The commission shall review the use of facial recognition and make recommendations to the legislature. The commission shall: (i) study the facial recognition system operated by the registry of motor vehicles and make recommendations for regular independent bias testing and standards to ensure accuracy and equity based on age, race, gender and religion; (ii) evaluate access to the system and management of information derived from the system including, but not limited to, data retention, data sharing and audit trails; (iii) recommend ways to ensure that the system is used in a manner that protects privacy and promotes accountability; (iv) identify which federal agencies, if any, have access to Massachusetts databases that catalogue images of faces and the authorization for and terms of such access; (v) assess whether law enforcement should be permitted to request the registry of motor vehicles to perform facial recognition searches under any circumstances and, if so, what substantive and procedural limitations should be imposed thereon; (vi) recommend ways to ensure rigorous due process protections for criminal defendants when facial recognition is used in any part of an investigation; and (vii) make recommendations to ensure compliance with limitations imposed upon the use of facial recognition, including training and enforcement mechanisms.

Not later than July 1, 2021, the commission shall submit its report and recommendations to the

governor, the secretary of transportation, the clerks of the senate and house of representatives and the joint committee on public safety and homeland security.

SECTION 66. (a) The community policing and behavioral health advisory council, established in subsection (e) of section 25 of chapter 19 of the General Laws, shall study and make recommendations for creating a crisis response and continuity of care system that delivers alternative emergency services and programs across the commonwealth that reflect specific regional, racial, ethnic and sexual orientation needs and differences in delivering such services. The study shall include, but not be limited to: (i) a comprehensive review and evaluation of existing crisis intervention, alternative emergency response and jail diversion models, services and programs in the commonwealth at the state, county and municipal level and models used effectively in other jurisdictions; (ii) a method for evaluating the effectiveness of existing crisis intervention, alternative emergency response and jail diversion models, services and programs in diverting individuals from the criminal justice system and emergency departments to appropriate care; (iii) recommendations for expanding effective crisis intervention and jail diversion models, services and programs identified in clause (ii) across the commonwealth; (iv) identification of crisis response training programs and protocols for law enforcement officers and 911 telecommunicators that reflect best practices and a plan for standardizing systems and aligning such programs and protocols across the commonwealth; (v) identification of outcome measurements and data collection procedures to be used to evaluate the effectiveness of the crisis response system and its components; (vi) an analysis of the federal Substance Abuse and Mental Health Services Administration national guidelines for behavioral health crisis care, including regional crisis call centers and mobile crisis teams; and (vii) an estimate of the additional costs or cost savings of implementing the council's recommendations under this section and possible sources of funding for delivering the crisis response and continuity of care system at the state, county and municipal levels. In developing recommendations for a crisis response and jail diversion system, the council, where appropriate, shall prioritize non-police community-based programs.

(b) The council may commission an independent research or academic organization with expertise in clinical social work, criminal justice, behavioral health jail diversion modalities and accessible analysis of quantitative and qualitative data and communication of study results to conduct the study. The council shall facilitate the collection of data needed to complete the study pursuant to a memoranda of understanding with the department of mental health, the executive office of public safety and security, the executive office of health and human services and relevant social service agencies.

(c) The study shall be designed in consultation with interested stakeholders, including, but not limited to, the president of the New England Area Conference of the National Association for the Advancement of Colored People, the American Civil Liberties Union of Massachusetts, Inc., the National Association of Social Workers, the Massachusetts Association for Mental Health, Inc., the Association for Behavioral Health, Inc. and members of the general court.

(d) Not later than January 1, 2022, the council shall submit the study's findings to the clerks of the senate and house of representatives, the joint committee on mental health, substance use and recovery, the joint committee on public health, the joint committee on health care financing, the joint committee on public safety and homeland security and the center for responsive training in crisis intervention. The study's findings shall be published on the department of mental health's website. Not later than 3 months after receiving the study's findings, the council shall solicit public comment and hold not less than 4 public hearings, 1 of which shall be held in Berkshire, Franklin, Hampshire or Hampden county and 1 of which shall be held in the Worcester area.

(e) The council shall report on existing and innovative crisis response models and recommend legislation or regulations to advance and strengthen non-police solutions to crisis response and jail diversion. The report shall incorporate the study's findings and issues raised in public comments and hearings. The report and recommendations shall be submitted to the clerks of the senate and house of representatives and the joint committee on mental health, substance use and recovery not later than January 2, 2023.

(f) The center for responsive training in crisis intervention shall incorporate the council's recommendations into regional training opportunities and training curricula.

SECTION 67. (a) There shall be a commission to make an investigation and study to: (i) dismantle structural racism in a systemic way that eliminates the violence of arrest, disparities of incarceration and barriers to positive community re-entry; (ii) systematically, comprehensively and iteratively review where and how the systemic presence of structural and institutional racism in the department of correction has generated a culture or practices and policies that produce racial inequality, trauma or disparate impacts and outcomes by race among and between incarcerated persons, correction officers or other department of correction staff or families of incarcerated persons; provided, however, that the scope of such review shall include mapping the various subsystems interacting within the criminal justice system, including, but not limited to, policing, parole and re-entry, that in their intersection with the work and mission of the department of correction produce or accelerate racial inequality or disparate impacts by race; (iii) recommend policies within the department of correction that focus on restorative justice program access, health care continuums, public health and behavioral health impacting people of color in the commonwealth such as socially determinative conditions regarding incarceration, probation, parole and community reentry, including, but not limited to, social indicators of health before, during and after incarceration that include health issues such as post-traumatic stress disorder that department staff and incarcerated persons experience in corrections and physical or behavioral health issues as a result of violence in policing and use of force; (iv) propose programs for implementation by the department of correction that benefit correction community members, including, but not limited to: (A) language supports for incarcerated English learners; (B) anti-racism training for all department community members regardless of position or ethnic identity; and (C) educational opportunities for correction officers and incarcerated persons; and (v) provide a road map for the establishment of a publicly-funded permanent government entity with expertise to dismantle structural racism that shall: (1) recommend actual internal changes to the department of correction; (2) make administrative or policy recommendations to the governor and specific executive agencies; and (3) make legislative recommendations to the general court. The programs described in clause (iv) may include programs to promote interpersonal trust, relationships, wellness and quality of life of incarcerated persons and staff, to provide educational and personal development opportunities and historical bias and anti-racism training and to improve the correctional physical and administrative structure such as green space, adequate staffing space, facilities resources, communications and management.

(b) The commission shall consist of the following 31 members: 3 members of the Massachusetts Black and Latino Legislative Caucus appointed by the caucus, 1 of whom shall be the chair of the commission as selected by the caucus; 3 persons appointed by the speaker of the house of representatives, 1 of whom shall be selected from a list of nominees from Citizens for Juvenile Justice, Inc., 1 of whom shall be a member of the Legislative Criminal Justice Reform Caucus and 1 of whom shall be selected from a list of nominees from Prisoners' Legal Services; 2 persons appointed by the senate president; the

secretary of public safety and security or a designee; the undersecretary of criminal justice or a designee; 7 persons appointed by the governor, 1 of whom shall be selected from a list of nominees from the Boston branch of the National Association for the Advancement of Colored People New England Area Conference, 1 of whom shall be selected from a list of nominees from the Urban League of Eastern Massachusetts, Inc, 1 of whom shall be selected from a list of nominees from the American Civil Liberties Union Racial Justice Program, 1 of whom shall be selected from a list of nominees from the Dimock Health Center, Inc., 1 of whom shall have medical and behavioral health expertise in the incarceration setting, 1 of whom shall be a member of the Charles Hamilton Houston Institute for Race and Justice and 1 of whom shall have expertise in trauma and adverse child experiences; 3 persons appointed jointly by the undersecretary of criminal justice and the commission chair who shall be incarcerated persons, at least 1 of whom shall be selected from a list of nominees from the African American Coalition Committee and at least 1 of whom shall be a person who has demonstrated a commitment to persons that are foreign born; 3 persons appointed jointly by the undersecretary of criminal justice and the commission chair, all of whom shall be correctional officers and at least 1 of whom shall be a member of the Massachusetts Correction Officers Federated Union; 3 members appointed jointly by the undersecretary of criminal justice and the commission chair, all of whom shall be members of the department of correction administration; 3 members appointed jointly by the undersecretary of criminal justice and the commission chair, all of whom shall be family members of persons currently incarcerated; and 2 members appointed jointly by the undersecretary of criminal justice and the commission chair, both of whom shall be formerly incarcerated persons. An appointing authority with 2 or more appointments shall ensure that their appointments draw from socially and economically disadvantaged and historically underrepresented groups.

All appointments shall be made not later than 30 days following the effective date of this section and the chair of the commission shall convene the first meeting of the commission not later than 60 days after such effective date. The commission shall meet not less than 4 times.

(c) The department of correction shall assist the commission in facilitating the participation of department staff and incarcerated persons, including, but not limited to, providing necessary transportation of incarcerated persons, videoconferencing or other appropriate online or electronic communication and access to available and appropriate space at a correctional facility or administrative office. Participation by department staff may be considered by the department to be included in such employees' regular workday activities. The department, or any other state agency as defined in section 1 of chapter 29 of the General Laws, shall assist the commission in gathering relevant information about current operations, programs, staffing and budgets.

(d) Not later than March 31, 2021, the commission shall submit a report with recommendations for legislation, if any, together with drafts of legislation necessary to carry its recommendations into effect, with the clerks of the house of representatives and the senate, the joint committee on the judiciary, the joint committee on public safety and homeland security and the house and senate committees on ways and means.

(e) Not later than 6 weeks after March 31, 2021 or 6 weeks from the date of the filing of the report in subsection (d), whichever is later, the department of correction shall file a report on actions being taken to respond to the commission's report with the clerks of the house of representatives and the senate, the Massachusetts Black and Latino Legislative Caucus, the joint committee on the judiciary, the joint committee on public safety and homeland security and the house and senate committees on ways and means.

SECTION 68. The executive office of public safety and security shall study the feasibility and recommend a plan on ensuring that all municipal law enforcement departments achieve a minimum level of accreditation form the Massachusetts Police Accreditation Commission, Inc. or an equivalent accrediting entity. The study shall include, but not be limited to: (i) a cost assessment of requiring such accreditation; (ii) a survey of any grants available to assist a law enforcement department in achieving such accreditation; (iii) an estimate of a reasonable time period in which a law enforcement department could achieve such accreditation; and (iv) an assessment as to whether the available accrediting entities evaluate a law enforcement department's compliance with federal and state civil rights and equal protection laws as a part of the entity's accreditation process.

Not later than July 1, 2021, the executive office of public safety and security shall file a report of its findings, including any recommendations, with the clerks of the senate and house of representatives, the senate and house committees on ways and means and the joint committee on public safety and homeland security.

SECTION 69. Notwithstanding section 223 of chapter 6 of the General Laws, a law enforcement officer, as defined in section 220 of said chapter 6, who has completed an academy or training program certified by the municipal police training committee or the training programs prescribed by chapter 22C of the General Laws on or before effective date of this section and is appointed as a law enforcement officer as of the effective date of this section, shall be certified as of the effective date of this section.

All law enforcement officers who have completed a reserve training program on or before the effective date of this section shall be certified as of the effective date of this section. Prior to the expiration of that certification, the officer shall complete additional training as required by the municipal police training committee or be granted a waiver pursuant to section 96B of chapter 41 of the General Laws.

Any training waiver or exemption granted by the municipal police training committee prior to the effective date of this section shall expire 6 months after the effective date of this section. Any person who has not completed an academy or training program certified by municipal police training committee or the training programs prescribed by said chapter 22C on or before the effective date of this section and has been appointed to a law enforcement position as of the effective date of this section, shall not exercise police powers following the expiration of any training waiver or exemption under this section. Prior to the expiration of this 6-month period, the person may obtain from the municipal police training committee a waiver pursuant to said section 96B of said chapter 41 or an extension of time necessary to complete training according to a work plan approved by the municipal police training committee.

The certifications of law enforcement officers who have graduated from an academy or training program certified by the municipal police training committee or the training programs prescribed by said chapter 22C who are certified as a result of subsection (c) of section 223 of said chapter 6 and whose last names being with: (i) A to H, inclusive, shall expire 1 year after the effective date of this section; (ii) I to P, inclusive, shall expire 2 years after the effective date of this section; and (iii) Q to Z, inclusive, shall expire 3 years after the effective date of this section.

SECTION 70. Notwithstanding any general or special law to the contrary, in making initial appointments to the police officer standards and accreditation committee established pursuant to section 221 of chapter 6 of the General Laws the governor shall appoint 3 members for a term of 3 years, 5 members

for a term of 2 years and 5 members for a term of 1 year.

SECTION 71. Notwithstanding paragraph (2) of section 2JJJJJ of chapter 29 of the General Laws, the initial terms of the board of directors of the Justice Reinvestment Workforce Development Fund shall be as follows: 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, 3 shall be appointed for a term of 3 years and 3 shall be appointed for a term of 4 years.

SECTION 72. Notwithstanding any general or special law to the contrary, section 100I of chapter 276 of the General Laws, as inserted by section 61, shall apply to any pending petition for expungement filed pursuant to sections 100F, 100G or 100H of said chapter 276 that was filed on or before the effective date of this act. Any petition for expungement filed pursuant to said sections 100F, 100G or 100H of said chapter 276 that was denied before the effective date of this act solely because the petitioner had more than 1 record as an adjudicated delinquent or adjudicated youthful offender or of a conviction may immediately refile the petition under section 100I of said chapter 276.

SECTION 73. Notwithstanding any general or special law to the contrary, not later than October 1, 2020, the municipal police training committee shall issue guidance on developmentally appropriate de-escalation and disengagement tactics, techniques and procedures and other alternatives to the use of force for minor children that may take into account contextual factors including, but not limited to, the person's age, disability status, developmental status, mental health, linguistic limitations or other mental or physical condition.

SECTION 74. Notwithstanding any general or special law to the contrary, a person who is appointed as a school resource officer, as defined in section 37P of chapter 71, as of the effective date of this act may continue in such appointment without receiving a certification to serve as such pursuant to subsection (a) of section 223 of chapter 6 of the General Laws; provided, however, that such person shall receive said certification not later than August 1, 2021.

SECTION 75. The municipal police training committee shall complete a 10-year strategic plan establishing its goals and objectives, approved by not less than two-thirds of its voting members. The strategic plan shall include, but not be limited to: (i) a description of how the committee plans to prioritize its financial resources; (ii) the scope of training the committee plans to offer new and existing officers; and (iii) an analysis of whether the committee will be able to provide the required, mandated in-service training to existing officers. Not later than July 1, 2021, a report on the strategic plan shall be filed with the clerks of the senate and house of representatives, the senate and house committees on ways and means and the joint committee on public safety and homeland security. The committee shall publish the report on its website.

SECTION 76. Notwithstanding any general or special law to the contrary, the first review of the municipal police training committee's curriculum, training materials and practices, as required by section 116 of chapter 6 of the General Laws, shall be completed not later than January 1, 2023.

SECTION 77. Not later than July 1, 2021, the police officer standards and accreditation committee shall develop the regulations required under section 4 of chapter 147A of the General Laws; provided, however, that nothing in this section shall prevent the provisions of said chapter 147A from taking effect upon the effective date of this act.

SECTION 78. Notwithstanding any general or special law to the contrary, the executive office of public

safety and security shall promulgate regulations requiring police departments to participate in critical incident stress management and peer support programs to address police officer mental wellness and suicide prevention as well as critical incident stress and the effect on public safety. The programs shall be created internally within a department or departments may collaborate within a regional system. The programs shall include, but shall not be limited to, mental wellness and stress management pre-incident and post-incident education, peer support, availability and referral to professional resources and assistance. The secretary shall ensure that each officer is notified of the program during each 3-year certification cycle under this act.

SECTION 79. Paragraph (3) of subsection (c) of section 2JJJJJ of chapter 29 of the General Laws shall take effect for fiscal year 2022.

SECTION 80. Section 52 shall take effect 1 year after the effective date of this act.

Oxford Police Department
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Chief of Police
Anthony Saad

Lieutenant
William Marcelonis

Sergeants
Jeromy Grniet
Joseph Conlon
Jason Burdett
Michael Gifford

17 July 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".

Our members at the Oxford Police Department can truly appreciate the efforts & conversations currently taking place before the House of Representatives. Our hope is that these conversations will prove to be productive for all parties involved.

My main concern as Police Chief regarding a few of these proposals, if passed, is that they would deliver an adverse effect on the profession of policing by way of 'retaining veteran personnel' and the inability to 'recruit' talented, well qualified individuals. The future of law enforcement in the Commonwealth may be at a crossroads.

Respectfully,

Anthony Saad
Chief of Police

Patrick M. Ambrose
Chief of Police
pambrose@danversma.gov

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Danvers Police Department

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".*

The Danvers Police Department was the first nationally accredited municipal police agency in the commonwealth. We have continuously maintained our accreditation since 1986. In order to maintain this standard, we have continuously needed to update our policies and procedures and training standards. These changes have allowed us to practice the most modern-day best practices in policing. I say this in order to demonstrate that we are not unwilling to change or adapt to the needs of our communities and to show that we are not opposed to any legislative changes. However, in reviewing SB2820 as amended, I have several serious concerns which I would like to express to you.

- The construction of this bill was done so without input from law enforcement. MCOPA should have had a seat at the table in order to assure all viewpoints were considered.

- **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):** The POSAC committee was given the power to conduct *"independent investigations and adjudications of complaints of officer misconduct"* without providing any language as to how or why an investigation would be conducted. This section also fails to address any review or oversight of the system.

- **SECTION 10:** Section 10 or SB2820 calls for a new standard for the defense of "qualified immunity", a standard which has been well established for 50 years. This new standard would provide police officers with substantially less protection when doing their jobs. This I strongly believe will have the most devastating effect on policing. Police

productivity will be lowered for the fear of being sued simply for doing your job. Communities in the commonwealth are already struggling to find qualified candidates to become police officers and these efforts will become much harder with these proposed changes.

- **SECTION 49:** This section calls for the end of information sharing from school departments to law enforcement. In this day and age that approach defies logic and will only decrease the safety of our children while attending school.

- **SECTION 55:** The MPTC does not teach, train, authorize in any way the use of choke holds or neck restraints during the course of arrest or restraint. However, this section fails to provide any deadly force exception. I would ask that the wording of "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury" be included in this section.

Although there are other concerns in this bill, I feel these are the most notable. I appreciate the opportunity to express my concerns and recommendations.

Respectfully,

Patrick M. Ambrose

Danvers Chief of Police

WHITMAN POLICE DEPARTMENT
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Timothy P. Hanlon
Chief of Police

July 17, 2020

To: Chairwoman Cronin and Chairman Michlewitz
Via Email: 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.

Without belaboring the concerns presented in the attached letter from the Massachusetts Chiefs of Police Association (MCOPA) in further detail, I urge you to reconsider passing SB2820 as amended. A complete and full comprehension of the intended and unintended consequences this legislation would have on the police profession in Massachusetts is necessary before enacting such wide sweeping reforms. I do not believe the intent of SB2820 can be accomplished by hastily rushing to reform long standing concepts in policing over the course of a few weeks.

As a law enforcement professional with over 20 years of experience, I am not ashamed to say that I, and those under my supervision are having difficulty envisioning what policing in Massachusetts would become should the concerns outlined in the MCOPA letter authored by Chief Brian Kyes and Chief Jeff Farnsworth fall on deaf ears.

Police officers need a thorough and complete understanding of what is expected of them in performing their duties to the best of their abilities. Collective reform of a large number of mandates in batch form will undermine the confidence these officers need in order to function in making split-second decisions under life-threatening circumstances.

In closing, I thank you for the opportunity to be heard regarding SB2820.

Sincerely,

Timothy P. Hanlon
Chief of Police
Whitman Police Department

CITY OF NEWBURYPORT

POLICE DEPARTMENT

MARK R. MURRAY
CITY MARSHAL

4 GREEN ST

NEWBURYPORT, MA 01950

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July 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".

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).

CITY OF NEWBURYPORT

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 theUnited 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. How croft 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 is 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.

• 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.

The men and woman of the Newburyport Police Department have always and will continue to serve the citizens of the community with professionalism and integrity. Thank you for taking the time to allow me to express my concerns regarding SB 2820, and for your efforts for drafting this very difficult bill.

Respectfully,

Mark Murray
City Marshal

CITY OF NEWBURYPORT

City of Salem, Massachusetts
Police Department Headquarters
95 Margin Street, Salem, Massachusetts 01970

Mary E. Butler
Chief of Police

July 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.

For thirty-three years, I have dedicated myself to policing in the great City of Salem, MA. I do this because I care about what happens in our community and since I was twelve years old my sole mission has been to make sure people were safe, had assistance when they needed it and stood up and became the voice for those who felt they had none.

I am not ignorant of the pressure to "do something" at this particular time in our nation and within this State, but three weeks of cobbling together legislation without thoughtful consideration and due process is not going to wipe away the last 60 years of inequity since the civil rights movement; it's much bigger than that. I applaud the efforts of everyone who has stepped up to listen at this point, and I applaud the unwavering commitment to make changes that will make our communities and all those persons within them who feel unheard or marginalized to have a voice in their government and in the policies of government organizations. It is undoubtedly time, as voice have been raised, followed by quiet and inaction. However, thoughtful action that will have the desired impact of ensuring racial equity is not a mission that can be undertaken without discussion and without understanding "how" this will actually create that equity.

I understand that policing is at the forefront in light of the murder of George Floyd by a man who had no business being a police officer and with three others whose inhumanity could not see or stop the travesty right in front of their eyes. They will deserve the punishment due them as they have selfishly tarnished the reputation of all police officers who dedicate themselves to this profession, who daily go out and

respond to calls for assistance, and who are committed to having and participating in a safe and peaceful community.

You change that dedication and commitment when you don't allow the voice of the very people who are working to keep our communities safe and to respond to all persons, regardless of race, ethnicity, gender, religion or economic status to be heard as well.

In Qualified Immunity, to shift the burden to municipalities is going to create a breakdown and deficiencies in the financial makeup of local government to provide the services in many areas within their community. I know many feel this is an overreaction, yet as legislatures, you are not privy to the day-to-day operations of police and of the persons with whom we interact daily. Even with QI, no act that is willful, wanton or malicious, is covered by this immunity. Force used in excess of the standards and policy is willful, wanton or malicious, so immunity would not cover this. Any bad conduct will sever qualified immunity. Maybe this the added piece that should be clarified. Don't we want our police officers to act in good faith?

The bill also discusses a database that will be available to the public. I would like to address the question of what personal identifiers will be placed on each officer in this database? We all know or have been subjected to data breaches at banks, retail and government and this would be no exception and it is why I pose the question.

The bill includes language to put together a Commission to address training and background investigations, yet there was no indication that anyone who would be filling that Commission and addressing these matters have any training or experience in law enforcement – there should be some. Salem Police have put together, after three years of work with our citizens, a proposal to replace Civil Service and it includes an Advisory Committee. One of the requirements for the civilian board members is to attend our Citizen Police Academy, offered twice a year, within one year of appointment. The reason for that decision and the value it would have on the operation of the board was recognized by the civilian members of the working committee.

With training, regardless of what that training is, it needs to be funded. Without funding for any training determined by this bill or by the Commission, some other coverage or efforts in our communities will go unanswered or unfulfilled. Unfunded mandates need to end.

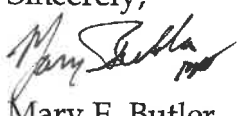
Lastly, a clear understanding of the definition of "misconduct" needs to be clarified for all to understand. Is that as simple as an officer raising his/her voice to stop a motorist at a detail? Additionally, this has the makings of usurping the authority of the Chief of Police, and taking away his/her ability to manage the officers in the Department if officers were to understand it makes no difference what the Chief

decides in these matters because they will be decided and changed by another group even after the Chief's disciplinary action.

In summary, I thank you for your openness to accept testimony from the Chiefs of Police as it relates to the bill and to some of the hard discussions and decisions you will need to make in the coming days. As I stated before, I applaud the efforts to make changes that will hopefully fill voids to create more equity for all of our citizens, I just want to ensure they actually have the desired results.

Thank you for all you do in our State to keep Massachusetts a leader in our nation.

Sincerely,



Mary E. Butler
Chief of Police
Salem, MA

Southbridge
Police
Department

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Phone: (508) 764-5420
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Chief Shane D. Woodson
Administrative Fax: (508) 764-2257

Deputy Chief Jose A. Dingui

July 17, 2020

TO: Chair Aaron Michlewitz & Chair Claire Cronin

FROM: Chief Shane D. Woodson

SUBJECT: SB2820

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 Chief of Police in my community, I support any legislative process that works towards attaining a final comprehensive bill that will enhance the delivery of professional policing services in our profession. Unfortunately, I was not provided with the opportunity to work with you and provide input to help us achieve this goal. All I have ever asked for is a "seat at the table" and I'm eager to participate in any subsequent public hearing(s) as it pertains to the Governor's Bill, *An Act to Improve Police Officer Standards and Accountability and to Improve Training,* and/or to Senate Bill 2800 as amended, as the House of Representatives contemplates the potential drafting and releasing of their own legislation specific to police reform in our state.

I will always advocate for additional training, equipment and resources and agree with language in any bill that will further the level of accountability for my officers. Since I have been Chief, I have worked in my community at being transparent with the people we serve. As a result, we have been able to establish many positive relationships with the residents of my community based on a mutual trust. Our residents rely on us to be professional and we treat everyone with compassion and respect. Overall, I challenge anyone to question the brand of policing that my officers provide in our community every single day.

I call your attention to some of the extremely disappointing and disparaging remarks that were made on the floor of the Senate this week by some (not all) Senators. In my opinion, it is an embarrassment to witness my elected officials use an incident that occurred more than 1,000 miles away as leverage to only further their specific political agenda. This is irresponsible and insulting to my officers and is unacceptable to all law enforcement professionals. We give our all, each and every day and never ask for anything in return other than to be treated with fairness and respect.

Thankfully, there were many members of the Senate who have emerged as true leaders. I look forward to working with them in the future and sharing my input at reaching inclusiveness and I commend each of them for having the courage to support our true heroes.

Respectfully,

Chief Shane D. Woodson

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Scott A. Dumas
Chief of Police

978-948-7644
Fax 978-948-7087

July 17, 2020

Re: *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, SB 2820.*

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 know you are in receipt of correspondence co-signed by Chief Brian Kyes, President of Massachusetts Major City Chiefs, and Chief Jeff Farnsworth, President of Massachusetts Chiefs of Police Association. Rather than belabor what has already been stated, and although there are other areas in the bill I wish they had addressed, I will let stand their testimony as there is far more ground on what we all agree with than what we disagree. If you begin on where we agree rather than on where we disagree, we will gain far more ground.

I would like to engage you more from the human standpoint. First of all, let me state I appreciate the House's willingness to listen to testimony regarding this important issue. A meaningful discussion on race relations, social justice, inequities in society, has been long overdue. What's unfortunate is it took the grotesque, criminal act of a Minneapolis police officer to bring that discussion to the forefront. What does that say about us, as a society, that we have been unwilling to address these important issues until the public display of the worst our profession has to offer? And how very easy has it been for our leaders to inaccurately and despicably lay this at the feet of law enforcement. You want to make it easier for good cops to get rid of bad cops? Please, we welcome it. You want to mandate training to law enforcement officers on the history of slavery, lynching, racist institutions and racism in the United States, then mandate it in every classroom and public and private industry. To do otherwise is shameful and insulting.

There are so many discussions that need to take place. That first discussion however is an inward discussion. What have "I" done to arrive us in this place we find ourselves in? How can "I" help to improve this situation we find ourselves in? As a human being, I will engage in that discussion. As a law enforcement professional, I will engage in that discussion. I am however dismayed that some in our society, have an unwillingness towards self-assessment but instead project their responsibility onto this noble profession, which is then emboldened by our leaders with a lack of response.

What the Senate has done, in my opinion, has not responded to anything that is taking place in the Commonwealth of Massachusetts. Instead they have reacted to an unwatchable event that took place over 1,000 miles away, that has triggered misdirected and hateful actions towards the guardians of our communities by joining the loud minority and labeled them racists and the root of all evil. As a result, we have not engaged in discussions followed by effective and meaningful action needed to address identified issues at home.

What is unfortunate by reacting instead of responding; the very essence of what we all seek, meaningful improvement, is not achieved. Reacting is done with emotion, and as a result, too often, causes more lines of division. Response is done with thought. Thought involves bringing all stake holders to the table. Thought involves the impact of any decisions being made. Thought involves beginning with common ground and seek to fill the voids rather than widening them. Thought involves a sustainable plan with checks and balances. Thought involves leadership. Please do not react. Respond and lead.

Respectfully,

Scott A. Dumas
Chief of Police
Rowley Police Department

BELCHERTOWN POLICE DEPARTMENT

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Christopher G. Pronovost
Chief of Police

July 16, 2020

The Honorable Aaron Michlewitz & Claire Cronin
Massachusetts House of Representatives
Beacon Ave.
Boston, MA

Dear Chair Aaron Michlewitz & 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 can assure you that I, along with all chiefs of police within the Commonwealth, share in recognizing the need for police reform. I do, however, see many potential serious issues in SB2820 as it is currently written. I urge you to bring more of a police perspective to this conversation.

There are specific provisions of the Bill which would add extreme costs to existing police budgets, specifically the mandate of additional training and the administrative requirements of complying with all aspects of this Bill. In addition, the section relative to "*investigations and adjudications of complaints*" offers no specific guidelines on what complaints would be forwarded to the proposed committee. This vagueness leaves the door open to arbitrary and capricious cases being forwarded and determinations made in a similar manner.

Other problematic provisions of the Bill include the section on altering qualified immunity for public officials. With my 35 years of police experience as a police officer, I can tell you with certainty that this provision alone will destroy the ability for police officers to do their job. No police officer will put their personal liberty and property interests at stake in order to promote public safety. Policing will be relegated to a reactive and minimal-task occupation, with officers choosing to respond to, and engage in, only the most necessary tasks. Many officers, in anticipation of this provision, and because of fear, are already contemplating leaving the profession for the private sector or retirement. We will not be able to recruit the best officer candidates.

Passage of this Bill as written will also result in the termination of many important community-based policing initiatives. This includes little or no school involvement, a cease in substance abuse and mental health team response, and the abolishment of many other community-based programs and initiatives.

In closing, we, the police, recognize the need for change and reform. However, this is not something that can be rushed through your chamber due to political pressure. It is simply too important an issue and it demands great research, thought, and input from a plethora of community and law enforcement groups. I urge you to carefully consider the unintended consequences of this Bill as currently written.

Sincerely,

Christopher G. Pronovost
Chief of Police

Cc: Representative Thomas Petrolati
7th Hampden District

16 July 2020

Senator Aaron Michlewitz
Senator Clair Cronin
Massachusetts State House
24 Beacon Street
Boston, Massachusetts 02133

Dear Chair Aaron Michlewitz and Chair Claire Cronin:

My name is Michael Perkins, I am the Chief of Police for the Town of Cummington, located the western hills of Hampshire County.

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 extremely concerned the impact SB2820 will have on my small rural community. While we are at a pivotal time with so many calling for change in the way policing is done in today's twenty first century society, I implore you as legislators to pause and really focus on the what these changes would do for our Commonwealth.

Shifting resources such as funding, away from policing is of great concern to me.

In a small rural community, policing is about engaging community members, answering questions, hearing concerns and being able to respond in time of need. These relationships were built over time and often supplemented through grant funding. This allowed department members to be visible in the community and participate in a variety of community events. The Cummington Police Department also received supplemental funding to target aggressive driving on the ten mile stretch of Route 9 that runs through town. Both Community Policing and Traffic Safety funding have been already been "shifted away" from the small rural agencies and now there is a call to shift even more funding away???

In rural communities' police are so much more than just the police. We are emergency medical responders, community care givers, active listeners trained to listen when someone has a concern, we are a shoulder to cry on as we encounter people during the most difficult of times. Please consider increasing funding to rural agencies to ensure we have the ability to carry out our mission.

Should you wish to discuss any of this further, please do not hesitate to contact me.

Respectfully Submitted,
Michael Perkins

TOWN OF BOURNE
POLICE DEPARTMENT

DENNIS R. WOODSIDE
CHIEF OF POLICE

175 Main Street • Bourne, Massachusetts 02532
Phone: (508) 759-0604 - Ext. 1
Address all communications to Chief of Police
Fax: (508) 759-0603

July 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".

As a police officer for 33 years and a current Chief of Police for over 9 ½ years I am deeply concerned in the way the legislature is reacting and approaching these so-called police reforms.

All of the sections are concerning and also concerning is the rush to react by passing legislation that will only cause more harm and divisiveness. Some of the sections touch on subjects that your Massachusetts Chiefs have been asking for over several years. Most of these proposals are not needed to start with and if there are going to be changes of such significance, the legislature, and ALL of the legislatures, should be doing their due diligence to become properly educated on the issues of fact. The results of passing such measures will significantly reduce the safety of all of us citizens. The fact that this legislation is being rushed for no apparent reason other than personal political gains, is of the utmost concern.

Police officers are your last line of defense to keep us all safe. You are in fact diminishing that defense and the losers will be all of our citizens. You will see a loss of very valuable and experienced talent in the law enforcement community and a significant decrease in qualified and proper candidates to become police officers. Why would anyone want to subject their families to put more than their very lives on the line to protect anyone?

You are in fact sponsoring a significant reduction in all of our safety and will cause more people to defend themselves.

I'm not going to spell out all the issues as they have been spelled out by the Massachusetts Chiefs of Police. And I only had a few minutes to write this letter, that really should never had needed to be written.

You need to become educated to the facts because this is too big to pursue in the fashion that you have chosen. Please SHOW YOUR INTELLIGENCE AND LEADERSHIP TO ALL OF US RESIDENTS. Vote down all these proposals and pursue the desired change in a more responsible fashion.

Thank you for reading this (if you actually do),

Chief Dennis R. Woodside
Bourne

NORTH ANDOVER
POLICE
DEPARTMENT
--- Community Partnership ---

To: Chair Aaron Michlewitz
Chair Claire Cronin
From: Lt. Daniel P. Lanen
Re: Bill S2820
Date: July 17,2020

Dear Chairs,

I am writing in regards to S2820. I do not agree with the majority of the proposed police reforms. Many of the proposals will cause a flight from policing during a time when we are already facing a recruitment and retention crisis. Agencies throughout the country cannot fill open positions now and legislation of this type would cause many to leave the profession and hinder recruitment efforts.

You will hear from many what a disaster these proposals will incur and I will review some of the main issues later in this letter. I would like to begin by making two proposals that would improve policing. If you are interested in making sure all departments are professional you could require all departments to attain the Massachusetts Accreditation Council Certification. This is a timely and costly process that would require funding.
In regards to the Use of Force, the FBI has a national Use of Force data site that has been implemented a few years ago. In order to keep track of use of force data, you could require all departments to use this mechanism. The system is already in place and would not cost the State any funds.

Some of the major issues with the proposals are the following;

Qualified Immunity: There have been no issues demonstrated with the current system. Police are sued, disciplined and prosecuted under the current statutes.

1475 Osgood Street, North Andover, Massachusetts 01845 Telephone: 978-683-3168 Fax: 978-681-1172

Decertification Process: The proposals eliminate Due Process rights of Law Enforcement. Why are we not afforded the basic rights of other citizens?

Makeup of the Board: Why are we the only profession to be reviewed by members who are not in the profession?

Reporting Mechanisms: The required reporting mechanisms proposed for any citizen contact are onerous and have no clear guidance for standards and reporting requirements.

We would all like more training and education. However, it is odd that the legislature is now focusing on this. You have defunded the Quinn Bill. Had two years of $0 appropriated for police training and waived police training requirements. The legislature has never in recent history prioritized police training. In a forty billion-dollar budget the legislature has had issues funding police training. Most recently, the legislature passed a new car rental tax for police training. If training is a priority why was it never given priority in your budgets?

We are all in this together and any legislation should be researched and well thought out. This legislation as proposed is a danger to the citizens of the Commonwealth. It does not improve community relations and will cause a shortage of available police. I have already been approached by members in my department who are looking to move to other states or apply for federal jobs. One member's wife has told him to leave the job. This will be the norm throughout the Commonwealth and it will take many years to recover. What do we do in the meantime? How do we fill positions? How do we provide services?

Thank you for your attention to this matter. I am available any time to talk.

Lt. Daniel P. Lanen
North Andover Police Department
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Phone: 978-2432-1542

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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

Dear Chair Claire Cronin and Chair Aaron Michlewitz,

Thank you for giving us the opportunity to submit testimony before you today. My name is Jim Evers, President of the Boston Carmen's Union, Local 589. I am proud to write today, on behalf of the over 4,000 MBTA employees represented by the Boston Carmen's Union who are also certified members of the Amalgamated Transit Union (ATU) – the largest transit union in the US and Canada.

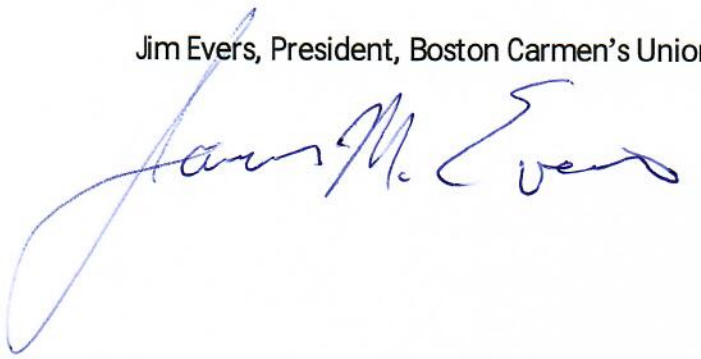
I write today in response to S 2820. The Bill is intended to help reform policing in Massachusetts but including the removal of Qualified Immunity is not in the best interest of policing or any public servant in the Commonwealth. The aspect of qualified immunity in the bill encompasses all public employees, beyond just law enforcement officers. As a result of S 2820, our members – and all employees across the public sector – may become subject to far-reaching legal consequences all of which carry a burdensome price tag for municipalities, as well as individuals and their families. As it is written, the Bill would drastically lower the standards under which a civil action could be brought against a public servant with qualified immunity. There are thousands of men and women throughout the Commonwealth who come to work each day to serve the public, they should not have to come to work in fear of a personal lawsuit for carrying out their duties.

As the men and women driving, operating, and maintaining MBTA buses, trains, and tracks, the Carmen's Union continues to exhibit its dedication to serving the Commonwealth. We urge the

House to avoid moving forward with these adaptations to qualified immunity, so to not lose focus of the police reform efforts of SB2820 and to spare both public employees and municipalities from unnecessary legal implications.

Sincerely,

Jim Evers, President, Boston Carmen's Union



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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

Dear Chair Claire Cronin and Chair Aaron Michlewitz,

Thank you for giving us the opportunity to submit testimony before you today. My name is Jim Evers, President of the Boston Carmen's Union, Local 589. I am proud to write today, on behalf of the over 4,000 MBTA employees represented by the Boston Carmen's Union who are also certified members of the Amalgamated Transit Union (ATU) – the largest transit union in the US and Canada.

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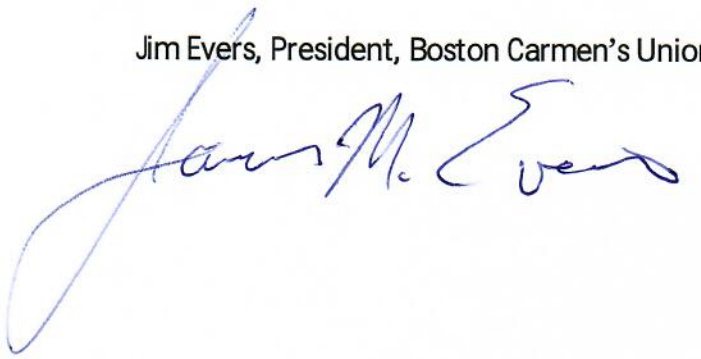


State of Massachusetts House of Representatives,

My name is Christopher Landry, I am a resident of Massachusetts, residing on Cape Cod, and I can be contacted at (413)-548-5773. I am writing to you to submit my public testimony for bill 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.* In addition to being a resident of the state of Massachusetts, I am an MPTC certified police officer and have been for eight years between my part-time and full-time municipal certification.

I proudly serve the community of Provincetown, MA and have done so for my entire tenure as a police officer. I submit this to you with great respect and appreciation that you are allowing public comment on this bill that will make many changes to the law enforcement profession. As the bill stands now, I agree and support many amendments of this bill. Working in what may be the most diverse community in the Commonwealth, I appreciate all people for who they are regardless of race, ethnicity, gender, sexual orientation and/or religion.

Furthermore, I truly appreciate how this bill is authored to make reforms for the law enforcement profession that are long overdue. Those changes I appreciate are but not limited too: more inclusion for persons of color, creating and adopting certifications standards and making it a requirement for an officer to intervene when excessive use of force is encountered by another officer. However, this bill is not perfect, and I do not support three specific topics. Those topics include an officers right to appeal to civil service, officers use of force and qualified immunity.

As documented under section 225, subsection (g) pertaining to an officer's right to appeal to the civil service commission as identified in chapter 31 needs to be changed. Many labor unions have put forth countless hours of hard work and dedication to allow any employee regardless of profession their right to appeal. If the law is adopted as written, it removes an officer's right to appeal decertification to the civil service commission that oversees all departments governed by them. I understand and respect the intent behind this amendment to remove an officer's certification if they are found responsible for wrong-doing, however, they still should have the right to appeal to the governing body that evaluates their employment. Furthermore, if the officer's rights to appeal is not allowed, it undermines the civil service commission's ability to review the decertification of a police officer. Please review the language of this amendment and change it to make it allowable for an officer to appeal decertification to the civil service commission.

Pertaining to an officer's use of force, I submit this opinion as my own as I am not a use of force expert and/or instructor. I received my training for use of force from the MPTC and do so on a yearly basis both at in-service training and through my

departments defensive tactics instructors. As documented in chapter 147A Regulation of Physical Force by Law Enforcement Officers, Section 2 (b) it states:

> *A law enforcement officer shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to: (i) effect the lawful arrest of a person; (ii) prevent the escape from custody of a person; or (iii) prevent imminent harm to a person and the amount of force used is proportional to the threat of imminent harm.*

My issue with this language is that it contradicts the teachings from U.S. Supreme Court case Graham V. Connor which created the reasonableness standard. An officer is trained to act in a reasonable manner when forced to make split second decisions in situations that are tense and rapidly evolving. This amendment does not allow an officer to use force for civil custodies, such as, MGL 123 s 12 Involuntary Hospitalization for Mental Health or court ordered apprehensions for drugs and/or alcohol abuse also referred to as section 35. This amendment as written does not allow the use of force when encountering a subject that is incapacitated by either alcohol and/or drugs. When dealing with persons incapacitated by these substances, they are not of sound mind and at times choose to resist and even fight. These individuals need to be placed in protective custody, which is not an arrest but a custody nonetheless, which is needed to prevent them from damaging property and/or protect them from themselves or others as they are a danger. Also in this amendment it speaks to using force when encountering "imminent harm" which is defined in Section 1 as:

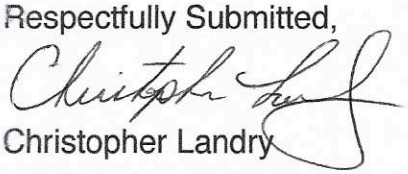
> *"Imminent harm", serious physical injury or death that is likely to be caused by a person with the present ability, opportunity and apparent intent to immediately cause serious physical injury or death and is a risk that, based on the information available at the time, must be instantly confronted and addressed to prevent serious physical injury or death; provided, however, that "imminent harm" shall not include fear of future serious physical injury or death.*

As written, it states in section 2 (b) (iii), a police officer cannot use force unless its to prevent "imminent harm." The word imminent should be removed throughout subsection (iii) and changed to just read "harm." In my opinion, this language I presented would be more in line with current practices and training of law enforcement pertaining to use of force. Please review Chapter 147A, Section 2, Subsection B and make the appropriate changes to keep police officers and the public safe.

Regarding the issues of qualified immunity, as the language is written now, it is setting up the Commonwealth for many frivolous lawsuits. This will not only put pressure upon the municipality to fight these frivolous claims which will bring on non-repayable attorney fees, lost wages, etc. This will also put unjustified pressure upon any municipal employee that was merely doing their job in a legal and justified manner because a person believed their constitutional rights were violated. Please review this matter as I know it is a subject that is of much debate but this needs to be removed and/or changed to identify with the current standard.

As previously stated, I support the majority of this bill with the exception of the aforementioned sections that need to reviewed and changed. I again thank you for allowing me to submit my testimony and look forward to watching this legislative process unfold in a transparent manner. Please feel to contact me if that is needed.

Respectfully Submitted,



Christopher Landry

CHIEF OF POLICE
Dennis J. Towle

Serve & Protect

Lt. David J. Perry
Administrative Assistant
Ms. Denise Krula

TOWN OF SUTTON
POLICE DEPARTMENT

489 Central Turnpike
Sutton, MA 01590-1702
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Fax (508) 865-8757

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 a local Police Chief and veteran police officer I would like to offer the following recommendations:

1. *Section 6 (line 272): As a law enforcement professional I am in favor of creating a POST system. This will add professionalism to the occupation and create a new standard. However; I believe the language should be similar to the 46 other states who have adopted a similar system. The use of the acronym POST should be universally applied and the term POSAC should be eliminated. Additionally, the board should include 2 members selected from MA Chiefs of Police.*
2. *Section 10(C) (line570): I would offer similar thoughts mirrored by a statement submitted by MA Chiefs of Police.*
3. *Section 39 (line1025): This language makes sense. However; the need for a public hearing is absurd and will only create an additional hazard for law enforcement.*
4. *Section 49 (line 1101-1115): This provision prevents school personnel from sharing and communicating with law enforcement officers. The senate should read the report written by President Obama on 21st century policing and realize that in order to build trust in a community – communication is a vital component.*
5. *Section 50 (line1116): Language regarding an SRO has already been established in the 2018 Criminal Justice Reform Act. There is no need to create another set of standards.*
6. *Section 52 (lines 1138-1251): We already have a comprehensive form of data collection that was recently enacted. There is no need complicate the matter further.*
7. *Section 55 (line 1272): We do not use chokeholds. However; an officer needs to be able to react to a deadly encounter in a variety of ways. Accordingly, there needs to be a deadly force exception for the use of a potential life-saving tactic.*

Respectfully submitted:

Dennis J. Towle
Chief of Police
Sutton Police Department

Tel (781) 932-4510
Fax (781) 935-7792

City of Woburn
Massachusetts
Police Department

25 HARRISON AVENUE
WOBURN, MA 01801

ROBERT F. RUFO, JR.
CHIEF OF POLICE

"Community Safety Through Regional Partnership"

July 17, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov
Re: Concerns to Senate 2820 as Amended

Dear Chairman Aaron Michlewitz and Chairwoman Claire Cronin,

Please accept the following testimony with regard to SB2820 – I was able to complete a comprehensive review and thorough reading 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".

I will choose not to be redundant in articulating the sections that have been expounded upon by my colleagues at The Massachusetts Major City Chief's and the Massachusetts Chief's of Police Association, but I would like to emphasize the significance, disappointment and outrage at the attempt of dismantling of Law Enforcement in the Commonwealth of Massachusetts and having received virtually no support from most of our elected officials.

One provision that I shall make comment on is SECTION 10(c). The definition as created, presents a departure from the Federal Standard for Qualified Immunity, though the extent to which is certainly debatable until the SJC provides clarification. Until such a time, and certainly not within the timetable that this change is intended, the Act would provide public employees with substantially less protection than that afforded under the Federal standard. The Senate's version of "Qualified Immunity" would only apply to state-based claims under the Massachusetts Civil Right Act. What Section 10 proposes is similar to that which has previously been proposed by the 9th Circuit Court of Appeals. In those instances where the 9th Circuit attempted to lower the standard on Qualified Immunity, the Supreme Court decisively reversed the 9th Circuit and actually scolded the court for its attempts. Where there is a clearly established decision, why would Massachusetts attempt the same failed process?

Respectfully,

Robert F. Rufo Jr.
Chief of Police

TOWN OF WARE
POLICE DEPARTMENT

22 NORTH STREET, WARE, MASSACHUSETTS 01082 – 1004
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SHAWN CREVIER
CHIEF OF POLICE

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 would like to reiterate the issues of Qualified Immunity from a letter from Attorneys at Law – Brody, Hardoon, Perkins, and Kesten, LLP.

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.

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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, I IH and I Il, 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 S 1 983, 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.

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The test is based on what the objective reasonable official could have known, not the subjective belief of that particular person. Thus, even if 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 Q], "[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.

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CHIEF OF POLICE

Under the proposed statutory changes to the MCRA (S 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, 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. <u>Financial impact on municipalities</u>

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 plaintiffs costs and attorneys' fees (which in many cases greatly exceed the amount of the plaintiffs 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.

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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

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SHAWN CREVIER
CHIEF OF POLICE

have on the citizens of the Commonwealth require careful consideration. S2800 **should not** be passed at this time.

Rushing to pass this bill would be detrimental to many public departments, including Police.

And finally, some of the more jarring principles of this Bill would, at length, throw all things into disorder, and be productive of an irreparable breach, and a total disunion.

That harmony and mutual confidence may speedily be maintained, between all the parts of the Commonwealth, is the favorite wish of many who feel the warmest sentiments of good will towards the State. Passing S2800 would be most retrograde to this desire. Please consider carefully your imminent decision, for the eyes of History are resting squarely upon you.

Thank you for your time and consideration,

Chief Shawn C Crevier

Chief Shawn C. Crevier
Ware Police Department

7-17-2020

CITY OF GARDNER POLICE DEPARTMENT

Richard A. Braks
Chief of Police

200 Main Street
Gardner, Massachusetts 01440

Phone (978) 632-5600
Fax (978) 630-4027

July 17, 2020

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

Please accept the following as testimony with regard to 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.

During this unprecedented time in history the policing profession is facing its greatest challenges known to our present-day law enforcement officers. These same men and women who have vowed to dedicate themselves and respond to calls within their communities in the face of ever increasing dangers, are being vilified for the improper and at times illicit actions and incidents involving known individual officers. These specific incidents and officers should be dealt with based on their individual merits. Our men and women train, accept and understand the hazards that could be present when they begin this job. Officers are expected to see, hear and respond to events that occur as well as continually train and gain the knowledge and experience that will assist in the best possible results every day. Today the present danger to our profession and individual livelihoods comes from an unexpected source that has commonly supported our efforts, but quickly has seemed to be voiceless. Many specific efforts to effect the results of law enforcement in the future has had a very negative result throughout the profession nationally. Gardner is a small, central Massachusetts community with progressive ideas, an inclusive atmosphere, and in turn a community with a changing demographic due to these notable strengths within our community. We have strong leadership at all levels dedicated to our community with young, smart men and women who are knowledgeable and dedicated to a plan that embraces inclusiveness and equity. It is truly concerning that today I have young officers who question their future in law enforcement and senior officers contemplating a necessity to seek early retirement. Merely having to deliberate leaving a career that becomes who we are, not what we do, is more than concerning.

Law enforcement officers understand there is a time to listen and gain understanding before action occurs. We recognize there are many suggestions for police improvements in Bill 2800 and amended Bill 2820 that are commonly agreed upon throughout law enforcement here in Massachusetts, and are now before you in the House. More importantly, there are items of great concern that need greater understanding as you and your colleagues proceed.

I endorse the Massachusetts Chiefs of Police opinion on Bill 2820 that you've received and ask that the House of Representatives proceed with due diligence and greater understanding as a result of the hearings.

Respectfully submitted,

Richard A. Braks
Chief of Police

Southeastern Massachusetts Police Chiefs Association

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

Re: **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

Chair Claire Cronin and Chair Aaron Michlewitz,

The Southeastern Massachusetts Police Chiefs Association represents the Police Chiefs of more than 100 cities and towns and 5 counties in Southeastern Massachusetts including Cape Cod and the Islands.

The murder of George Floyd in Minneapolis, MN at the hands of former law enforcement officers recently was disturbing and shocking. We are angry and sickened by this heinous crime and how it was carried out against another human being. Those responsible must be held accountable and we must do everything possible as a nation and a profession to ensure it never happens again. As police leaders, our foremost responsibility is to serve and protect ALL people in our community. We are in the integrity business and this tragedy is at the heart of all we do. We are and should be held to the highest standards of honor and integrity, with the greatest appreciation for the sanctity of human life. We work every day to build trust and earn the confidence of the people we serve, demonstrated by our respect and compassion for ALL.

We have been advocates and facilitators for many of the following initiatives:

- We have adopted the principles established in the President's Task Force on 21st Century Policing (2015) including;
    - 1. Building trust and legitimacy;

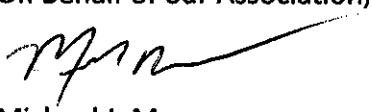
    - 2. Policy and oversight;
    - 3. Technology and Social Media;
    - 4. Community Policing and Crime Reduction;
    - 5. Training and Education; and
    - 6. Officer Safety and Wellness.
- Many agencies are involved in various stages of Accreditation, a voluntary process of external evaluation in which police departments strive to meet and maintain best practices and excellence in policing. The Massachusetts Police Accreditation Commission was first established by the Governor's Executive Order in 1996. Many have achieved full Accreditation or Certification which requires annual review of Use-of-Force and Biased Based Policing policies. As part of that annual review, agencies must also analyze all officer involved use-of-force incidents and public interactions to determine if there are any tendencies or patterns of potential misconduct.
- We assign a School Resource Officer to support the education of our youth. An officer in school is there to provide guidance to students and teachers, is a positive role model, diverts children from more serious interactions with the criminal justice system, and also stands watch for outside threats.
- In the past several years, we have sent our personnel to basic and advanced training on fair and impartial policing, implicit bias, leadership, procedural justice, mental health first-aid, and de-escalation tactics.
- Many of us have organized and supported a Citizens Police Academy to give residents insight and perspective on what, how and why we do what we do. It also gives us the opportunity to bridge gaps in communication, develops mutual understanding with the public we serve, and gives us the ability to form new partnerships to solve problems in our community.
- We are participating in the FBI National use-of-Force Data Collection registry launched in 2019.
- We have openly advocated for a fair and comprehensive Police Officer Standards and Training (POST) certification process for police officers.
- We have advocated for less lethal alternatives to reduce injuries to subjects and officers in the event of a violent confrontation.
- We continue to seek grants and employ practices that involve mental health and substance abuse clinicians in the field. We have also invested in training our personnel on recognition of people suffering from mental illness.
- We have adopted wide ranging policies and initiatives to save the lives of people who are struggling with addiction including issuing Narcan to officers.
- We have been advocating for more comprehensive training facilities to include three full service regional police academies. These would replace multiple temporary sites usually the result of a closed school or state building.

- In the face of limited resources or calls for budget cuts, we have pushed for expanded and contemporary leadership and professional development programs for our personnel.
- We encourage all our personnel and colleagues to continue their formal education, many of whom have achieved Master's level graduate or law degrees.
- We have advocated for more comprehensive background processes and development of higher quality candidate pools through better recruitment.

To be clear, we categorically reject any presumption or stereotype that our members harbor an inherent racial bias or support discriminatory police practices or policies. We take our commitment and responsibility seriously and proactively lead our agencies. We are imperfect human beings who work very hard to maintain the public's confidence through transparency and professionalism. If there was any doubt, let the dedication of our personnel demonstrated over the past four months of a pandemic shine through while every other government institution and social service simply closed their doors.

Thank you for your time and consideration.

On Behalf of our Association,



Michael J. Myers
President
Southeastern Mass Police Chief's Association(SEMPCA)
Chief of Police
Fairhaven Police Department

Massachusetts Sheriffs' Association

132 Portland Street, 2nd Floor
Boston, Massachusetts 02114
(857) 233-5706 / Fax: (617) 936-3267

July 17, 2020

Representative Aaron Michlewitz
Chair, House Committee on Ways and Means
Representative Claire Cronin
House Chair, Joint Committee on Judiciary
24 Beacon St., Room 243
Boston, MA 02133

Dear Chair Michlewitz and Chair Cronin:

As House members begin their debate on legislation addressing law enforcement reform in the Commonwealth, I am writing on behalf of the Massachusetts Sheriffs' Association to share our collective response to provisions contained in S.2820 which will impact the Office of Sheriff.

The Massachusetts Sheriffs' Association recognizes the need for reform in order to restore trust between our agencies and communities of color. The Sheriffs, since 1692, are the longest serving peace officers in the Commonwealth. We have demonstrated a commitment to protecting public safety and directly responding to the needs of our respective communities, and are dedicated to a collaborative approach to ensure injustices are not repeated.

To that end, the Massachusetts Sheriffs' Association earlier on joined the Black and Latino Caucus in support of their core principles by issuing a strong statement calling for reform in the Commonwealth. Sheriffs are committed to the work because equity and justice must be the foundation for our future.

Sheriffs' Offices throughout the Commonwealth are increasingly on the front lines of the deadly opioid epidemic and a mental health system unable to diagnose and treat individuals in the community, which can often lead to incarceration. For example, nearly half of the individuals in our jails and houses of correction report a history of mental illness with 75% - 80% having a co-occurring substance use disorder. Therefore, we support provisions contained in the bill that seek to examine our crisis response system and expand diversion opportunities for individuals with unaddressed behavioral health issues. We believe additional resources for crisis intervention will result in a decrease in law enforcement interactions in the community and possibly incarceration in the Commonwealth.

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Massachusetts Sheriffs universally share the urgency to focus more resources towards expanding capacity within the community to address the behavioral needs of the justice-involved because we believe individuals should not have to come to jail to receive adequate treatment. In addition to the above sentiments, we respectively request that as negotiations move forward that members consider our positions stated below.

Peace Officer Standards & Accreditation Committee

The Sheriffs fully support the creation of a Peace Officer Standards & Accreditation Committee that includes county correctional professionals in order to establish uniform training curricula and best practices. Additionally, we respectively request a Massachusetts Sheriffs' Association designee be a named member of the Committee.

Justice Reinvestment Workforce Development Fund

The bill establishes a Justice Reinvestment Workforce Development Fund that would provide competitive grants to organizations working to strengthen communities with a high percentage of target population members, by creating job training, job creation and job placement opportunities. The legislation proposes that the "savings" from the Department of Correction and Sheriffs, not to exceed $10 million, would provide the resources for the fund. These savings are thought to be due to the decrease in inmate counts at our jails and houses of correction.

Sheriffs support the concept of the Justice Reinvestment Workforce Development Fund, it is important to note that Sheriff's offices across Massachusetts already do this work. Every Sheriff's office heavily invests in re-entry services, which includes educational and vocational training, job placement, resume building, housing assistance and much more. While the legislature may think that because counts are down there are savings in Sheriff's offices, this could not be further from the truth. Sheriff's offices are insufficiently funded, and due to COVID-19 as well as the implementation of the medication-assisted treatment pilot Sheriff's offices have incurred more cost, not less. Sheriffs need additional resources for re-entry services, not less.

Sheriffs oppose the inclusion of this language as it relates to cost-per-inmate because we believe it is duplicative of the ongoing work of the commission established to examine correctional budgets. The Sheriffs have spent countless hours and staffing resources working with the commission, and believe it has been a very productive process. It would be unfortunate to set aside all the great work accomplished by commission members to date by including this language.

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Qualified Immunity

The Sheriffs oppose attempts to remove the Qualified Immunity defense. This has been a rushed process without a thorough consultation with not only law enforcement professionals, but representatives from the many public employee groups outside of policing and corrections that also rely on the protections of qualified immunity. The defense is essential to the protection of peace and correctional officers who act in good faith and would have a devastating impact on law enforcement who must be able to respond without hesitation while relying on clearly established law. Qualified immunity is not a defense for a peace officer who knowingly violates an individuals' constitutional rights.

Enhancing Training on Racial Bias, Duty to Intervene and De-escalation

The Sheriffs would endorse enhanced training on racial bias, implicit bias, use of force, de-escalation and the duty to intervene as well as training that embraces humanity and equity.

Ban of Chokeholds

The Sheriffs support the ban on Chokeholds. An exception must allow for the use where lethal force is needed to prevent a person from causing serious bodily injury or death to the officer and or others.

Militarizing Law Enforcement Equipment

The Sheriffs support reporting any acquisitions from the federal government to the Executive Office of Public Safety and Security but feel that the approval process included in S.2820 is unnecessary.

Chemical Agents & Canines:

The Sheriffs support the provisions contained in the bill that require the use of de-escalation techniques if feasible prior to the deployment of chemical weapons or canines.

Behavioral Health

S.2820 reconstitutes the Policing & Behavioral Health Advisory Council established in criminal justice reform bill signed by the Governor back in 2018. The charge of the Council is to study and make recommendations regarding the creation of a crisis response system in the Commonwealth that could serve as an alternative to emergency services and police response.

Given the number of individuals in our jails & houses of correction across the Commonwealth with unaddressed behavioral health issues Sheriffs support this new mandate and respectively request a seat on the Council. Sheriffs could provide tremendous insight on the challenges addressing both the criminogenic and behavioral health needs of these individuals. Lastly, given the strong relationships with their local police chiefs Sheriffs can highlight their role in supporting existing diversionary models in their community.

July 17, 2020

Use of Force Standard

The Sheriffs support legal based report writing standards and training as outlined by the United States Supreme Court for arrestees, detainees and inmates. The standards hold officers accountable for the totality of circumstances known to the officer at the time of the incident understanding that use of force is fluid.

Use of Force Data Collection

The Sheriffs remain concerned with the onerous and heavy reporting requirements contained in the bill and the lack of clarity within the definition of use of force. Specifically, the additional staffing resources and equipment needed to collect and store this information. Additionally, Sheriffs will continue to support compliance with privacy laws before the release of materials in furtherance of any use of force investigation, and oppose language calling for certain materials becoming a matter of public record.

No-Knock Warrants

No-Knock Warrants have a significant law enforcement purpose. Language must include exceptions for No-Knock exigent warrants granted by judges when the occupants are believed to be armed and dangerous or where the evidence sought could be destroyed before entry is made without such No-Knock entry.

Student Records and Confidentiality

The Sheriffs are opposed to the broad language used in Section 49 of S.2820 as it blocks the flow of communication between law enforcement and schools when a credible threat has been identified.

We take objection to any rushed attempts at such serious reform. The topics contained in this legislation and their effect on all citizens of the Commonwealth deserve a thorough, thoughtful and timely approach.

Lastly, on behalf of the Massachusetts Sheriffs' Association, we thank you for your consideration of the above comments, and your critical work during this process. Thank you for your commitment to making improvements across the criminal justice system, which we believe will increase the public safety. If you have any questions, please do not hesitate to contact Massachusetts Sheriffs' Association Executive Director Carrie Hill at carrie.hill@massmail.state.ma.us.

Sincerely,

Peter J. Koutoujian, President

Massachusetts Sheriffs' Association

Charlton Police Department

85 Masonic Home Road
Charlton, MA 01507

Graham S. Maxfield
Chief of Police

Tel. (508) 248-2250
Fax (508) 248-1039
E-MAIL: graham.maxfield@townofcharlton.net

July 17, 2020

VIA EMAIL: Testimony.HWMJudiciary@mahouse.gov

RE: 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.

I echo the sentiment of the Massachusetts Chiefs of Police and I encourage everyone in the Legislature to use common sense, rather than a feverish need to do "something", when voting on this bill. Punishing Police Officers here in Massachusetts for a despicable act that occurred halfway across the country is misguided and disheartening to the dedicated members of law enforcement who serve our communities with dignity and respect.

Respectfully,

Graham Maxfield
Chief of Police

Spencer Police Department

9 West Main Street
Spencer, Ma. 01562
TEL: (508) 885-6333
FAX: (508) 885-9914
TTY: (508) 885-2399

Chief of Police
David B. Darrin

July 17th, 2020

Via email to: Testimony.HWMJudiciary@masshouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz

I have been employed as a Police Officer in Massachusetts for thirty-eight years, the past twenty-five years as Chief of Police in North Brookfield and Spencer.

I have many concerns about this very important piece of legislation. It is my opinion that much more time is needed to conduct research and seek input from law enforcement.

Problem Areas:
Law Enforcement being singled out for "Racism" training;

- The mention of "Accreditation" in POSAC language;
- MCOPA seats needed on POSAC;
- POSAC independent investigations;
- Loss of Qualified Immunity;
- Public hearings for acquisition of certain Police equipment;
- Schools unable to shall information with Police;

Respectfully,
David B. Darrin – Chief of Police
Spencer, Massachusetts

Salisbury Police Department

Thomas W. Fowler, *Chief of Police*

181 Beach Road, Salisbury, Massachusetts 01952 • 978-465-3121 • www.salisburypolice.com

July 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.

As a police chief for the past eight years and a police officer for the past thirty-three years, I have some serious concerns with Senate bill 2820 as amended. Please consider how the following will impact how my officers do their job and how it will effect public safety in the Commonwealth.

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 this legislation mandates, it makes one assume that all police officers in the Commonwealth are inherently racists.

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. I came from a POST state eight years ago. The issue as I see it is the Senate Bill makes reference to Accreditation. I work for an accredited department and Massachusetts has a strong accreditation program. While, in my opinion every department should strive for accreditation it should not be linked by the acronym POSAC.

SECTION10(c) (line 570):Section 10: the limitations on qualified immunity have long reaching effects not only on police officers but municipalities and other municipal employees. This has been a long standing legal principle that must not be tampered with.

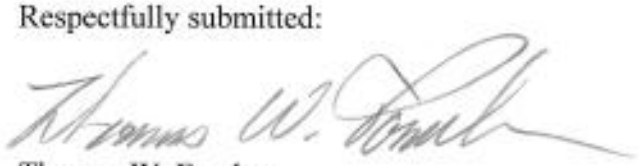
SECTION 49 (line 1101-1115): This provision prevents school department personnel and school resource officers (who actually work for police departments), from sharing information with law enforcement officers –including their own agency –when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. Please remember the series of school shootings that have recently occurred. SROs have been an important component to community police and trust building and to refer to them as eyes and ears of the police state in our schools goes against the basic mission of School Resource Officers.

SECTION55(line 1272): Please know that in the Commonwealth of Massachusetts we do not train, recommend or advocate for choke holds or any type of neck restraint. That said, 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 to weigh in with our concerns and recommendations and hope that you would give due consideration to what I have outlined above. Should you have any follow up questions and/or concerns please do not hesitate to contact me in the days or hours that lay ahead. I respect that time is of the essence regarding this important legislation and stand ready to assist if and when called upon.

I can be contacted by email at tfowler@salisburypolice.com or 978-225-2061.

Respectfully submitted:



Thomas W. Fowler
Chief of Police

Cc: Representative James M. Kelcourse, 1st Essex

Town of Kingston
POLICE DEPARTMENT

Maurice J. Splaine
Chief of Police

244 Main Street, Kingston, Massachusetts, 02364 Business: (781) 585-2121 Fax: (781) 585-7556

By Electronic-mail to: Testimony.HWMJudiciary@mahouse.gov

July 17, 2020

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".***

In the interest of brevity, I would like to submit a succinct list of bulleted comments providing insight, concerns, and potential impacts from the perspective of a law enforcement executive.

- I support the establishment of a POST (Police Officer Standards and Training) Program. This is a program that exists in many other states. POST should be charged with the certification and decertification of police officers. It should be anticipated that decertified officers may appeal the determination. There are local CBA (Collective Bargaining Agreement) rights/implications that will need to be addressed with the unions. Civil Service and Arbitrators may rule to reinstate a decertified officer. How will this all work?

- I do not support the reduction, modification, or elimination of qualified immunity. Qualified immunity does not serve to protect illegal actions committed by police officers. Rather it protects all public officials in matters where the law is unclear and does not give them adequate guidance. This doctrine allows lawsuits to proceed if a government official knew their actions were unlawful, but acted anyways. Modifying qualified immunity will have many negative unintended consequences for all Massachusetts citizens, courts, and all public employees, not just police officers. All public employees are protected by qualified immunity, not just police officers. Municipal legal defense budgets will skyrocket. Frivolous suits claiming civil rights or constitutional violations will now be financially settled and not litigated in the federal courts. Cases will be decided simply on a financial business matrix. Is it cheaper to write a check to the accuser and their attorneys or to argue the merits of the case? Moreover, municipal employees will be hesitant to act in fear that they will be subjected to personal lawsuits based upon actions made in their official municipal capacity. Nobody will be pursing careers in public service.

- The provision that prevents school department personnel and SRO's (School Resource Officers) 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. Why do we want to make our schools less safe? School districts and local police have had professional relationships for many years. Safety has always been the goal. The overall safety of the entire school population should be the primary objective of the community.

- To be clear, the Kingston Police Department does 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. 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.

In conclusion, meaningful police reform should not be rushed. All stakeholders should be heard. Police reform should be laser focused on the issue at hand and not an all-encompassing bill to address political agendas that go well beyond police reform efforts. I appreciate the opportunity to submit written documentation pertaining to Senate 2820 as amended.

Respectfully submitted,

/s/ Maurice J. Splaine
MAURICE J. SPLAINE
Chief of Police
Email: msplaine@kpdmass.org

Cc: Kathy LaNatra, State Representative, 12th Plymouth District

House Committee on Ways and Means
House Committee on the Judiciary
24 Beacon Street
Boston, MA 02133

Benjamin Dexter
149 High Street
Carver, MA 02330
(508) 633-7464

July 17, 2020

Re: Testimony Against S.2820

Dear Legislators;

Massachusetts is a state where police already must be well-trained. Due to the great provisions of the Massachusetts Declaration of Rights drafted by John Adams and progressive political climate that already imbues policing, criminal procedure protections here in the Commonwealth demand far more careful work from our police officers than anywhere in the nation. There is an old saying amongst Massachusetts police officers that "If you can be a cop in Massachusetts, you can be a cop anywhere." Unfortunately, this bill as written changes that maxim from a source of pride to an out-of-state recruiting slogan that covers moving expenses.

I have proudly served as police officer for 15 years. I never had any intentions to leave this profession for another fifteen, until recently. If S.2820 passes as written, I must seriously consider continuing doing what I love. This bill tips the balance to the point where there is too much to lose for too little return, both in terms of a livelihood and the personal satisfaction I receive from helping those in need.

First, I will admit that, despite all my best efforts, I once again have not read the entire amended bill. There has simply not been enough time to so in the life of police officer who works full time to provide for his family. As any good legislator knows, it is a large undertaking to take the various provisions of a bill and plug them into existing statutes in order to get a glimpse the big picture. For that reason alone, I suspect many legislators have not done the same—on legislation that proposes to dramatically change long-held employment, training, and legal standards for the very arm of government necessary for the preservation of a free society. I do not hesitate to add such preservation not infrequently results in the loss of life of those performing it.

I also think it imperative to add that it is utter recklessness to think that any bill which up-ends the legal and training standards of an entire profession can be amended with warp speed in the course of a couple weeks and not have any major deleterious consequences. That is to say nothing of the fact this bill contains an emergency preamble, leaving police officers instantly forced to abide by new standards in which they have not been trained and conflicts with those in which they have. The 90 day delay on the enactment of new legislation provides citizens the opportunity to adjust and conform their conduct (and in this case, police policies and training) to new law. Effectively, police officers will be held to account under new standards they are unable to properly prepare for, undermining the very intent of a 90 day enactment delay. This bill should give us all pause, not an invitation to act at warp speed.

To this point, I have heard repeatedly that multiple police organizations were "consulted" on this legislation, though to what effect is rather suspect given their universal lack of support. The implication of this point seems to be that "you should already have been ready for this." Regardless of whose input was sought, individual police officers are also citizens, constituents, and voters first. Our participation in

government should not be premised upon notifications by unions and organizations for a bill before it is actually filed and available for public scrutiny. Of course, to any reasonable onlooker, that was exactly the point. I find all this to be a dishonest procedural stunt to attempt to ram this bill through with less than three weeks left in the legislative session, particularly for a bill that contains multiple provisions concerning accountability for dishonesty in policing. I ask that you please lead by example of the same transparency, integrity of character, and accountability you rightfully demand from our profession.

The legislature could extend session so this bill can be properly considered, but in the absence of that, I am left to assume you having five months off to campaign for re-election is more important than ensuring this legislation does not endanger the lives of police officers. I find that absolutely shameful.

Much of the consternation to this bill concerns the effective removal of qualified immunity protections for police actions. Currently, qualified immunity protects government actors from liability in suits where the alleged conduct is not a violation of "clearly established law," in effect preventing liability in hindsight for official actions. Even as a police officer, I too have some issues with how broadly qualified immunity is sometimes applied in Federal courts, often against officers suing their own police departments. Nonetheless, the foundational principle that officers and other government officials should not be held liable on a case of first impression is sound. Bill S.2820 takes this presumption and turns it on its head, into a standard where immunity applies where no reasonable person could have believed their actions would violate someone's rights. This Legislature will find much of their criminal law priorities going unenforced as even the most minor constitutional concern will be cause for the police to ignore a new statute.

It is important take stock of the practical implications of this provision. First, it threatens to increase the number and amount of settlements by municipalities that are often attached to lawsuits as a party, instead of the costlier option of successfully defending such suits; in effect, functioning as like an unfunded local mandate. Second, along with creating a new state law cause-of-action, dismantling qualified immunity threatens to crowd state court dockets with good faith, inadvertent violations of criminal procedure rights that are properly vindicated under the exclusionary rule. Finally, eliminating qualified immunity threatens to deem officers liable who find themselves responding to situation that presents a legal gray area, where the law is unclear. If cops could read minds, our job would be easy. But when your very job is dealing with the unpredictability of human behavior every day, a margin of error that recognizes good faith exceptions must be built in. Otherwise, our profession will most assuredly become unworkable, if worth doing at all.

Perhaps the most chilling aspect of this bill for police officers is the change in the legal standard of what constitutes "imminent harm." This change, with the limitation on the use of force for "future harm," effectively eliminates the fleeing felon rule. While the fleeing felon rule is not immune to criticism, it is also the legal standard by which officers take immediate actions in circumstances like active shooter incidents. Instead of waiting for ta shooter to attempt to kill even more people after such harm has already been aptly demonstrated, officers are empowered to end further bloodshed of innocent citizens upon identifying the perpetrator, should circumstances require it. This may have not the intention of this provision, any objection to my characterization becomes irrelevant without the presence of qualified immunity, as we are now forced to function under the most conservative interpretation of law.

Furthermore, this change to use of force standards would hamstring officers who have a legitimate right to fear their own use of force tools may be used against them in the event they become incapacitated by weapon that is not generally regarded to be lethal. These concerns are not speculative, and they threaten the safety of the public as much as they do police officers. Take, for instance, the suspect who threw a rock at the head of Weymouth Police Officer Michael Chesna just two years ago this week. Officer Chesna was incapacitated, disarmed, and murdered with his own firearm before the suspect turned the gun on 77 year-old Vera Adams, killing her for having the audacity to look outside through a window of her home. Given this new legal standard, that very result, in that very situation, would be a

certainty. I write that without a shred of hyperbole. We cannot place police officers in a position where prison and death are their only two options and expect them to continue serving our communities. No salary, pension, or benefits package is worth it.

Another concern I have is the removal of the requirement for mandatory assignment of school resource officers. A good school resource officer (SRO) can have immeasurable positive effect on the student body and school community they are often an integral part of. It should be noted this requirement was only passed by the legislature in 2010 as part of a large omnibus school bullying bill (Chapter 92 of the Acts of 2010). In addition, current law requires a memorandum of agreement between the school and police department specifying what matters fall within the scope of school discipline and what are to be handled as criminal justice matters—addressing the bulk of concerns raised by advocates for removing cops from schools. In addition to the risks of active shooter in our modern age, SROs humanize police officers for our kids who often forge lasting relationships with the officers in their school. Personally, I cannot count how many times I have been approached by people in their 20s and early 30s asking, "How's Officer So-and-so doing? They were my SRO."

There are a slew of other provisions in this bill my objections to which are both too numerous to cite and are perhaps aptly explained by correspondence from others. I would ask that you take stock of the fact few those on the proposed standards committee are required to have any law enforcement experience whatsoever. Panels of doctors judge other doctors, and panels of lawyers judge other lawyers. I am simply asking that a fraction of this same due process be afforded to law enforcement professionals.

In closing, it is worth a reminder that government's primary job is to protect citizens from violating the rights of one another so that we can attain a peaceful and lawful foundation upon which to pursue happiness. There is no doubt that racism in our society has put that pursuit in jeopardy for millions of people of color for hundreds of years. Nevertheless, cops insure that foundation does not fail. Every day I see police officers do amazing things and make positive changes in the lives of all walks of life, without regard to immutable qualities of birth, as they sacrifice themselves for others. Policing is THE most honorable profession and no one will ever persuade me otherwise.

We deserve to be heard, we deserve your careful consideration, and we do not deserve to be hastily dismissed. I would ask that you vote against S.2820 as written and considered under present timetables. I also ask you speak up for cops who do the right and just thing, day in and day out. That really should not be a big ask, but it sure seems like it is.

Sincerely,

Benjamin Dexter
Sergeant, Plymouth Police Department
Curry College, B.A., M.A, Criminal Justice
New England Law | Boston, J.D.

TOWN OF HAMILTON MASSACHUSETTS
POLICE DEPARTMENT

Russell M. Stevens
Chief of Police

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July 16, 2020

Via email Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

I write to you as a Chief of Police and a Law Enforcement Officer for over 36 years. During my tenure in this field, I along with other Law Enforcement Officers have had the great fortune of being able to help more people and save more lives on a daily basis than any other profession. On May 25th, 2020, many of us witnessed the deplorable actions of Minneapolis Police Officer Derek Chauvin as he kneeled on the neck of Mr. George Floyd for 8 minutes and 46 seconds. This unspeakable act resulted in the death of Mr. Floyd and erodes at the public trust that we, in law enforcement, work tirelessly to maintain. I along with all other members of the law enforcement community throughout the nation am disgusted with this senseless act of brutality at the hands of this officer and demand that justice be served.

We as Police Officers should and must be held to a higher standard, however, in these current times, we find ourselves being vilified. There is an apparent movement at this time to hate all law enforcement and attribute the actions of others onto all police. There are over 800,000 Law Enforcement Officers serving in the United States and approximately 20,000 serving in Massachusetts, and I would venture to say we all agree in that we have to do better. The tragic death of George Floyd should never have taken place. As tragic as this is, there needs to be a complete, unbiased and detailed study of this unfortunate and preventable incident to determine all the failures that led us here. Then to identify any potential trends to determine what action can be taken nationally, as well as locally, to prevent this from recurring, such as proper hiring practices, academy training, in-service training, legal updates, accreditation and proper leadership.

I, as well as other members of the Massachusetts Chiefs of Police Association, have read Senate Bill 2820 as amended and offer the following in the way of guidance as you move forward through the hearing process.

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). 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.

- **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.

I thank you for affording me the opportunity to be heard and look forward to a transparent process as this Bill moves forward through the House of Representatives.

Respectfully Submitted:

_____

Russell M. Stevens
Chief of Police
Hamilton Massachusetts

To: The Chair of the House Ways and Means,
Rep. Aaron Michlewitz in cooperation with
Rep. Claire Cronin,
Chair of the Joint Committee
On Judiciary:

Reference:
Bill # S2820

Title: 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..

My name is Steven Charbonnier and I have been a member of the Boston Police Department for 22 years. I grew up in Dorchester and come from a long line of law enforcement officers. My father Albert F. Charbonnier served 39 years on the Boston Police before retiring in 1996, I also have 2 brothers Albert Jr. and Robert who also are Boston Police officers. My brother Mark Charbonnier served with the Massachusetts State Police and was killed in the line of duty 1994.

I am writing this letter to ask you not to support S2820. My family, friends and colleagues all stand against this bill as presented.

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. Furthermore the process employed by the Senate to push this through with such haste without public hearing or input of any kind was extremely undemocratic and non transparent.

Police across the commonwealth support uniform training standards and policies and have been requesting more training for years.

The Senate version of a regulatory board is unacceptable as it strips officers of the due process rights and 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 bias against law enforcement and preconceived punitive motives toward police.
We as police officers ask that we receive the same procedural justice safeguards, as members of the communities we serve demand and enjoy.

The proposed makeup of the oversight board is one sided and biased against law enforcement. It is unlike any of the 160 other regulatory boards across the Commonwealth and as constructed incapable of being fair and impartial.

The Senate has tried to pass a knee jerk reaction to an incident which occurred half a country away that everyone agrees was egregious; the Fraternal Order of Police nationally and in this state quickly condemned it.

Massachusetts officers are among the highest educated and trained in the country.

This bill directly attacks qualified immunity and due process. Qualified immunity does not protect bad officers , it protects good officers from civil lawsuits. We should want our officers to be able to act to protect our communities without fear of being sued at every turn, otherwise why would they put themselves at risk? A large majority of law enforcement officers do the right thing and are good officers, yet there is a real push to end qualified immunity to open good officers up to frivolous lawsuits because of the actions of a few who, by their own actions, would not be covered by qualified immunity anyway. It just doesn't make any sense why we are endangering the livelihood of many for the actions of few.

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.

If the Senate bill S2820 is passed in its current form the costs to the municipalities and the State will skyrocket from frivolous lawsuits and potentially having a devastating impact on budgets statewide.

My brother, sisters and I were raised to help others, to do good deeds and to protect people who could not protect themselves. My father chose the profession of being a police officer and his 4 boys followed in his footsteps. My brother Mark gave his life for the freedoms we enjoy and for the protection of our State. He is a true hero. As are all men and woman who put on a uniform and badge to help others.

Representatives, again I ask you not to support this bill.

Thank You
Steven Charbonnier
Detective
Boston Police Dept.
857-225-1419

Town of Marion

Police Department

John B. Garcia
Chief of Police

July 17, 2020

Sent via e-mail

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.

There are several areas of the bill that create concern. 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." Is this to imply that law enforcement is a racist institution? Will other areas of government including educators also be required to receive such training or is law enforcement being singled out? I view this as an insult to all law enforcement officers across 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. I am opposed to the title, POSAC (Police Officer Standards Accreditation and Accreditation Committee). This is causing a great deal of confusion with MPAC (Massachusetts Police Accreditation Commission) which is the organization that oversees police department accreditation in Massachusetts. The acronym POST is used across the country, it would be less confusing to conform to the rest of the country.

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 easily be viewed as arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

SECTION10(c) (line 570):Section 10. The concept of qualified immunity is often misunderstood. Qualified immunity does not protect officers who committed illegal actions. It safeguards all public officials from being found personally liable for a violation of civil rights unless that official violated "clearly established statutory or constitutional rights of which a reasonable person should have known". The elimination

of Qualified immunity will have a detrimental effect on the ability of departments to retain officers as well as recruit new officers out of fear of being personally responsible for frivolous law suits.

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. I can't believe this is even being considered. It would be highly irresponsible to prohibit any educator who learns of a potential crime or a crime that has been committed to report that information to law enforcement.

SECTION 55 (line 1272) So called "choke holds" have been prohibited in Massachusetts for some time now. There does need to be an exception to allow a "chock hold" in situations where lethal force is justified.

I appreciate the opportunity to express my concerns and recommendations and hope that you would give due consideration to what has been outlined above.

Please do not hesitate to contact me should you have any questions or need additional information.

Respectfully,

John B. Garcia
Chief of Police
508-748-3594

Town of West Bridgewater
POLICE DEPARTMENT

Chief of Police Victor R. Flaherty, Jr.
Phone (508) 894-1294
Fax (508) 894-1295

99 West Center Street
West Bridgewater, MA 02379
wbpd.com

July 17, 2020

Re: SB2820

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.

Claire from our conversations, I understand how passionate you are on the safety of our youth and our continued commitment to community policing. The impact of this bill to our department and all Massachusetts Police Departments will be devastating. We will lose many highly educated, professional and compassionate police officers to early retirement while others will change their profession entirely.

As you are aware, It has always been difficult to hire qualified, passionate, honest and caring individuals for this profession. If this bill passes it will make it almost impossible. Qualified immunity is not a protection for the few officers that abuse their authority it is protection for the officers who go out every day to honor the police profession in a compassionate and professional manner.

Respectfully,

Victor R. Flaherty Jr.
Chief of Police

Cc: Representative Michelle Dubois

NORTON POLICE DEPARTMENT

82 EAST MAIN STREET
NORTON, MASSACHUSETTS 02766

BRIAN M. CLARK
CHIEF OF POLICE

ADMINISTRATIVE (508) 285-3300
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Representative Aaron Michlewitz
Chair, House and 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 Representatives Michlewitz and Cronin,

Thank you for the opportunity to provide written testimony regarding Senate Bill 2820.

The murder of George Floyd left me disturbed and disgusted that this occurred at the hands of law enforcement officer. This was clearly preventable and unnecessary. His murder, however, is not characteristic of the job officer's do day in and day out, in particular in Massachusetts. As a profession we are constantly changing and striving to be better. Massachusetts police agencies have been progressive to adapting quickly to needed change that occurs in the police profession.

In 2014, President Obama established the 21st Century Policing task force which released its report in 2015. The report highlighted six pillars.

1. Building Trust and Legitimacy
2. Policy and Oversight
3. Technology and Social Media
4. Community Policing and Crime Reduction
5. Training and Education
6. Officer Safety and Wellness

I conducted a review of this report and found that Norton meets and exceeds every pillar.
In Norton, the police department started the ***Norton Opioid Prevention and Education*** **(NOPE)** collaborative to provide necessary help and resources to victims of the opioid crisis while diverting victims from the criminal justice system. We also have a Problem Oriented Policing Unit (POP) to assist

Our department was awarded the IACP One Mind Campaign certification for our officers being trained in mental health first aid, having a model policy and working with our area crisis team.

Officers have and continue to receive training in topics such as Procedural Justice, Implicate Bias, Mental Health First Aid, and De-Escalation.

We also participate in the FBI national use of force data collection registry.

The Norton Police Department has received Accreditation certification by the Massachusetts Police Accreditation maintaining the best standards, policies and operations of the police profession.

I have very serious concerns about the language in the bill.

In particular the change is the bill made to **qualified immunity** for police officers is far reaching and will have serious implications for this profession as well the pubic safety of our citizens. Qualified Immunity does not protect officers from illegal and wrongful conduct and this is not absolute immunity which it, seems to be confused with. If changed this will have detrimental effects on proactive public safety and certainly recruitment and retention.

We work collaboratively with the schools, assigning **School Resource Officers** to provide valuable safety information as well as diverting students from the criminal justice system. We have received great feedback from students, faculty, staff and residents for the work we do in the schools. We have open lines of communications all to provide the best service for the community.

Lastly, there is a section regarding racial and other profiling. This in term is **Data collection**. This will become extremely burdensome and be a tremendous amount of work that will require additional support or assistance to do for a department our size.

Education is very important to police officers. The majority of our officers have college and advanced degree. Officers are committed to the communities they work and serve. Many officers are coaches, troop leaders and assist with regular community events.

I look for to working with you, my own legislators, police and community leaders to make positive reforms for the profession in a well thought out open manner.

Sincerely,

Brian M. Clark
Chief of Police

July 17, 2020

Rep. Aaron Michlewitz
Chair, House Committee on Ways and Means
24 Beacon St.
Room 136
Boston, MA 02133

Rep. Claire D. Cronin
Chair, Joint Committee on the Judiciary
24 Beacon St.
Room 243
Boston, MA 02133

Re: S. 2820 testimony opposing Section 65 ban on use of facial recognition technology

Dear Representatives Michelewitz and Cronin:

Thank you for the opportunity to provide input on S2820 as your committees consider this important legislation passed by the Senate. SIA is a nonprofit trade association representing businesses providing a wide range of security products and services across the U.S., including more than 23 companies headquartered or with major operations centers in Massachusetts.

We support legislation providing meaningful reforms to policing practices that would result in stronger community engagement, address inequities, and help ensure that the kind of tragic events like we have witnessed the past few months in our nation never happen again. However, we are concerned with inclusion of what should be considered an unrelated provision. Section 65 would ban any government entity in the Commonwealth from virtually any use of facial recognition technology, despite the potential for tremendous benefits when used effectively and responsibly.

Addressing concerns about public sector applications of this technology is a legitimate policy objective, building public trust by ensuring that it is only used for purposes that are lawful, ethical, and non-discriminatory. We support establishing the special commission as called for in the provision, to examine these issues and make policy recommendations. But there is little evidence use of the technology has contributed to racial profiling or the other systematic issues of primary concern in police reform that would justify a blanket ban.

Instead, for over a decade it has been used as a speed and accuracy enhancing tool in many thousands of investigations, to reduce human error and eye-witness misidentification, eliminate innocent persons as potential offenders, recover human trafficking victims and help crack cold cases.[1] In fact, many law enforcement agencies believe that it contributes to fairer and more effective policing, by potentially reducing the impact of human bias, and reducing unnecessary police to civilian contacts in communities impacted historically by a strained relationship with local police.

In any case, it is clear the ban on facial recognition included in S2820 is intended to address the public concerns about facial recognition technology regarding possible government uses that could raise privacy and civil liberties concerns. However, it would also ban many non-controversial public sector uses of the technology that do not raise such concerns. The purpose is often simply to help validate one's identity, with obvious benefits to

[1] https://www.securityindustry.org/2020/07/16/facial-recognition-success-stories-showcase-positive-use-cases-of-the-technology/

the users. Under the ban, hospitals and other health care facilities owned by state and local governments would be prohibited from using the technology, as others have, to reduce the need for frontline health care workers to touch surfaces in order to access to clean rooms and other secure facilities. The bill would also curb potential workplace safety enhancements for public employees and protections for building visitor and occupants, from**:**

- validating identities noninvasively and accurately when requiring access to secure facilities and systems
- speeding employee entry through security checkpoints, preventing lines where people are clustered in proximity
- protecting the sensitive citizen data often held by government entities, by helping ensure only authorized persons are permitted access
- increased security at checkpoints of buildings such as courthouses, were both workers and visitors face threats
- integration with building controls for HVAC, fire alarm and emergency communications systems that increase occupant safety and achieve other goals like increased energy efficiency

Accordingly, we urge you to amend Section 65 to:

- ***Alternatively, establish conditions or limitations that apply to specific uses of the technology*** to address potential risks, versus a blanket ban that would also eliminate most benefits for citizens in the Commonwealth.
- ***Provide an additional exception for non-controversial uses in building systems.*** The provision already provides an exception from the ban for personal electronic devices. Similar to how it is commonly used to unlock an electronic device, facial recognition enabled access control systems allow an authorized user to unlock a door or to access a secured area.

Lastly, some discussions about banning the technology have centered around the potential for negative impact on women and minorities from "bias" in the technology. It is critically important to use high performing products. Industry is striving to provide technology that is as effective and accurate as possible across all types of uses, deployment settings. The National Institute of Standards and Technology (NIST), the world's leading authority on this technology, found last year that the highest performing technologies had "undetectable" differences across demographic groups, while most others performed far more consistently than had been widely reported in the media and a number of non-scientific tests.[2]

On behalf of SIA and its members, we urge the Committees to closely reevaluate Section 65, and seek alternative ways to address concerns about facial recognition without unnecessarily limiting the benefits of this critically important technology. Please let us know if we can provide further information or assistance.

Jake Parker
Senior Director, Government Relations
Security Industry Association
301-804-4722
jparker@securityindustry.org

[2] https://www.securityindustry.org/report/what-nist-data-shows-about-facial-recognition-and-demographics/

Coalition for Smart Responses to Student Behavior

July 17, 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. 2820

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. 2820), we also write to identify the aspects of the Senate bill we most strongly support. They are:

- **Section 50 (with correction below)**: 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. We recommend an additional correction: the words "subject to annual approval by public vote of the relevant school committee" were stricken inadvertently and should be re-inserted after the words "agricultural school" in line 1122 so that it properly mirrors the same in lines 1124-5.
- **Section 49**: 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 sections in S.2820 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***:

- **Section 5 of S.2820**: 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.
- **Sections 4 (l. 215-217) & 73**: 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

[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).

matters.[3] There is significant misunderstanding between Massachusetts' police officers and school administrators on the role of police in schools.[4]

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.

Sincerely,

The Coalition for Smart Responses to Student Behavior
Together with the following organizations and individuals:
ACLU of Massachusetts
Action for Boston Community Development
ADL New England
Bethel Institute for Social Justice/Generation Excel
Black Lives Matter- Worcester
Boston Student Advisory Council (BSAC)
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
Citizens for Juvenile Justice
Citizens for Public Schools
City Mission Society
The City School
Coalition for Effective Public Safety
Committee for Public Counsel Services
CORI & Reentry Project of Greater Boston Legal Services
Criminal Justice Policy Coalition
Disability Law Center
Dorchester Youth Collaborative
Ending Mass Incarceration Together
Fair Sentencing of Youth
Framingham Families for Racial Equity in Education
Freitas & Freitas
Friends of Children
GLBTQ Legal Advocates & Defenders

[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).
[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).

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
Louis D. Brown Peace Institute
Massachusetts Advocates for Children
Massachusetts Appleseed Center for Law & Justice
Massachusetts Attorneys for Special Education Rights (MASER)
Massachusetts Commission on LGBTQ Youth
Mass Mentoring Partnership
Mental Health Advocacy Program for Kids at Health Law Advocates
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
Parent/Professional Advocacy League (PPAL)
Power of Self-Education (POSE) Inc.
Prisoners' Legal Services
Project RIGHT
RFK Children's Action Corp
Roxbury Youthworks
Sociedad Latina
Spectrum Health Services
Strategies for Youth
Unitarian Universalist Mass Action Network
Violence in Boston
Vital Village Network
Worcester Interfaith
Young Sisters/Young Brother United
Youth Build Boston
Youth on Board
YW Boston

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

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Dan French, **Citizens for Public Schools**
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Lisa Hewitt, **Committee for Public Counsel Services**
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Leon Smith, **Citizens for Juvenile Justice**

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Lisa Thurau, **Strategies for Youth**
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Town of Lancaster
Police Department

Edwin H. Burgwinkel
Chief of Police

Robin Zagwyn
Administrative Assistant

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 Chairman Michlewitz and Chairwoman Cronin,

I would like to take this opportunity to thank you for your public service and for allowing us to submit written testimony on behalf of police departments across the Commonwealth relative to Senate Bill 2820.

Police Chiefs in Massachusetts have 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. We support 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 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 police officers 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.

I am 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 lack of public comments, in this rushed process, is one of my greatest concerns.

The Massachusetts Chiefs support uniformed standardized training statewide and policies as well as an 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 suits.

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

Sincerely and Respectfully,

Edwin H. Burgwinkel; Police Chief, Town of Lancaster

HUDSON POLICE DEPARTMENT

911 MUNICIPAL DRIVE • HUDSON, MASSACHUSETTS 01749
TEL: 978-562-7122 • FAX 978-568-9660
www.townofhudson.org

RICHARD P. DIPERSIO
CHIEF OF POLICE
978-568-9659

July 17, 2020

Via email to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as amended

Dear Chairwoman Claire Cronin and Chairman Aaron 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 fully endorse the opinion as expressed by the Massachusetts Chiefs of Police Association. As a police leader I fully embrace the challenges that lie ahead and I will continue to instill strong values into my department, hold all of my staff accountable for all of our actions, and will continue to work through these difficult times to help build a stronger community here in Hudson. I ask that police leaders be part of these conversations as they pertain to police reform in the Commonwealth.

I was appointed Chief of Police here in Hudson on March 1st of this year, after twenty-two years of service here to the town. I can say that we have an extremely dedicated police department, who work tirelessly each and every day to engage with our community and provide exceptional policer service to them. That has always been the case here. We are all angry at what happened to George Floyd in Minneapolis, and we condemn the actions of those former police officers. But to judge all police officers on the actions of a few is wrong and it is unfair. We agree and embrace reform because it is important. But reform should not be implemented without having conversations with all stakeholders. The COVID-19 pandemic has shown us that conduct and information must be carefully analyzed and all decisions must be based on facts, not on opinions. This holds true for reform. What happened in Minneapolis does not happen here in the Commonwealth. We have the best trained, best educated police officers anywhere in the world. Statistics show just that. This is a time we need to work together to come up with viable solutions that are in the best interest of the communities we serve, while at the same time provide support, resources, and protections for police officers who perform their jobs with professionalism, compassion, and dedication each day.

I have had conversations with the officers of the Hudson Police Department. Both rookie officers and veteran officers. While they continue to go out and perform their jobs with the same dedication and professionalism as they always have and what is expected of them, they are scared. The bill as proposed by the Senate will have dire consequences on not only policing and the ability to hire and retain officers, but also on the people and the communities we serve. Lack of trust will continue, the number and quality of police applicants will diminish, police will be forced into a situation where they become

reactive only, and the anti-police rhetoric will place officers in danger and divide communities. I ask that you do not rush reform. Work with all sides to come up with solutions that focus on the outstanding policing here in the Commonwealth, and show support for the men and woman who do their jobs honorably.

Respectfully submitted,

Richard P. DiPersio
Chief of Police

TOWN OF SOUTH HADLEY MASSACHUSETTS

JENNIFER GUNDERSEN, Chief of Police
gundersenj@southhadleypolice.org

July 17, 2020

Dear Chair Aaron Michlewitz and Chair Claire Cronin,
CC: Senator Joanne Comerford and Representative Dan Carey

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 share in your commitment to improve police officers in Massachusetts in how we protect all community members in the Commonwealth with fairness, equity and dignity for all. I recognize that the entirety of the Criminal Justice system must do better for our communities of color, of which we have let down. And while most of the Senate Bill 2820 I can and do support, I would be remised if I did not bring to your attention some strong concerns to this Bill as proposed. I provide my comments as it relates to **Qualified Immunity, training in lynching for police officers only, local control over investigations of misconduct, racial accurate data collection and chokeholds.**

Section 10: **Qualified Immunity** I am very concerned by and strongly opposed to efforts to change the qualified immunity protections for police officers in Massachusetts. Qualified immunity is a foundational protection for the policing profession and any modification to this legal standard will have a devasting impact on the police's ability to fulfill its public safety mission. Calls to limit, reduce, or eliminate qualified immunity do not represent a constructive path forward. In fact, these efforts would most certainly have a far-reaching, deleterious effect on the policing profession's ability to serve and protect communities, including here in South Hadley. **Qualified immunity is only available when a reasonable official would not have known that their actions would violate a constitutional right that was clearly established at the time of the alleged incident**. This is a concept that police officers have understood for many years. It does not make any sense to have a law that is enacted that would presumably eliminate qualified immunity by its words while at the same time stating that it is also available as a defense. It is our strong recommendation that this provision be eliminated.

Section 4: 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 I read this, we are assigning 400+ years of racism in the United States on the backs of police officers. This is an ignorant and unfair characteristic. As a reminder, we do not write the laws, legislators do. We merely enforce the laws someone else determined was in the best interest of the Commonwealth. This is shortsighted and unjust, and "racist institutions" as written imply that the police are "racist institutions." **Please correct this language, as the men and women of the South Hadley Police Department do not deserve attack.**

Section 6 : **This language is fraught with vague term which is certain to be appealed, which is not in the best interest of us all if we want true reform, let's do this right!** 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 52: **I am an extremely strong proponent of having accurate data on the demographics of persons we, the South Hadley Police, interact with. I struggle to get accurate data on our motor vehicle stops, and this has the appearance that we are avoiding transparency. The race and ethnicity of motorists should be self-identified by the operator at the time of licensure! This is attainable and accurate, and I am dumbfounded as to why the RMV has not done this.** 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: In my 26 years of policing, chokeholds have never been authorized as a form of force. 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. South Hadley Police has a long standing policy, practice and training which bans chokeholds, except if faced with deadly force. **I am a 5'03 51 year old female police officer and parent of young children. If faced with deadly force, I need the government to support my efforts to save my life.**

Thank you in advance for your commitment and efforts to improve policing in the Commonwealth of Massachusetts.

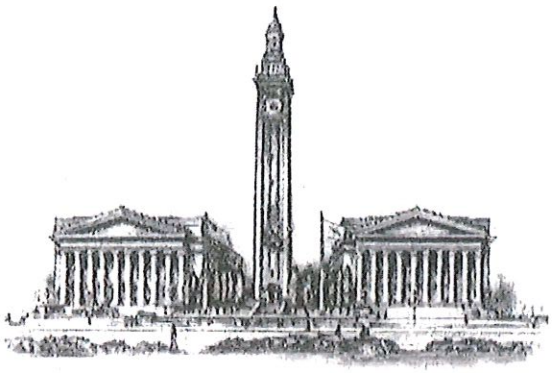
Sincerely,

Jennifer A. Gundersen

Jennifer Gundersen
Chief of Police

Cheryl C. Clapprood
Police Commissioner

Springfield Police Department
130 Pearl Street · P.O. Box 308
Springfield, MA 01101
(413) 787-6313



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

July 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".

With regard to the process, we seek the opportunity to be part of the criminal justice reform effort. All public employees are entitled to due process and access to a thoughtful and effective appeal mechanism that allows for case by case deliberation on aggrieved acts. Law Enforcement officers should be no exception.

In order to protect this basic right, I would hope the House would proceed through the establishment of a commission to study potential changes and ensure that our cities, towns, public employees and residents are protected from an increase in unnecessary lawsuits. Furthermore, qualified immunity pertains to civil law and does nothing to punish bad police officers who engage in criminal acts.

My peers and I understand the need for civilians to be represented on the board and we support the addition of civilian members, however as a professional certification board, the vast majority of the board should be law enforcement officers. I would hope that Law Enforcement representation on the POSAC Board be increased substantially.

I can tell you that the women and men who report to work at the Springfield Police Department (SPD), willing to place themselves in harms' way in defense of others, feel that they are unnecessarily under personal and political attack. The rush to pass legislation, without any public participation, will erode public safety. It will significantly increase the difficulties in recruiting and retention of our future police officers causing highly-qualified people to rethink the police career path.

I support Senator John C. Vellis' contribution. "Qualified immunity does not serve to protect illegal and unethical actions of police officers. Rather, it ensures that a public official, who often must make a split-second decision, does not need to hesitate in a dangerous or lifesaving situation."

The removal of qualified immunity does harm, but no good. The erosion of qualified immunity would have numerous consequences for all citizens of the Commonwealth, citizens, business owners, court personnel and most other public employees, not simply Law Enforcement. As I am sure you are aware, there is not a single documented instance of qualified immunity shielding of a police officers from wrongful conduct.

Life or death decisions need to be guided by training, perception, common sense consideration for the safety of all, and not in consideration of litigation.

The women and men of the SPD urge you to vote against a rushed and severely flawed bill that would damage public safety, erode citizen credibility on the public process and create a veritable logjam in in an already over-burdened, understaffed and underfunded state court system.

Sincerely,

Cheryl C. Clapprood

Cheryl C. Clapprood
Police Commissioner

CCC/pt

State Police Association of Massachusetts

REPRESENTING SERGEANTS AND TROOPERS
OF THE MASSACHUSETTS STATE POLICE
11 BEACON STREET • SUITE 700 • 7TH FLOOR • BOSTON, MASSACHUSETTS 02108
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COREY J. MACKEY
PRESIDENT
PATRICK M. MCNAMARA
VICE PRESIDENT
CHRISTOPHER DONAHUE
TREASURER
MICHAEL F. CHERVEN
SECRETARY

July 17, 2020

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

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

Chair Michlewitz and Chair Cronin:

Thank you for the opportunity to testify on the various police reform measures before you. We wholeheartedly appreciate you taking the time to listen to the perspective of the professions that are impacted by this legislation, even with limited time left in the formal legislative session. Your dedication to getting such important legislation right through careful consideration is noted and appreciated by our membership.

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* has a number of provisions that we, as law enforcement officers, support. We hope that you will join us 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. The cadet program is a tool that we expect will result in increased diversity in the State Police, an essential goal that we all can share. Focusing on well-educated officers and continual training throughout an officer's career are also collective efforts we support.

S2820 also has a number of issues that the State Police Association does not support as written. They are:

Section 6, POSAC Vote and Composition – The POSAC, as a whole, is an important body that will help ensure the public's trust in their law enforcement officers. As drafted, there are a number of provisions that are concerning. One of those is language requiring the POSAC to decertify an officer by only a majority vote; that is an exceptionally low bar to strip an officer's livelihood; we suggest a ¾ vote is a more fair threshold. The POSAC is also, as written, not composed of a majority of professionals in the field; only 6 of the 15 board members will be trained law enforcement professionals. As in many professions, experience and training in the field is essential to rendering a thoughtful critique and a dispassionate judgment of actions taken.

Section 6, Sustained Complaint of Misconduct – SPAM maintains that fair and equitable process under the law demands the same rights of appeal afforded to all citizens and fellow public servants. This section only protects the rights to appeal "within the appointing authority or committee." We believe due process and fairness demand that all current rights of appeal are preserved. Further, the POSAC is a new creation with new authorities, as such their review of employee conduct should justly be forward looking.

Section 10, Qualified Immunity – SPAM agrees that the ability to hold officers accountable for their actions is an important tenet of police reform, and to that end supports the concept of the POSAC. Opening up qualified immunity is a step too far, offering up both law enforcement

officers and most other public employees to frivolous lawsuits and harassment. Though the Senate added language that explicitly does not address indemnification provisions, indemnification as it stands is limited, and those that put their lives on the line everyday do not deserve the threat of losing their homes and the security that they are able to provide for their families. This language will increase litigation, distracting public employees from their missions, and prevent line officers from seeking promotion due to the increased risk of being sued as a supervisor.

Section 18, Appointing a Civilian Colonel – SPAM recognizes that it is a privilege to wear the uniform of the highest ranking uniformed member of an organization, and it is an important morale issue for the membership that a civilian not be appointed to lead an organization and don a uniform that they haven't earned. Just as the military appoints a civilian Secretary of Defense who oversees the highest ranking uniformed military ranks, we propose that the Colonel remain the highest ranking uniformed member of the State Police, but be subordinate to a civilian Superintendent or Commissioner if the Governor chooses to appoint one. We also propose that should a civilian Superintendent or Commissioner be appointed, his or her qualifications should be increased from 10 years law enforcement experience to 20, from 5 years of experience in a supervisory position to 10, and that this experience be at an institution of similar size and scope as the State Police.

Section 28, Due Process for Administrative Suspensions – This section is similar to language the Governor included in S2469, *An Act Advancing Reform Within the State Police*. We agree with the Governor that it takes far too long to resolve disciplinary actions within the State Police, but it is patently unfair to take the independent review out of the process. While we also recognize the ability of the Colonel to immediately suspend a Trooper without pay, that Trooper would need to wait a year without pay to appeal the decision of the Colonel. Department protocols stipulate that an investigation should be conducted within 30 days of suspension, and though we recognize that a complicated case may take a little longer, it is unreasonable for a Trooper to wait a full year to receive the results of an investigation into their conduct and appeal that decision. Given the 30 days internal policy for completion of an investigation, we think 45 days is a reasonable period of time for a Trooper to go without pay or health insurance and ultimately be able to appeal that decision to the Colonel and ultimately to civil service.

Section 33, Promotional Changes – SPAM supports the goal of the promotional changes included in this legislation, however to implement them immediately falls in the middle of a three year long promotional cycle. The State Police only test for the ranks of Sergeant, Lieutenant and Captain once every three years, respectively. We ask that if this section is included, that implementation be delayed until July 1, 2023. In this same section, there is a provision that requires a full year in grade before becoming eligible to take the next exam; we agree that there should be at least a full year in grade prior to a promotion, however the exam is only offered every three years. We suggest this section remove the restriction of one year on taking the exam in order to avoid these timing concerns.

Section 56, Treble Damages - SPAM takes issue with the singling out of police for punishment of treble damages and extending the statute of limitations beyond a typical 3 years for civil infractions to 4 years from the time the conduct was discovered. While it is obviously wrong for a police officer to falsify records of hours worked, it is similarly wrong for any public employee to do so. SPAM asks that if this section is included in future legislation, it should be applied universally to all public employees so that the public can be sure no employee is stealing from the public.

Education – Not included in this legislation is an important determinant to diversifying the State Police. Many municipal forces pay their officers an incentive for education while, since 2009, the State Police do not, and we believe this distinction makes it an easy choice for an educated officer to choose a municipal force rather than the State Police. An educated, diverse police force is a better force, and the fact that the State Police offer a lower level of benefits than many municipalities will continue to be a deterrent to recruiting. This is of particular interest to the successful implementation of a cadet program, where the State Police will be competing with other municipal forces to recruit the most competitive and diverse police force.

Thank you, again, for the chance to share our concerns with the House as you consider legislation focused on police reform. Together, we have the opportunity to pass landmark legislation that can be supported universally, as well as the solemn obligation to get this right. Please do not hesitate to reach out if we can be of any assistance as you deliberate the legislation before you, and thank you once again for your consideration of these concerns.

Sincerely,

Corey Mackey
President, State Police Association of Massachusetts

Essex Police Department
24 Martin Street
Essex, MA. 01929
(978) 768-6628

Paul D. Francis/
Chief of Police

07/17/2020

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.*

As the Chief of Police of a small police department, I am very concerned about the collateral damage that this bill, as written and passed by the Senate, will have on my department and policing in general here in the Commonwealth. I sincerely believe we can always do better, and will always support commonsense, well thought out change for the better, but such change must involve all of the stakeholders. Unfortunately this was not the case with SB2820, and I would be remiss if I didn't say that I find what took place in the Senate disheartening at best, and I believe the negative effects of this rush to pass legislation, without proper vetting and input, will be felt for years to come.

In Massachusetts we have been ahead of the curve for years when it comes to issues of racial bias and diversity, as well as the use of excessive force. Though we always welcome more training, and strive to be the best police officers we can be, there is a cost associated with training. It seems counterproductive to be considering taking funds away from policing, when more training will be mandated. In as much as I realize that time is of the essence in this situation, I will not attempt to dissect the bill as written, and I feel as though MCOPA has covered it well. However, I feel as though it's imperative that I speak about Qualified Immunity.

For me Qualified Immunity is about more than just protecting police officers from frivolous lawsuits. With Qualified Immunity as it stands, police officers can be confident that they can do their jobs without the constant fear of being sued, possibly losing all that they have worked for, including their jobs, with all of this exacerbated by the impact on their families. Qualified Immunity is there to protect police officers of integrity, that perform tasks on a daily basis that most would not have the fortitude to do, and they do so in good faith, knowing that there's always a chance of being sued, but that there are protections in place when acting reasonably and in good faith.

My fear, not only for my department, but for the policing profession in general is that we will have a mass exodus of experienced, professional police officers that act with integrity, respect and empathy. Recruitment of police officers has been on the decline for some time now, with the defunding of the Quinn Bill, Social Media and news outlets accentuating the negative in policing by the minute. I have had many officers of all ranks, both on my department and from other departments, who have been contemplating leaving the field. When you then take into account concerns for catching COVID-19, and infecting family members, along with being advised that members of various groups are going to target police officers and family members at their homes due to current events, I'm afraid changing and/or dismantling Qualified Immunity might be the final straw for many officers. You need to know that for many, we feel as though we have been unjustly vilified, and don't know where to turn. I ask you to please consider those of us in this field, we are mothers and fathers, sons and daughters, children and grandchildren, just like all of you, we are not what we are being portrayed to be. Please don't rush to judgement and "throw the baby out with the bathwater".

Respectfully,

Paul D. Francis/
Chief of Police

Straight Ahead MINISTRIES
OFFERING KIDS A WAY OUT

7/16/20

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,

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.

Our criminal justice system is not immune to structural racism and we join you and all members in the great work needed to set things right. The unfortunate reality is that 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,

Dr. Scott Larson
508-479-2354
slarson@straightahead.org

12 BROADWAY, BEVERLY, MA 01915

7/16/20

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,

We are writing today in support of expanding the existing expungement law (MGL Ch 276, Section 100E) as part of S.2820.

Stop Handgun Violence is a gun violence prevention organization with a long history of education and advocacy for policies that reduce gun violence in Massachusetts. In over 25 years of tackling this problem, it is clear that gun violence is an intersectional issue that requires a holistic approach. This is why our organization joined the Expungement Movement with 90 other local organizations and signed a coalition letter of support for expanding the expungement law.

While we strongly support laws that protect our public safety, we believe that reducing recidivism and removing barriers to employment, education, and housing are key components of a safe and healthy citizenry.

We urge you to consider expanding the existing expungement law (MGL Ch 276, Section 100E) as the House takes up S.2820 to address Racial Justice and Police Accountability.

Thank you for your consideration,

Sincerely,

Sonya Yee Coleman
Stop Handgun Violence
Community Organizer

Transparency in Use of Electronic Control Weapons and Devices

Mr. Hendricks moves to amend the bill by inserting the following new sections:

- SECTION 1. "Electronic Control Weapon or Device", as used in section 2 shall mean any portable device or weapon from which an electrical current, impulse, wave or beam may be directed which such current, impulse, wave or beam is designed to temporarily incapacitate.

- SECTION 2. Section 131J of said Chapter 140, as so appearing, is hereby further amended by inserting after the last sentence, the following paragraphs:- “If an electronic control weapon is discharged by a law enforcement or public safety official, the data relative to such, including time and duration of discharge, serial number of device used, and identity of the official responsible for discharge, must be reported within 24 hours to the official's commanding officer and to the Attorney General's office. Any contractor whose business consists of collecting electronic control weapon data for the Commonwealth, upon notice of discharge of an electronic control weapon under its purview, shall report the time and duration of discharge, and serial number of device used to the Attorney General's Office within 24 hours.”

Commonwealth of Massachusetts

TOWN OF FAIRHAVEN
POLICE DEPARTMENT

1 Bryant Lane
Fairhaven, MA 02719
Phone: 508-997-7421
Fax: 508-997-3147
www.fairhavenpolice.org

Michael J. Myers
Chief Of Police

July 16, 2020

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

Re: **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

Chair Claire Cronin and Chair Aaron Michlewitz,

As I am sure you are aware, we as police professionals, have deep concern for the current legislation being proposed regarding police reform. The bill that was voted in the Senate does very little to protect the citizens of this Commonwealth. I suggest to you that it puts everyone in greater danger. Not only will Police Officers be faced with greater danger as they are forced to second guess their training and knowledge, but because of these hesitations and uncertainty, so will the citizens they are supposed to protect.

By amending or reducing the qualified immunity section of the law you will inevitably be risking your continuants safety. Just two years ago yesterday, Sgt. Michael Chesna of the Weymouth Police Department was faced with this exact scenario. And with great tragedy Sgt. Chesna was killed by a rock wielding suspect who knocked him unconscious, stole his gun, shot him to death in cold blood as he lay unconscious AND then proceeded to shoot and kill an innocent elderly citizen as she sat peacefully in her home. The current qualified immunity law allows Officers to do their job without hesitation but it also still protects citizens from violations of their rights. Having clearly established law guides these decisions.

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. Utilizing the word "Accreditation" in the title is 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. We support that part of the reform bill and are more than willing to work together to see that happen.

Reducing the availability of any use of force options is very concerning and troubling for our profession and the safety of our citizenry. For years the Police profession has evolved to create, test and establish those less than lethal uses of force options that best control violent situations with the least risk to the suspects, innocent citizens and the Officers. This includes the very effective use of K-9's, "Tasers", tear gas and less lethal projectiles. By eliminating these items from the available uses of force options you would essentially be creating more lethal force scenarios which is the opposite of your purpose. We can only strongly encourage you to leave the selection and use of these force options to the professionals and experts who develop and deploy them.

The movement of this bill in both the Senate and House is at an extremely rapid pace. With very little time to read, digest and vote on such a life changing piece of legislation for all citizens we ask that you do not create law based solely on emotion. This very bill moves to change legislation that was created just a few years ago after the Parkland School shooting in Florida. At that time legislation was passed to require ALL communities MUST have at least one School Resource Officer in their jurisdiction. I suggest to you that legislation may have been passed based on emotion. Here we are four year later changing that exact legislation based on a different emotion. We ask that you don't create this legislation based on emotion, or pressure, that you will only be required to come back in a couple of years to change when a new emotion arises. Further just a few months ago the hands free bill was heavily debated and eventually held up by members of the House regarding the data collection piece. The Senate bill threatens to change those areas the members of the House fought so hard for.

We as Police Chiefs are committed to improving our profession and being a model for the rest of the country. We believe we have been doing this for years. We have a use of force continuum that teaches and requires de-escalation as much as it does escalation. The neck area has been considered a lethal force area in most if not all levels of use of force and the MPTC(Massachusetts Police Training Committee) has not and does not teach neck restraints as part of Police Officer training. We were one of the first States to adopt many of the recommendations from President Barack Obama's 21st Century policing model and implement the 6 pillars of success. We have taught all our officers in our in service training classes on unconscious bias, procedural justice, mental health first aid and de-escalation.

As a profession we are doing all that we are asked. We ask that you assist us in becoming better and not dismantle everything we have tried to build. By reaching too far on this bill you will push quality Officers and candidates away from the profession. This will leave us with less qualified individuals to do the job. Less qualified Officers result in more issues and thus having an opposite effect of what this bill is intended to do. Embracing the profession and providing the proper training, equipment, funding and support is what will reduce community concerns with Police Officers. We ask that you do what is right and support a bill that brings us all together and not drive us further apart. We ask for your support and thank you for your consideration when debating this bill.

Sincerely,

Michael J. Myers
Chief of Police
Fairhaven Police Department

Testimony 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."

Submitted by:
Francesco Torra
11 Franklin Street
Wakefield, MA 01880

Dear Chair Michlewitz, Chair Cronin and members of the House Committee on Ways and Means,

My name is Francesco Torra and I live at 11 Franklin Street, Wakefield, MA. I am the Recording Secretary for AFSCME Local 419 Suffolk County Correction Officers and also am a corrections officer and deputy sheriff at the Suffolk County Sheriff's Department. I am writing 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." Although this bill has good intentions and several good aspects, there are portions of this bill that would be unnecessarily detrimental to those in law enforcement and other public workers.

Portions of this bill that I support are:

- The creation of a permanent commission on the status of african americans in Section 1.
- Having a Municipal Police Training Committee set policies and standards for training, background investigations, training requirements and maintain records of training in Section 3.
- Adding the teaching of history of slavery, lynching, racist legal institutions and racism in the United States to in service training in Section 4.
- Having the Municipal Police Training Committee shall establish and develop basic and in-Service training programs designed to train officers on the regulation of physical force. Such programs shall be included in basic and in-Service training for all officers for which the committee establishes training policies and standards in Section 5.

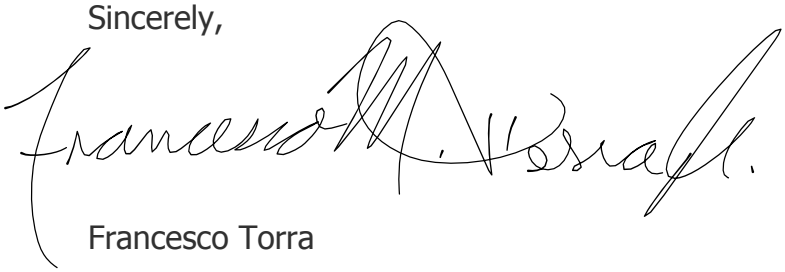
- In Section 9, "(b) If the attorney general has reasonable cause to believe that a violation of subsection (a) has occurred, the attorney general may bring a civil action for injunctive or other appropriate equitable and declaratory relief to eliminate the pattern or practice." If this language is in this bill, why must there be language eliminating qualified immunity?
- The creation of a community policing and behavioral health advisory council, in Section 16.
- The creation of a Criminal Justice and Community Support Trust Fund and a Justice Reinvestment Workforce Development Fund, in Section 37.
- Requiring an officer to intervene and report unnecessary use of force, in Section 55.
- Section 57. "Holding a law enforcement officer who has sexual intercourse or unnatural sexual intercourse with a person in the custody or control of the law enforcement officer shall be found in violation of subsection (b)."

Portions of this bill that I do not support are:

- In Section 6, the Police Officer Standards and Accreditation Committee does not include anyone from the sheriff's departments, even though deputy sheriffs are under their realm of oversight.
    - All members of this committee need a standardized law enforcement training themselves to properly understand the duties of law enforcement. For example, the actions of an officer during use of force encounters.
    - The elimination of due process and the right to appeal would be violating union rights.
- In Section 10, the elimination of qualified immunity would leave law enforcement and other public employees open to frivolous lawsuits that will put an unjust financial burden on us. For example, at the Sheriff's Department, many of us have encountered individuals who attempt to move forward with completely unsubstantiated and made up accusations. If it weren't for qualified immunity, we would have to spend thousands of dollars of our own money to have the charges dismissed in court. That is a burden we cannot take on.
- In Section 55, language outlining justified use of force is judged by the POSAC, some members who may not have been trained on the use of force continuum, as the law enforcement officers have. How will they understand the actions of law enforcement if they have not undergone the same training that will be standardized by the Municipal Police Training Committee?
- In Section 63, the commission created will have far too few members with corrections experience, training, or expertise to make recommendations for a field they may have no understanding of.

I urge you to amend the portions of this bill that would unnecessarily hurt the public, law enforcement, and public sector workers. Thank you to Chair Michlewitz, Chair Cronin, and the members of this committee for your consideration.

Sincerely,



Francesco Torra

To Whom It May Concern:

"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,

Amanda Cordes, J.D.
100 Marshall St.,
Winthrop, MA 02152
acordes@su.suffolk.edu

HATFIELD POLICE DEPARTMENT

3 School St.
Hatfield, MA 01038
Phone (413) 247-0323 Fax (413) 247-9261

Michael Dekoschak
Chief of Police

July 17, 2020

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

Re: Concerns to Senate 2820 as Amended

Dear Charwoman Cronin and Chairman Michlewitz;

I am requesting the opportunity to give testimony regarding Senate Bill 2820 as amended.

"Emergency Law" **necessary for the immediate preservation of the public safety and convenience.** These are the words used by the legislature in the introduction. I fail to see the "emergency" that if enacted, would preserve public safety. as would any objective legal professional or citizen for that matter. As the mechanism for making laws in our great Commonwealth, the legislature has decided that they will not legislate on behalf of their constituents. They have instead, chose to be activists and propose an "Emergency Law" that will do nothing to better or uplift underserved communities of color or otherwise.

A great deal of elements contained in this bill are already in practice by the men and woman who police this Commonwealth and who do so with pride and a profound duty to serve the greater good. For example, a duty to intervene is already being trained and instilled in your officers. De-Escalation is already being trained and practiced by you officers in Massachusetts. Dealing with persons with mental illness or developmental issues is deeply rooted in the police culture in Massachusetts, especially on recognizing it and providing meaningful solutions and alternatives to those in need of immediate respite. The simple fact of the matter is that the Police in Massachusetts have far outpaced the legislature on issues of "Police Reform" and we have done so because it is the right thing to do for our communities. The Police in Massachusetts work extremely hard every day for their respective communities. In Fact, much of the work we do from small town to big city is finding solutions to improve the quality of life for our citizens. Why then must our legislature pretend that unless they enact an "Emergency Law" that if not passed immediately, will endanger the lives of everyone especially those of color. There is work to be done to better our Commonwealth, but that work MUST be inclusive having all stakeholders at the table so that truth, transparency, and

an equitable share is actually realized and not just perceived by passing a bill without discussion with those most impacted in the middle of the night.

As I have stated earlier the Police in Massachusetts already embrace and practice much of what the legislature is proposing. This begs the question then as to why they are proposing it. Is it because they simply do not know what their Police in Massachusetts actually do or what they are trained in? I hope this is why because this can be addressed. Unfortunately, I think it must more directly have to do with special interest and again, activism. To prove my point, take a look at some of the language being proposed.

Lines 1588,1589 and 1590 in the bill that would prohibit an officer from viewing body camera footage before he/she makes a statement. Why would you or anyone not want the indisputable facts relating to an incident, the undeniable truth. This has been an area of contention with the ACLU for some time. One of the reasons given is so that an officer's perception can be altered if allowed to see the footage for the purpose of giving report. This makes no sense if the truth is what we are after. Why would we **not** want the officer's report to reflect what **did** happen as opposed to what they thought happened. Is it because it makes it much harder to defend a guilty person later on? This section if not changed only serves to foster questions and doubt about an incident. Witnesses perception is an important thing. It is also highly debatable.

Lines 1634,1635,1637 and 1638 must be worded differently than how they appear now. The current wording would suggest that no police officer in Massachusetts would be able to "access" or "use" Facial Recognition of any Biometric Technology other than fingerprints. Could the current wording be used as a defense if an officer does "Access or "use" this technology. If so, this is dangerous language as it would suggest that no officer in Massachusetts could be part of an investigation such as a terror investigation that also utilizes Federal assistance that could use that technology. This language could severely hamper a jurisdiction's duty to protect its citizens.

Lastly, Qualified Immunity is not absolute immunity. Changing words in a well debated set of precedence WILL have unintended consequences. Much will be left up to interpretation if changes. For Instance, by changing the wording to "every" reasonable person suggests that if **one** person can be found and is deemed reasonable, then a claim can proceed. This means that if 100 reasonable people agree and one does not, the claim proceeds. Words have meaning, you know this, so why have so little debate and time spent on such an important subject. Qualified Immunity does not affect Police alone. Qualified Immunity affects everyone from the secretary in the personnel office to the janitor at city hall and countless others that you are trying to protect with your "Emergency Law". Yet you without regard for those you are trying to protect, the most vulnerable among us financially are trying to pass without the due process such a significant piece of law deserves. How many of your constituents would be affected by this? How many of your constituent's work for some type of government agency? Many

I presume. How could you even think of changing Qualified Immunity with such little regard for whom could be mostly impacted by it without proper debate as to potential un intended consequences.

To Conclude, I have great respect and trust in you to do the right thing based on sound thought and what is best for all of Massachusetts not just special interest. I hope you will afford me the same respect as a Law Enforcement professional and as a citizen in this great Commonwealth.

Respectfully Submitted;

Chief Michael Dekoschak

"To Protect and Serve"

From: Susan <supataat@yahoo.com>
Sent: Friday, July 17, 2020 1:13 PM
To: Testimony HWM Judiciary (HOU)
Subject: Senate Bill 2820

July 16, 2020

Dear Chair Michlewitz and Chair Cronin,

My name is Susan P Atkins and I live at 211 Rantoul Street Beverly MA 01915. As a constituent, I write to express my opposition to Senate Bill 2820. This legislation is detrimental to police and correction 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 with which Bill 2820 was passed.

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, improvement is always welcome, 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,
Susan P Atkins

From: Natalie May <natalie.may.g@gmail.com>
Sent: Friday, July 17, 2020 1:09 PM
To: Testimony HWM Judiciary (HOU)
Subject: Testimony for S.2820

Dear members of House leadership,

I am writing you to say that S.2820 does almost nothing to prevent state violence against Black people or stop the flow of Black people into jails and prisons.

I believe S.2820 will cause more harm than good by increasing spending on law enforcement through training and training commissions, expanding the power of law enforcement officials to oversee law enforcement agencies, and making no fundamental changes to the function and operation of policing in the Commonwealth. Real change requires that we shrink the power and responsibilities of law enforcement and shift resources from

policing into most-impacted communities. The definition of law enforcement must include corrections officers who also enact racist violence on our community members.

If the Massachusetts legislature were serious about protecting Black lives and addressing systemic racism, this bill would eliminate cornerstones of racist policing including implementing a ban without exceptions on pretextual traffic stops and street stops and frisks. The legislature should decriminalize driving offenses which are a major gateway into the criminal legal system for Black and Brown people and poor and working class people. Rather than limiting legislation to moderate reforms and data collection, the legislature should shut down fusion centers, erase gang databases, and permanently ban facial surveillance by all state agencies including the RMV. I also support student-led efforts to remove police from schools.

The way forward is to shrink the role and powers of police, fund Black and Brown communities, and defund the systems of harm and punishment which have failed to bring people of color safety and wellbeing. S.2820 does not help us get there.

Thank you,
Natalie May
17 Pond Street
Boston, MA 02130

From: caitw6@gmail.com
Sent: Friday, July 17, 2020 7:05 AM
To: Testimony HWM Judiciary (HOU)
Subject: MA police reform bill

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,
Caitlan Williams / 611 A East 8th street Boston, Ma 02127 / caitw6@gmail.comFrom: Emiv711 <emiv711@aol.com>
Sent: Friday, July 17, 2020 1:08 PM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives: I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a commission to study and make recommendations regarding policing with a lopsided membership. Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement authority or GANG MEMBERSHIP. To think that school authorities would be prohibited from telling the police that a student might be a member of MS-13 or any other dangerous gang is extremely dangerous. Section 49 should be eliminated. SB 2820 endangers our police by dramatically watering down "qualified immunity" in Section 10. This provision should be eliminated. Section 52 should also be eliminated as it hinders an officer's ability to protect our roadways as well as him- or herself by not allowing them to ask someone who they have stopped about their immigration or citizenship status. Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers. I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representation.
 Sincerely,
Emily Chaves
From: Louis Ferraro <louisferraro@comcast.net>

Sent: Friday, July 17, 2020 1:08 PM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives:

I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a commission to study and make recommendations regarding policing with a lopsided membership.

Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement authority or GANG MEMBERSHIP.

To think that school authorities would be prohibited from telling the police that a student might be a member of MS-13 or any other dangerous gang is extremely dangerous. Section 49 should be eliminated.

SB 2820 endangers our police by dramatically watering down "qualified immunity" in Section 10. This provision should be eliminated.

Section 52 should also be eliminated as it hinders an officer's ability to protect our roadways as well as him- or herself by not allowing them to ask someone who they have stopped about their immigration or citizenship status.

Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers.

I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representation.

Sincerely,

Patrice FerraroFrom: Louis Ferraro <louisferraro@comcast.net>
Sent: Friday, July 17, 2020 1:08 PM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

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Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers.

I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representation.

Sincerely,

Lou FerraroFrom: Shawn P. Cronin <spcronin44@gmail.com>
Sent: Friday, July 17, 2020 1:06 PM
To: Testimony HWM Judiciary (HOU)
Subject: Input

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

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(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,

Shawn Cronin
2275 Lewis St. Dighton, MA

From: Michael O'Neill <mistamoneill@gmail.com>
Sent: Friday, July 17, 2020 1:02 PM
To: Testimony HWM Judiciary (HOU)
Cc: Scaccia, Angelo - Rep. (HOU)
Subject: Please support S.2820

Dear Chairman Michlewitz and Chairwoman Cronin,

I am emailing you with regards to my 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.

We need strong use of force guidelines for police in Massachusetts, public records of police misconduct, a duty to intervene policy, and bans on no-knock warrants, choke holds, tear gas, and other chemical weapons.

Please pass a bill that includes each of these critical reforms.

Mike O'Neill

240 Kittredge Street, Unit 2

Roslindale MA, 02131

From: Jeffrey Weir <callaweir15@hotmail.co.uk>
Sent: Friday, July 17, 2020 12:59 PM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives:

I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a commission to study and make recommendations regarding policing with a lopsided membership.

Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement authority or GANG MEMBERSHIP.

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Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers.

I oppose SB 2820, and at a minimum it should specifically eliminate any provisions similar to sections 10, 49, and 52, as well as amend Section 63 to have more police representation.

Sincerely,

Sent from my iPhoneFrom: Scott Sullivan <sulliaft@bc.edu>
Sent: Friday, July 17, 2020 12:59 PM
To: Testimony HWM Judiciary (HOU)
Subject: Public Testimony

Hello, my name is Scott Sullivan with the Greater Boston Interfaith Organization (GBIO). I live at 8 Ashwood Terrace, Apart 1, Roslindale, MA 02131. I am writing to urge you and the House to pass police reform that includes:

* Implement Peace Officer Standards & Training with certification

* Civil service access reform

* Commission on structural racism

* Clear statutory limits on police use of force

* Qualified immunity reform

Thank you very much.

--

Scott Sullivan '13
Sulliaft@bc.edu
P: 508-320-4634

8 Ashwood Terrace, Roslindale, Ma 02131
From: Alison Bennett <abennett218@gmail.com>
Sent: Friday, July 17, 2020 12:53 PM
To: Testimony HWM Judiciary (HOU)
Cc: Scaccia, Angelo - Rep. (HOU)
Subject: An Act to Save Black Lives by Transforming Public Safety

Chairman Michlewitz and Chairwoman Cronin,

Massachusetts can take a bold step towards ending systemic racism in policing by passing 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 need strong use of force guidelines for police in Massachusetts, public records of police misconduct, a duty to intervene policy, and bans on no-knock warrants, choke holds, tear gas, and other chemical weapons.

Please pass a bill that includes each of these critical reforms.

Alison Bennett

240 Kittredge St, Roslindale

From: Bob C <whitehouse115@comcast.net>
Sent: Friday, July 17, 2020 12:45 PM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives:

I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a

commission to study and make recommendations regarding policing with a lopsided membership.

Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement authority or GANG MEMBERSHIP.

To think that school authorities would be prohibited from telling the police that a student might be a member of MS-13 or any other dangerous gang is extremely dangerous. Section 49 should be eliminated.

SB 2820 endangers our police by dramatically watering down "qualified immunity" in Section 10. This provision should be eliminated.

Section 52 should also be eliminated as it hinders an officer's ability to protect our roadways as well as him- or herself by not allowing them to ask someone who they have stopped about their immigration or citizenship status.

Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers.

I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representation.

Sincerely,
From: santib@verizon.net
Sent: Friday, July 17, 2020 12:44 PM
To: Testimony HWM Judiciary (HOU); santib@verizon.net
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives: I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a commission to study and make recommendations regarding policing with a lopsided membership. Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement authority or GANG MEMBERSHIP. To think that school authorities would be prohibited from telling the police that a student might be a member of MS-13 or any other dangerous gang is extremely dangerous. Section 49 should be eliminated. SB 2820 endangers our police by dramatically watering down "qualified immunity" in Section 10. This provision should be eliminated. Section 52 should also be eliminated as it hinders an officer's ability to protect our roadways as well as him- or herself by not allowing them to ask someone who they have stopped about their immigration or citizenship status. Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers. I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representation. Sincerely,
From: Melissa Larson <melissalarson11@yahoo.com>

Sent: Friday, July 17, 2020 12:42 PM
To: Testimony HWM Judiciary (HOU)
Subject: Letter from MA Resident regarding S2800 or S2820

I understand that there was a deadline for this e-mail. I hope that this will still make it into the hands of someone that will be making decisions about the future of our communities.

As a taxpayer and registered voter in Massachusetts I am against bill S.2800 S2820. I do not disagree that to some degree racism exists in this state, we must address it logically and not just react to the current climate in the country.

Additionally to pass a bill which will impose restrictions and eliminate protection against civil suits on law enforcement, the very people that provide us with a blanket of security from bad people of all walks of life, is a dangerous path to choose. We need to support and protect the men & women who report daily to keep us safe in our communities and our state. There are far more good police than bad in my opinion and to create road blocks to the daily jobs they perform is unfair and dangerous. Here is a concept for you, reward good behavior and consequence bad behavior, regardless of the color or occupation of the individual exhibiting the behavior.
It's time to bring some common sense back into politics and government. At the very least you should be telling your voters what you are doing.
Sincerely,
Melissa Larson
Middleboro Resident

From: Misael <misael.moscat@gmail.com>
Sent: Friday, July 17, 2020 12:41 PM
To: Testimony HWM Judiciary (HOU)
Subject: S.2820 Vote

Dear Chair Michlewitz, Chair Cronin, and members of the House Ways & Means and Judiciary Committees,

I’m writing in favor of S.2820, to bring badly needed reform to our criminal justice system. I urge you to work as swiftly as possible to pass this bill into law and strengthen it.

I believe the final bill should eliminate qualified immunity (a loophole which prevents holding police accountable), introduce strong standards for decertifying problem officers, and completely ban tear gas, chokeholds, and no knock raids like the one that killed Breonna Taylor.

Misael Moscat & The City of Haverhill
From: Jorge Ceballos <jleandro.ceballos@gmail.com>
Sent: Friday, July 17, 2020 12:41 PM
To: Testimony HWM Judiciary (HOU)
Subject: Bill S.2820

Dear Chair Michlewitz, Chair Cronin, and members of the House Ways & Means and Judiciary Committees,

I'm writing in favor of S.2820, to bring badly needed reform to our criminal justice system. I urge you to work as swiftly as possible to pass this bill into law and strengthen it.

I believe the final bill should eliminate qualified immunity (a loophole which prevents holding police accountable), introduce strong standards for decertifying problem officers, and completely ban tear gas, chokeholds, and no knock raids like the one that killed Breonna Taylor.

Sincerely, Jorge Ceballos. Dracut MA.
From: john bookston <john.bookston@gmail.com>
Sent: Friday, July 17, 2020 12:40 PM
To: Livingstone, Jay - Rep. (HOU); Testimony HWM Judiciary (HOU)
Subject: Strengthen the Police Reform Bill

A veto proof majority can still be attained if the House removes the 1 year pass given to officers brought before the new review board.

Otherwise the Senate bill is terrific. As a past public defender, I have experienced multiple abuses of police authority done with impunity. The ability of an officer to put off any proceeding for a year is a game-changer.
From: grace moscat <gracemoscat@gmail.com>
Sent: Friday, July 17, 2020 12:39 PM
To: Testimony HWM Judiciary (HOU)
Subject: S.2820

Dear Chair Michlewitz, Chair Cronin, and members of the House Ways & Means and Judiciary Committees,

I'm writing in favor of S.2820, to bring badly needed reform to our criminal justice system. I urge you to work as swiftly as possible to pass this bill into law and strengthen it.

I believe the final bill should eliminate qualified immunity (a loophole which prevents holding police accountable), introduce strong standards for decertifying problem officers, and completely ban tear gas, chokeholds, and no knock raids like the one that killed Breonna Taylor.

Grace Moscat. Haverhill, MA.

From: dbardei@comcast.net
Sent: Friday, July 17, 2020 12:39 PM
To: Testimony HWM Judiciary (HOU)
Subject: Police Reform

Dear Chair Michlewitz, Chair Cronin, and members of the House Ways & Means and Judiciary Committees,

I’m glad the issue of police reform has finally made it to the attention of the country. Action on this topic is long overdue.

I’m writing in favor of S.2820, to bring badly needed reform to our criminal justice system. I urge you to work as swiftly as possible to pass this bill into law and strengthen it.

I believe the final bill should eliminate qualified immunity (a loophole which prevents holding police accountable), introduce strong standards for decertifying problem officers, and completely ban tear gas, chokeholds, and no knock raids like the one that killed Breonna Taylor. In addition police need additional training in de-escalation; they can’t do well what they are not trained to do!

Yours Truly,
Deborah Barolsky
Arlington MA
From: Ricardo Ceballos <ceballosricardo10@gmail.com>
Sent: Friday, July 17, 2020 12:37 PM
To: Testimony HWM Judiciary (HOU)
Subject: S.2820

Dear Chair Michlewitz, Chair Cronin, and members of the House Ways & Means and Judiciary Committees,

I’m writing in favor of S.2820, to bring badly needed reform to our criminal justice system. I urge you to work as swiftly as possible to pass this bill into law and strengthen it.

I believe the final bill should eliminate qualified immunity (a loophole which prevents holding police accountable), introduce strong standards for decertifying problem officers, and completely ban tear gas, chokeholds, and no knock raids like the one that killed Breonna Taylor.

Ricardo Ceballos
Wakefiled, MA
From: ginny@gingar.us
Sent: Friday, July 17, 2020 12:35 PM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives:

I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a commission to study and make recommendations regarding policing with a lopsided membership.

Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement authority or GANG MEMBERSHIP.

To think that school authorities would be prohibited from telling the police that a student might be a member of MS-13 or any other dangerous gang is extremely dangerous. Section 49 should be eliminated.% 0A
SB 2820 endangers our police by dramatically watering down "qualified immunity" in Section 10. This provision should be eliminated.

Section 52 should also be eliminated as it hinders an officer's ability to protect our roadways as well as him- or herself by not allowing them to ask someone who they have stopped about their immigration or citizenship status.

Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers.

I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representa tion.

Sincerely,Virginia Babin, Groton, MA
From: Summer Turner <sumttime@aol.com>
Sent: Friday, July 17, 2020 12:33 PM
To: Testimony HWM Judiciary (HOU)
Subject: Create Police Reform

Representative Aaron Michlewitz, Chairperson, House Committee on Ways and Means
Representative Claire Cronin, Chairperson, Joint Committee on the Judiciary

Hello, my name is Summer Turner with the Greater Boston Interfaith Organization (GBIO). I live at 342 Allston Street in Cambridge. I am writing to urge you and the House to pass police reform that includes:

-Implement Peace Officer Standards & Training with certification
-Civil service access reform
-Commission on structural racism
-Clear statutory limits on police use of force
-Qualified immunity reform

Thank you very much.

Summer Turner
Sumttime@aol.com
6178767030

Sent from my iPhone

From: eva.moscat@gmail.com

Sent: Friday, July 17, 2020 12:32 PM
To: Testimony HWM Judiciary (HOU)
Subject: Bill S.2820

Dear Chair Michlewitz, Chair Cronin, and members of the House Ways & Means and Judiciary Committees,

I'm writing in favor of S.2820, to bring badly needed reform to our criminal justice system. I urge you to work as swiftly as possible to pass this bill into law and strengthen it.

I believe the final bill should eliminate qualified immunity (a loophole which prevents holding police accountable), introduce strong standards for decertifying problem officers, and completely ban tear gas, chokeholds, and no knock raids like the one that killed Breonna Taylor.

Eva Moscat, Dracut MA

Sent from my iPhone
From: Jay Macomber <jaymac00@comcast.net>
Sent: Friday, July 17, 2020 12:30 PM
To: Testimony HWM Judiciary (HOU)
Subject: S2820

Honorable Representatives,

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:

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.

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.

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. There are only six law enforcement members on this committee of the fifteen members.

As a tax payer I am also greatly concerned with the cost of this bill which is not articulated in the bill.

The following Commissions are created by this bill with many of them allowing staffers to include lawyers being hired, reimbursement for expenses to include obtaining office space, and contracts with academic institutions. Many of these Commissions are allowed to take donations to subsidize themselves and carry funds over from one fiscal year to the next.

Commission of the Status of African Americans- 11 members
Commission of the Status of Latinos- 9 members
Police Officer Standards and Accreditation Committee- 14 members
Community Police and Behavioral Advisory Council- 21 members
Criminal Justice and Community Support Trust Fund
Justice Reinvestment workforce Development Fund- 14 members
Commission to Review and Make Recommendations for training protocols- 15 members
Law Enforcement Body Camera Task Force- 17 members
Special Commission to study Facial Recognition- 14 members
Commission to study to dismantle structural racism- 31 members

These new ten commissions have at least 150 positions and each commission has a mission assigned to it which will cost the tax payer. There is no price tag in this bill for this because the price tag is unknown. Where are the tax dollars going to come from to fund all of this? Even with a low ball figure of a cost of 3-5 million per commission we are at 30-50 million dollars. But we all know that the cost will be much higher. This bill is being advertised as a Police Reform package but policing is only a small part of this bill. Five of the ten Commissions have nothing directly to do with law enforcement.

This bill allows for the Colonel of the State Police to be hired from outside the agency with a minimal requirement of ten years in law enforcement or the military and only five years of senior management experience. This will make the Colonel of the State Police a political appointee and not someone who has worked their way through the ranks of the State Police. When you look around at some of the best police chiefs

around the country the majority have come up the ranks from inside that organization. Further, why would the Commonwealth want to hire a Colonel who has no allegiance to the organization? Why would we want the Colonel of the State Police to have no police academy training as is outlined in S2820 on Lines 788-790:

"No person, except the colonel, shall exercise police powers as a uniformed member of the department until they have been assigned to and satisfactorily completed the
training program."

The creation of a State Police Cadet program as created in lines 674-722 and 732-741 has me very concerned. What is going to be their function? Has this been negotiated with the State Police Association of Massachusetts? Will the cadets be performing functions that a fully trained trooper should be doing? Further, these cadets can be hand selected to enter the State Police Academy by the Colonel who by S2820 passing will be a political appointee. I can fathom that many of this new Colonel's selections will be to appoint friends of friends so as to avoid the Civil Service Testing process.

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 have earned and deserve.

Please consider the ramifications of this bill on the ability of our police to do their job.

Jason Macomber
26 Sandy Pine Road
Templeton, MA 10468

From: 7815897281@pm.sprint.com
Sent: Friday, July 17, 2020 12:28 PM
To: Testimony HWM Judiciary (HOU)

Sent from my mobile.

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,
Eileen Stockus
196 Bailey Street
Canton, MA
Emstockus@gmail. com

From: Kelly Keefe <kellykeefe25@yahoo.com>
Sent: Friday, July 17, 2020 12:24 PM
To: Testimony HWM Judiciary (HOU)
Subject: S.2820 opposition testimony

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,

Kelly De Castro

22 Weyham Road

Weymouth, MA 02191

Kellykeefe25@yahoo.com

13zIs16rchf_GkGDD&m=7gnr-BwidWpN3sbWvEirTBKDdRUf9hsS4fAkxr4jquc&s=MnvS-BzrYRox0dfOR9Wiv4Wxk40K_jukWwGipw9KIb8&e=>

From: Denise Gunn <denisegunn13@hotmail.com> on behalf of Denise Gunn <denisegunn@remax.net>
Sent: Friday, July 17, 2020 12:23 PM
To: Testimony HWM Judiciary (HOU)
Cc: Garballey, Sean - Rep. (HOU); Jehlen, Patricia (SEN)
Subject: S.2820 Opposition

?As a concerned wife, mother, mother-in-law and friend in Massachusetts trying to stay safe with the COVID-19 pandemic and 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 frivolous 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 our men and women, mothers and fathers, husbands and wives, sisters and brothers in law enforcement with the respect and dignity they deserve.

Thank you for this consideration ...

Respectfully,
Denise Gunn
48 Whitney Road
Medford, MA 02155

From: Kelly <kloynd9@comcast.net>
Sent: Friday, July 17, 2020 12:23 PM
To: Testimony HWM Judiciary (HOU)
Subject: Police reform

To whom it may concern,

As a Massachusetts resident who has family members who are in policing, nursing and emergency medicine, I do agree that police reform is needed. I feel that the current police reform bill gets one thing wrong which will make the public at large and first responders much less safe. Qualified immunity must not be taken away from any first responder. Bad police officers that break the law are not ultimately protected by qualified immunity if they knowingly break the law. That should continue to be the case. Removing qualified immunity from police officers & first responders that do their job professionally and to the best of their ability, must continue to be protected at least until they have had an opportunity to have their day in court. This is what the constitution allows for any private citizen and this right should certainly not be taken away from any first responder! Doing this will change policing as we know it. Every city and town will lose quality police officers and first responders (this is happening already), as they will no longer feel protected for doing their job correctly. It will give more power to criminals as they will be able to sue police officers and first responders if something doesn't go quite right. None of us are perfect and mistakes will be made, but even more so if they are second guessing every move they make! Not only will good police officers and first responders leave employment but future hires will be far less qualified choices of hire. Please do not to let this happen. We have already seen a crazy amount of violence in major cities like New York City. Defunding the police and removing qualified immunity will lead to more of this and make the public far less safe.

Passing this bill as is will have long term effects that will ultimately cost the Commonwealth of Massachusetts far too many innocent lives.

Thank you,
Kelly Loynd

Sent from my iPhone
From: Laura cowie-haskell <lcowiehaskell@gmail.com>
Sent: Friday, July 17, 2020 12:22 PM
To: Testimony HWM Judiciary (HOU)
Subject: I do not support S.2820

Dear members of House leadership;

S.2820 does almost nothing to prevent state violence against Black people or stop the flow of Black people into jails and prisons.

I believe S.2820 will cause more harm than good by increasing spending on law enforcement through training and training commissions, expanding the power of law enforcement officials to oversee law enforcement agencies, and making no fundamental changes to the function and operation of policing in the Commonwealth. Real change requires that we shrink the power and responsibilities of law enforcement and shift resources from policing into most-impacted communities. The definition of law enforcement must include corrections officers who also enact racist violence on our community members.

If the Massachusetts legislature were serious about protecting Black lives and addressing systemic racism, this bill would eliminate cornerstones of racist policing including implementing a ban without exceptions on pretextual traffic stops and street stops and frisks. The legislature should decriminalize driving offenses which are a major gateway into the criminal legal system for Black and Brown people and poor and working class people. Rather than limiting legislation to moderate reforms and data collection, the legislature should shut down fusion centers, erase gang databases, and permanently ban facial surveillance by all state agencies including the RMV. I also support student-led efforts to remove police from schools.

The way forward is to shrink the role and powers of police, fund Black and Brown communities, and defund the systems of harm and punishment which have failed to bring people of color safety and wellbeing. S.2820 does not help us get there.

Thank you,

Laura Cowie-Haskell, Boston, MA

From: Madison Rivard <madisonrivard@gmail.com>
Sent: Friday, July 17, 2020 12:17 PM

To: Testimony HWM Judiciary (HOU)
Subject: Testimony in Support of Police Accountability -- Use of Force Standards, Qualified Immunity Reform, and Prohibitions on Face Surveillance

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

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

Dear Chairs Michlewitz and Cronin,

I am in strong support of the many provisions in S.2820 designed to increase police accountability. In particular, I urge you to:

Adopt strict limits on police use of force,

End qualified immunity, because it shields police from accountability and denies victims of police violence their day in court, and

Prohibit government use of face surveillance technology, which threatens core civil liberties and racial justice.

We have seen that these measures are necessary to decrease police brutality, which is a major public health and social justice crisis.

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.

Now is the time to divest funding from police and invest in communities. Police do not prevent crime. Investing in education, social support, the built environment and

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,

Madison K. Rivard, MPH, NREMT

From: Emily Johnson Peterson <emilyj12@gmail.com>
Sent: Friday, July 17, 2020 12:16 PM
To: Testimony HWM Judiciary (HOU)
Subject: Testimony opposing S.2820

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.

Emily Peterson
67 Coachman Ln
West Barnstable, MA 02668

From: Galina Nizhnikov <teshena40@gmail.com>
Sent: Friday, July 17, 2020 12:15 PM
To: Testimony HWM Judiciary (HOU)
Subject: qualified immunity

keep qualified immunity for MA police officers intact.

From: Andrew Mason <andy40169@yahoo.com>
Sent: Friday, July 17, 2020 12:16 PM
To: Testimony HWM Judiciary (HOU)
Subject: S.2820 Concerns

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.

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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,

Andrew Mason

47 Fair Acres Drive, Hanover MA

From: patti donovan <donovanpatti@hotmail.com>

Sent: Friday, July 17, 2020 12:15 PM

To: Testimony HWM Judiciary (HOU)

Subject: Fw: Opposition to Parts of Bill S.2820

Testimony.HWMJudiciary@mahouse.gov

Susan.Gifford@mahouse.gov <mailto:Susan.Gifford@mahouse.gov>

Good Evening,

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:

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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,

Patricia Donovan

32 Longwood Ave. Onset, East Wareham, MA

781-254-9747

From: Paul Shoaf Kozak <pkozak04@jcu.edu>
Sent: Friday, July 17, 2020 12:12 PM
To: Testimony HWM Judiciary (HOU); Madaro, Adrian - Rep. (HOU); Gingras, Steven (HOU); Rivas, Gloribel (HOU)
Subject: S.2800

Hello,

I am writing in support of the Reform-Shift-Build Act (S.2800). I am an East Boston resident who has serious concerns with the current state of policing, especially considering the negative consequences of qualified immunity such as continued use of excessive force, primarily used on people of color, and a rise in distrust of police due to these un-checked actions.

Please take immediate action to address abuse of power by law enforcement.

Your concerned constituent,

Paul Shoaf Kozak
313 East Eagle St.
Boston, MA 02128
From: Kelsey Schroder <kgmcniel@gmail.com>
Sent: Friday, July 17, 2020 12:16 PM
To: Testimony HWM Judiciary (HOU)
Subject: support for S.2820 An Act to Reform Police Standards

I strongly support many provisions of the Senate bill and it is imperative that the House include these provisions in their version of the bill:
- The same limits to qualified immunity that the Senate included. This is vitally important to protect the constitutional rights of Massachusetts residents.

- Amendment 80, which gives superintendents and school committees the ability to authorize a school resource officer, rather than the current unfunded mandate for every district to have SROs. Districts should have local control over their own budgets and policies.
- Amendment 108, which prevents schools from sharing personal information about students into local, state, and federal databases.
- Amendment 65, which bans tear gas, a chemical weapon banned in warfare.

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Kelsey Schroder
Medford, MA
From: Katie Brogna <ktbrogna@gmail.com>
Sent: Friday, July 17, 2020 12:09 PM
To: Testimony HWM Judiciary (HOU)
Subject: Qualified immunity

Dear House of Representatives,

My name is Katie Chambers and I live at 54 Plymouth Road, Wakefield, MA. As your constituent, I write to you today to express my staunch opposition to S.2820, 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.2820 so as to treat the men and women in law enforcement with the respect and dignity they deserve.

Sincerely,

Katie Chambers

Sent from my iPhoneFrom: Lou <louehernandez@yahoo.com>
Sent: Friday, July 17, 2020 12:05 PM
To: Testimony HWM Judiciary (HOU)
Subject: S.2820

July 16, 2020

Dear Chair Michlewitz and Chair Cronin,

My name is Lou Hernandez and I live at 61 Sterling Place in West Boylston <x-apple-data-detectors://1> . I work at Mci-Concord and am a Correction Officer Il. I write to express my opposition to Senate Bill 2820. This legislation is detrimental to police and correction 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 on the very men and women who serve the public.
???????????????? ????????????????: 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 statutory 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.
???????? ???????? ???????????? ??????????: 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 would without a doubt rise.
???????????????? ????????????????????: 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,

Lou Hernandez

Sent from my iPhone
From: David Kendall <davidpkendall@gmail.com>
Sent: Friday, July 17, 2020 12:01 PM
To: Testimony HWM Judiciary (HOU)
Subject: S.2800

Good morning,

I'm writing to express support of S.2800, and specifically HD.5128 (an act relative to saving black lives) and HB.3277 (and act to secure civil rights, which would end qualified immunity). These are all things that should just be done, both for black lives, and for everybody else as well. Our police need to be re-imagined. We need to take a deep breath and look at where we are and how we got here. Do we really need to be this violent all the time? Do we want to be standing on this cliff, where the next step is into the abyss of a police/security state? I say no. Pass these measures.

Thank you,
David Kendall
16 Orchard HL,
Harvard, MA 01451

From: nanram <nanram@beld.net>
Sent: Friday, July 17, 2020 12:01 PM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives:

I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a commission to study and make recommendations regarding policing with a lopsided membership.

Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement

authority or GANG MEMBERSHIP.

To think that school authorities would be prohibited from telling the police that a student might be a member of MS-13 or any other dangerous gang is extremely dangerous. Section 49 should be eliminated.% 0A SB 2820 endangers our police by dramatically watering down "qualified immunity" in Section 10. This provision should be eliminated.

Section 52 should also be eliminated as it hinders an officer's ability to protect our roadways as well as him- or herself by not allowing them to ask someone who they have stopped about their immigration or citizenship status.

Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers.

I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representa tion.

Sincerely,
From: Marques Crosby <marques.crosby@gmail.com>
Sent: Friday, July 17, 2020 12:00 PM
To: Testimony HWM Judiciary (HOU)
Subject: Pass SB.2800, Reform, Shift, Build Act

Dear Chairman Aaron Michlewitz & Co-chair Rep. Claire Cronin:
My name is Marques Crosby. I am a resident of Medway and a member of Medway Marches. I am writing this virtual testimony to urge you to pass SB.2800 the Reform, Shift, Build Act in its entirety. It is the minimum and the bill must leave the legislature in its entirety.
I support this bill because I am tired of seeing excessive force being used, black lives being lost, and no accountability or training being given. This bill bans chokeholds, promotes de-escalation tactics, certifies police officers, prohibits the use of facial recognition, limits qualified immunity for police, and redirects money from policing to community investment. I urge you to ensure that all aspects of this bill are intact. We are in a historical moment and this bill ensures that we in Massachusetts meet the demand of this movement.
Thank you for your consideration of your request to give SB.2800 a favorable report.
Sincerely,
Marques Crosby
5 Virginia Rd, Medway, MA 02053

--

Marques A. Crosby
860.681.8260
marques.crosby@gmail.com
www.marquescrosby.com <https://urldefense.proofpoint.com/v2/url?u=http-3A__www.marquescrosby.com&d=DwMFaQ&c=lDF7oMaPKXpkYvev9V-fVahWL0QWnGCCAfCDz1Bns_w&r=uoevGInjCfTlguYncQubxpi5R6db_gq1YmKr0SCk2EnIiuk

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From: Cassie Catherine Q <cass-q@msn.com>
Sent: Friday, July 17, 2020 12:00 PM
To: Testimony HWM Judiciary (HOU)
Subject: Pieces to add to community testimony

My name is Cassie Quinlan, and I like to add comments to debate on the issues raised in the Senate bill S.2800

I apologise for rough nature of these remarks, I struggle to select and explain the key pieces that I know so well.

I know the topic from my soul, so many aspects come from my own personal experiences, as a solo immigrant, staying solo, but working, living and learning in different worlds: right in the Boston area.

I listened to much of the Senate debate, and yet note that much needs addition to the reforms and expectation of a separate bureau to evaluate police. I can contribute useful insight in 3 major aspects:

1. De-Escalation - If you want to learn skills in de-escalation, don't ask a big man with a gun who did not need them. Ask a small woman who traveled solo yet was able to learn to take charge in diverse situations, who learned them to survive. How to enter, engage, notice on site resources and communication, as well as community and other human services input, to manage risks with expectations of least harm to community members.
2. Completing Assignments: Unlike other human service agencies, Police role is to get the job done - achieve calm before leaving the scene. Ask someone in healthcare who was required to persuade, not medicate or strongarm - disruptive clients to comply with next step procedures - this focus, of cooperatively moving people or individuals to next step in defined process - is part of requirements needed to handle a task filled with resistance, belligerence, fear, etc. During protest demonstrations on Sunday, Police forces did a brilliant job, working with local helpers, holding a low profile, yet stepping up, then stepping back: in formation, they addressed emerging risk areas, then stepped back again, into the background. Those tactics were effective, and the protester guides helped on the other end, to limit incidents against the police. What police did wrong: they had No - End Plan. Wrapping up an engagement is a task on its own and as we saw, makes all the difference in how the whole event is later remembered on the media - judged by disruptions allowed to grow, after the day's protest was almost over.

3. Cultural Training - Implicit Bias training is limited from the start by its name: containing a polite liberal education terminology that is not realistic to officers working on streets in the real world: for many in the USA and police force, bias is not "implicit" - it is open, in their own communities, seen as normal - and explicit. Meaningful discussion is hampered without training for many white policemen, older, or younger, Irish or Polish descent, or other - to understand, come to terms with, get to know, and work with African American culture and other Black

cultures. This is not an easy task in a larger culture where again, there is a liberal bias about even mentioning culture - but meaning and details are lost and irrelevant in generalizations. Tom Kochman is one person who wrote about different styles of communication in Black and White. Movement, voice, history, expectations - a culture clash emerges when Catholic trained police officers, who are trained in a culture that relies on respect shown by calm and quiet - meet up with a culture that encourages all persons present to speak up and exchange information.

I am an individually trained throughout my life, to learn from, be rescued by, be inspired by, cultures other than my own. And as a Canadian resident immigrant living 50+ years in the USA, I navigated various worlds alone, starting in business management, but then finding more meaning and effectiveness in the work I did as a volunteer, in mental hospitals in the evenings. When I looked to change jobs by working entry level - I stumbled on Therapeutic Communities - drug free residential programs known around the world for effective work with recovering addicts. I participated in this program, started and run by ex prisoners, who knew they needed to change their lifestyles, if they were going to exit from and survive the drug life.

After a year in that program, I chose a new career, School Bus driving, which led me to work directly with teens, and in Boston's Black Neighborhoods as a school bus driver, during Boston Desegregation. Finding myself in the middle of a whole culture previously invisible to me, but with amazing talents for informal inclusion and self organizing - I kept learning directly from people and experiences in trainings in this culture - while also returning to graduate school, to study Intercultural Relations - a study of world and of cultural processes - which helped bring the various pieces together into a whole - which we miss so much, by parceling out training to be given by separate experts - while the Police - in order to be effective as Caring intervention people - need to bring with them as human beings: the whole. They can benefit from bringing or summoning Peace Officers with them, but the Police themselves need to be peaceful. Managing crowds works best when guides can actually know and like the people they lead.

My learning path was uniquely influenced by my offer to take full responsibility for my youngest brother, whose disabilities of Brain Injury made it very difficult for him to transition from care at home - to learning to survive, avoid risk, de-escalate, learn to learn - from others in any adult world. Because he is bigger than I, I had to strategize to figure out how to keep helping him, even after I learned that he was often not able to de-escalate quickly, and he is much bigger and heavier than I. I learned over time, from my own experimentation (only to meet him in public or on the phone for years) - learned what specific things he was afraid that he could not do, and I helped him start, learn skills that he could do if taught slowly (like how to ride the T) -and I also made sure to bring him to professional programs organized for disabled individuals. It was there that I learned that to them, my effort was irrelevant, and that their staff changed repeatedly- so they made countless mistakes in diagnosing him, always starting him back from the beginning and relying only on his choices - which he did not now how to make, since his experience was so limited.

Decades of working through the glitches, to help my brother use professional services, while I trained him how to avoid disruptive episodes and seizures - in community settings. This whole experience taught me that seeing interventions through to the end, is what makes the difference. Incomplete interventions just leave a reputation for failure, so that medical people intervene.

Interface with medical systems was my ongoing professional work - but I chose to work in Direct Care, with elders in their homes. Trained by my experiences with my brother, to find the success by follow through to the end of any intervention, hold on until next steps are clear, set up, tried out, and in place, don't just excuse failure by writing "patient was non-compliant".

My informal roles have led me to hold a working class distance from professional identity: for professionalism is not life. It needs to be supplemented by the wisdoms of working class people - African American special talents, Immigrant talents, and Irish and different white group talents - named, recognized, included - even alongside of an 80% focus on professional structures that endure. Until now, our larger culture, because of distances and because of the tendency to not name cultures - has been using an economic or political lens only. Thus our larger system persists,with its major division between working class people and college educated ones. The only description we are allowed talk about is the one that says that it is either or, that education is the "advanced" state, or there are working class alternatives.

I think both approaches to live are essential, and with a formula of maybe 75-80% professional - with working class leaders alongside - a population has a working formula, to include transition planning, cross class wisdom sharing, cross cultural and cross race explicit wisdom sharing and conversation as well.
I live in Concord MA at this time, so glad about these important conversations brought to us by the hard working policemen, left far too long with the whole task of policing a society - where people have not learned to talk with each other about cultural differences plain to see. Society and work training keeps focusing where the money is, in workplaces, but it is the country which does not know how to converse, and the current belligerence is the result of a country where we have emphasized free speech, but nobody sees the community value of listening, when every issue is only seen as political.

Cassie Quinlan (978)430-5780 cass-q@msn.com

From: Paul Birri <pebirri1@yahoo.com>
Sent: Friday, July 17, 2020 11:57 AM
To: Testimony HWM Judiciary (HOU)
Subject: Police Reform

July 17, 2020

Dear Chair Michlewitz and Chair Cronin,

My name is Paul Birri and I live in Shrewsbury, MA. I am a Correction Officer at the Souza Baranowski Correction Center. As a constituent, I am writing to express my opposition to Senate Bill 2820. This legislation is detrimental to police and correction officers, who are committed to the safety of the people of the Commonwealth. In 2019 the Criminal Justice System went through reform. That reform took several years to develop. The haste in which this bill was passed is disconcerting. Please allow me the opportunity to explain how this bill lacks any consideration for the very men and women who serve the public.

Qualified Immunity: Qualified immunity doesn't protect officers who violate the law or an individual's civil rights. Qualified Immunity protects officers who did not clearly violate statutory policy or constitutional rights. The erasure of this would open the flood gates for frivolous lawsuits making it necessary for officers to acquire additional insurance and jamming the justice system. This will cost the Commonwealth millions of dollars to process such frivolous lawsuits.

Less than Lethal Tools: These tools were developed in an effort to minimize injuries to subjects and Officers alike. They also create an option other than deadly force. The removal of an officer's ability to utilize pepper spray, impact devices and K9 would leave no other option than to jump from, verbal commands to physical force tactics and/or use of firearms. De-escalation tactics are trained and utilized overwhelmingly in the vast majority of law enforcement and Correction Officer encounters, but if these tools are removed, the amount of injuries and deaths would undoubtedly rise.

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

Please stop and think about this knee-jerk reaction 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 improvement, 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. Also to please consider the Correction Officer alone in a cell block, locked in with nearly one hundred inmates, not knowing when the next violent assault may occur. I'm asking for your

support in ensuring that whatever reform is passed, that it be done responsibly. Thank you for your time.

Sincerely,

Paul Birri

From: Samantha Lord <samantha.f.lord@gmail.com>
Sent: Friday, July 17, 2020 11:56 AM
To: Testimony HWM Judiciary (HOU)
Subject: S.2800

To Whom it May Concern:

I object to Section 24, 10A. In order to have more competent police officers who make the right decisions in difficult situations, one would want to attract the most intellectual candidates. Reading the laws set forth in this bill, it appears that the cadets would have to meet the same academic requirements as an academy provides, while circumventing any stress conditioning. If this is true, you will end up with officers less likely to make the right decisions under stress. If the goal of this bill is to create a police force that responds to pressure rationally, using de-escalation techniques, you will not get this by lessening training or bypassing stress conditioning. If you want qualified and intelligent police, what you should be requiring is a college degree and a difficult academy.

SECTION 64 (e). Body cameras should be made available to police officers as soon as possible. With the implementation of any of the laws in Bill S. 2820, body cameras should be made available to those requesting them for our citizens' and officers' personal safety and as assurance of lawfulness and truth. 2022 is a long time to wait.

Chapter 147A, Section 2 (e). In recent memory, there have been numerous instances where a vehicle was used as the sole weapon of attack on people, both nationally and globally. "Use of the vehicle itself" should constitute imminent harm. That line should be stricken from the bill.

I object to Section 223 (d) as the document does not make clear if this "searchable database" will include the officer's name (as opposed to 223 (e) which states it will "identify each officer by a confidential and anonymous number"). As you should be aware, in the small towns in which many MA residents live, everyone already knows where the police officers and Troopers live. If you are to include names, it will not matter whether you include an address or not, for the officer's address will be known. In the current, tumultuous climate, this information could certainly be used for harassment purposes, leaving family members vulnerable.

Thank you for your time and consideration.

Samantha Lord
413-539-7690
From: Capobianco, Valentino (SEN) <Valentino.Capobianco@masenate.gov>
Sent: Friday, July 17, 2020 11:57 AM
To: Amato, Matthew (SEN); Testimony HWM Judiciary (HOU)
Subject: Re: S2800 Testimony

The format looks good on my end.

Tino

Get Outlook for iOS <https://urldefense.proofpoint.com/v2/url?u=https-3A__aka.ms_o0ukef&d=DwMFAg&c=lDF7oMaPKXpkYvev9V-fVahWL0QWnGCCAfCDz1Bns_w&r=uoevGInjCfTlguYncQubxpi5R6db_gq1YmKr0SCk2EnIiuk13zIs16rchf_GkGDD&m=roaq1GD1DpePT5a1l8DhZ85Rf0P29EdCsg1Gup5JtNg&s=IZpVUHGN_xnb5F5HmY-3-ZYPuPvXJUsMYSS-5iHMGoY&e=>

From: Amato, Matthew (SEN) <Matthew.Amato@masenate.gov>
Sent: Friday, July 17, 2020 11:53:36 AM
To: Testimony HWM Judiciary (HOU) <Testimony.HWMJudiciary@mahouse.gov>
Cc: Capobianco, Valentino (SEN) <Valentino.Capobianco@masenate.gov>
Subject: S2800 Testimony

Good Afternoon,

I hope this email finds you well!

Here is Senator Feeney's testimony for S2800.

Best,

Matthew Amato
Director of Budget and Policy
Office of State Senator Paul R. Feeney
(Office) 617-722-1222 Ext. 1237
(Cell) 781-521-0622
From: Haley Roth <har965@mail.harvard.edu>
Sent: Friday, July 17, 2020 11:52 AM
To: Testimony HWM Judiciary (HOU)
Subject: Pass SB.2800, Reform, Shift, Build Act

Dear Chairman Aaron Michlewitz & Co-chair Rep. Claire Cronin:

My name is Haley Roth. I am a resident of Cambridge, MA and a member of March like a Mother: for Black Lives. I am writing this virtual testimony to urge you to pass SB.2800 the Reform, Shift, Build Act in its entirety. It is the minimum and the bill must leave the legislature in its entirety.

I am distressed by the inequitable treatment and measures taken by police toward people of color, Black people, those who suffer from mental

illness, and am enraged that the state has not supplied proper non-violent trainings.

This bill bans chokeholds, promotes de-escalation tactics, certifies police officers, prohibits the use of facial recognition, limits qualified immunity for police, and redirects money from policing to community investment.
I urge you to ensure that all aspects of this bill are intact. We are in a historical moment and this bill ensures that we in Massachusetts meet the demand of this movement.

Thank you for your consideration of your request to give SB.2800 a favorable report.

Sincerely,

Haley Roth

42 Sargent Street,

Cambridge, MA 02140

From: Jack Taylor <treadwell22@aol.com>
Sent: Friday, July 17, 2020 11:52 AM
To: Testimony HWM Judiciary (HOU)
Subject: S2820

?
? 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,

John Taylor

40 Elmwood Dr

Taunton

Sent from my iPhone

From: Emily Romm <eromm55@gmail.com>
Sent: Friday, July 17, 2020 11:50 AM
To: Testimony HWM Judiciary (HOU)
Subject: 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 representatives,
Please vote NO on the question of reducing qualified immunity for police. The police need confidence to act quickly in dangerous circumstances while they risk their own lives protecting public safety.
Please vote NO!
Emily Romm
617-784-1958

From: nuahsd@charter.net
Sent: Friday, July 17, 2020 11:49 AM
To: Testimony HWM Judiciary (HOU)
Subject: S.2880

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,
Shaun Cole
14 Valley View Dr. Hampden, MA

From: mcb74eo2@comcast.net
Sent: Friday, July 17, 2020 11:48 AM
To: Testimony HWM Judiciary (HOU)
Subject: Reject Senate Policing bill SB 2820

Dear Members of the Massachusetts House of Representatives: I am writing to ask you to reject the Policing Bill, SB 2820. It endangers public safety, removes important protections for police, and creates a commission to study and make recommendations regarding policing with a lopsided membership. Section 49 alters our education laws to prohibit school officials from reporting immigration or citizenship status to any law enforcement authority or GANG MEMBERSHIP. To think that school authorities would be prohibited from telling the police that a student might be a member of MS-13 or any other dangerous gang is extremely dangerous. Section 49 should be eliminated. SB 2820 endangers our police by dramatically watering down "qualified immunity" in Section 10. This provision should be eliminated. Section 52 should also be eliminated as it hinders an officer's ability to protect our roadways as well as him- or herself by not allowing them to ask someone who they have stopped about their immigration or citizenship status. Section 63 creates a fifteen-member commission to make recommendations on policing. But, only 3 of the 15 are associated with policing. It should have more equal representation of law enforcement officers. I oppose SB 2820, and at a minimum, it should specifically eliminate any provisions similar to sections 10, 49, 52, and amend Section 63 to have more police representation. Sincerely,
From: David Janvier <janvier1980@yahoo.com>
Sent: Friday, July 17, 2020 11:46 AM
To: Testimony HWM Judiciary (HOU)
Subject: Juvenile Justice Data, Raise the Age, and Expungement

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

Thank you for your commitment to racial justice and to the bright futures of young people in our

Commonwealth.

As a resident of the commonwealth, I urge you to support Juvenile Justice Data, Raise the Age, and Expungement.

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

Thank you for defending and protecting the students of Massachusetts. I look forward to hearing back from you about how you voted on this bill.

Best,

David

CONCORD POLICE DEPARTMENT

219 WALDEN STREET
P.O. BOX 519
CONCORD, MASSACHUSETTS 01742
TEL: (978) 318-3400 • FAX: (978) 369-8420
EMAIL: joconnor@concordma.gov

JOSEPH F. O'CONNOR
CHIEF OF POLICE

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.

My name is Joseph F. O'Connor and I am the Chief of Police for the Town of Concord. I joined the Concord Police Department in June of 2014 after having served on the MBTA Transit Police Department from 1990-2014. I had previously served as a police officer for the towns of Dennis and Winchester beginning my career in 1986. During my time at the Transit Police, I rose through the ranks from Police Officer to Superintendent-in-Chief.

I hold a master's degree in criminal justice from Boston University, and a bachelor's degree in criminal justice from Curry College. I am also a graduate of the FBI National Academy and the Police Executive Research Forum's Senior Management Institute for Police.

You are receiving information from various stakeholders who feel the need for change in our Commonwealth. The policing profession has been painted with a broad brush and as you are aware policing strategies and training vary throughout the country. Having spent the majority of my career working within Boston as a member of the MBTA Transit Police, I gained an understanding of many of the issues currently being debated. Here in Massachusetts, I am proud to personally observe leadership not only from my fellow Chiefs of Police but also Officers at all ranks as well as our non-sworn-personnel and residents who are committed to community policing that reflects the best of our profession.

The bill sent you by the Senate clearly was rushed, excluded testimony, and passed in the dark of night close to sunrise. I encourage under your leadership to have an open and inclusive process including citizens, police professionals, academics and other key stakeholders. The issues surrounding race and justice go far beyond the police officers in this Commonwealth and the narrow focus on our profession will not provide the results which our communities deserve. I have already begun to hear from some Officers who feel they are being scapegoated and in some cases beginning to think about retirement or changing careers since they feel their family's financial stability will be put at risk by the bill in its current form.

Please know that I concur with the Massachusetts Chiefs of Police Association's thoughts which are as follows:

"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. . 12, § 11H. Most notably, Section 10 ofthe Act would change that, and permit a person to file suit against an individual, acting undercolor 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 SCt.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."

In closing, I know the days ahead of you will be challenging, I implore you to take the time to accumulate facts and utilize them during your deliberations. I know that the Concord Police Department and those throughout the Commonwealth will continue to deliver exceptional service to our communities. Please feel free to contact me if I can be of any assistance.

Respectfully Submitted,

Joseph F. O'Connor

Chief of Police

cc. Representative Tami Gouveia <tami@tamigouveia.com>

THOMAS M. MCENANEY
CHIEF OF POLICE

OFFICE: (978) 692-2161
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Town of Westford
POLICE DEPARTMENT
53 Main Street
Westford, MA 01886

MEMBER
INTERNATIONAL ASSOC.
OF CHIEFS OF POLICE

N.E. ASSOCIATION OF
CHIEFS OF POLICE

MASS. CHIEFS OF
POLICE ASSOCIATION

July 17, 2020

Via email 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*".

First, let me start by saying, thank you for allowing this testimony to be submitted. The Senate missed an opportunity to draft a bill that had input from the public. I appreciate this opportunity to submit my testimony.

I have been the Chief of Police in the Town of Westford for the last twelve years. Our department is an accredited agency and was the 18th accredited Police Department in the Commonwealth to achieve such a goal.

For the purposes of brevity, I would yield to Chief Brian Kyes, President of the Major City Chiefs, and Chief Jeff Farnworth, President of the Mass Chiefs of Police, who have submitted testimony that captures my concerns and reflects my position with SB28000 as written.

In addition, with respect to Qualified Immunity, the Senate, in their haste to push out a bill and not take testimony, missed a valuable opportunity to receive input from those who are effected. The changes as proposed to Qualified Immunity in SB2800 will have detrimental effects on my department's ability to retain exceptionally trained, educated and experienced Police Officers. I respectfully submit that Qualified Immunity is essential to ALL public employees and it should not be removed.

Thank you for attention in this matter, and for reaching out to the public for input.

Respectfully Submitted,

Thomas M. McEnaney
Chief of Police

NAACP
NEW ENGLAND AREA CONFERENCE

Post Office Box 320128 West Roxbury, MA 02132

(617) 325-7580

July 17, 2020

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

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

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

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

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

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

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

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

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

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

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

Examples

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

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

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

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

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

Submitted by

Juan M. Cofield

Juan M. Cofield
President

07/17/2020

Testimony for House review of S.2820

Testimony.HWMJudiciary@mahouse.gov

As a police officer, this bill is weighing heavily on my mind. Please read this with an open mind and an open heart.

It is evident that the goal of this bill is to improve the lives of all in the Commonwealth, particularly communities of color and black lives, all of which is reasonable, proper, and overdue. The means to the end are not reasonable and will not accomplish the stated goals. Some particulars of this bill, as well as the haste in which it is being pushed through, raise concerns for law enforcement and for the population as a whole. If this bill passes as it stands, there will unquestionably be unintended consequences; do not let these be overlooked.

I am a former Corrrections Officer who served for almost four years during which time I worked as a Field Training Officer and on the Sheriff's Response Team. I have recently joined the Norwood Police Department as a Patrolman, a move that has taken many years of hard work to achieve. I am also a former EMT. Although I am not a decades-seasoned veteran, the following is not offered to you without thoughtful law enforcement experience. It also comes with the best in mind for the Commonwealth as a whole, not only for law enforcement officers and departments.

Separately, having professional standards and licensing (like many other professions) is not unreasonable and is, without opposition, likely inevitable. What is of concern is putting people without law enforcement experience in a position to make determinations of what is right and what is wrong for an officer to do without understanding the positions law enforcement officers are put in every day. Plumbers don't judge medical professionals: supervision ought to come from those who have worked and understand the job roles. That is exactly how supervisors and management works, that's how an overseeing committee ought to operate.

Having time to think, debate, and reason are not luxuries we always have. We make split second decisions for the best and safest outcome based on our training, experience, and pure good will; the same good will that we have when we strive to get the job in the first place.

As a former corrections officer, I can say many police officers do not even understand what life and operation of a correctional facility entails. And I don't mean from a security/procedure standpoint. I'm talking about the things that happen behind the walls, the things that most of society does not see, the things that normal, ordinary citizens don't have to even imagine, less deal with every day. Life behind the walls is different (to put it lightly). The criminals and detainees who correctional professionals have to endure day in and day out is under-appreciated and under-valued. Think about this: 1 or 2 officers working in a unit with up to 120 criminals or detainees. Try to imagine yourself in that position. The constant pending physical threat, the psychological manipulation officers endure are hidden from the outside world. Yet, someone on a committee without any experience is going to make judgements of how an officer's job is done?

Now take those same people. On the street, in the real world, with real weapons, real substance abuse issues, and real mental health issues. Many of whom do not have the help they need, yet we try to help many of them every day. Outside a secure correctional facility, without metal detectors, without searches conducted by policy for every individual entering. There is no security on the street. We, law

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JACK PILECKI
Chief of Police

July 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.

I am sure you have heard from a great many other Chiefs of Police at this point. Needless to say it is a very difficult time, not only for police officers, but for the members of our communities that we serve.

I could go over each particular point of the bill that are concerning not only to me, but to the Massachusetts Chiefs of Police Association. However, I am confident these concerns, which I wholeheartedly share, have already been brought to your attention. I do not want to waste your time going over these issues once again.

Instead, I would prefer to simply ask you to examine the bill from the perspective of police officers. If we are to be subject to frivolous and unfounded lawsuits, why would anyone with any common sense want to join this noble profession? Why would any current police officer want to continue to provide the services and perform the duties he/she are doing right now?

For most police officers the profession is a "calling". We dream as children of putting on the uniform to "protect and serve" our communities. When your badge is finally pinned on your uniform by your loved one after successfully completing a grueling police academy, the feeling is one of exhilaration and pride. Unfortunately, there are a few police officers who don't deserve to wear the badge and it's these officers who bring disgrace to this wonderful profession. Don't judge all of us by these shameful few.

Please don't dishonor the hard working people who labor so hard to do the right thing by adopting laws that will limit an officer's ability to provide such a valuable service to our communities. We agree with and support most of SB2820. We understand change is needed. But please bring about this needed change through a thoughtful and measured bill that doesn't discredit and alienate our dedicated police officers.

Sincerely,

Chief Jack Pilecki

Chief Jack Pilecki

July 16, 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,

I am writing to voice my strong support of the many provisions in S.2820 designed to increase police accountability. In particular, I am calling for 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.

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.

As a medical student in Boston, I witness the impact of police violence on our community's health every day. Communities already burdened with a multitude of health inequities must also grapple with the epidemic of police brutality and institutionalized racism. Therefore, I am calling on you to make a difference in protecting our community members and their health.

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.

Respectfully,
Joshua Grubbs

18R Shepherd St. Suite 100
Brighton, MA 02135

July 16, 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 the Allston Brighton Health Collaborative, I write in strong support of the many provisions in S.2820 designed to increase police accountability.
In particular, I urge 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.

The Allston Brighton Health Collaborative is a collaboration of organizations devoted to working together to promote and improve the health and wellbeing of the communities of Allston and Brighton. This includes working for all persons to feel safe and protected in our community.

Our Commonwealth must do our part to 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 all of our communities and residents.

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.

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,

Anna Leslie, MPH
Director

Town of Mansfield
Police Department
500A East Street, Mansfield, Massachusetts 02048

Police Chief
Ronald A. Sellon

Chair Claire Cronin, and Chair Aaron Michlewitz,

I want to begin by saying thank you for accepting testimony on behalf of this bill. My name is Ronald Sellon and I am the Police Chief for the Town of Mansfield, a distinction I have had for 7 years. I want to begin by saying I have vocally and forcefully condemned the killing of George Floyd and I have been a strong advocate for change for 20 years within the profession. Over the course of my career I have advocated for many changes in the paradigm of policing. Here in Mansfield, we take a team oriented approach to addressing quality of life and crime concerns in the community. This means that we approach each case on an individual basis and try to determine root cause with our Problem Oriented Policing team. As an example, in combatting the opioid epidemic, whenever there is an overdose the first goal is to provide medical assistance and treatment /rehab support because we know we cannot arrest ourselves out of such problems. To achieve this, we believe that empowering the families and friends with resources and support will provide a much better outcome of results than the traditional arrest-and-incarceration alternative. To do this, we team with organizations like Learn to Cope to provide family support, and the SAFE Coalition to provide an up-to-the-minute listing of open beds at rehabilitation facilities. Both of these are volunteer organizations and to assist them in funding we arranged support through our Rotary club, thus using the community to find solutions and build partnerships. While the national and state drop in overdoses was approximately 5%, Mansfield was at **28%** proving our approach worked better. I bring this up for a few reasons, first that I am not just saying "we are different and reform minded" but actually showing it. Secondly, it illustrates that any approach to reform must have an evidence-based quantifiable way to show it worked or didn't work. Lastly, the approach resulted in Mansfield being awarded the International Association of Chief of Police (IACP) Community Policing award for 2019. The IACP is the largest Police executive organization in the world representing 40,000 Police executives globally. Again, I don't say this to show off, but to point out that there are those of us who are reform minded and eager to make progress right here in Massachusetts, and the Senate ignored us, despite tangible proof that we have working models of police reforms that should be looked at and paid attention to across our state. We are not Minneapolis, or Ferguson and yet, the Senate treated us like we are.

When given an opportunity to sit on a committee for the IACP, I chose the Human and Civil Rights Committee. I did this so that I could tackle head on many of the issues that we are facing as a profession within our communities. As part of that committee, I was selected to be on the working group that redeveloped the Community Guide to Enhance the Response to Hate Crimes, where along with the Lawyers committee for Civil Rights as well as over 20 other advocacy organizations we developed the guide over multiple meetings. In this capacity I have had the privilege to work closely with organizations like them, as well as others such as the Anti-Defamation League, the ARC, and many others with the goal

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of strengthening civil rights response and support. As the sole Massachusetts Chief on the committee I think I could provide insight as we have developed white papers on a number of topics including: Ensuring Constitutional-based force policies, Consent decree analysis of the use of electronic control weapons, Use of force investigations, Citizen Complaint process, and Early intervention systems. Again, I was provided no opportunity to supply testimony to the Senate.

The Senate bill 2820 is a terminally flawed document that will do far more harm than it portends to correct, and I will attempt to be succinct in my approach as I known you have many other documents to address. The issue of qualified immunity is a complicated one that must be examined with legal scholars. As both a Police Chief, and an attorney who is admitted to practice in Boston Federal court, I can say that it is not something that can be casually dismissed (as the Senate is attempting to do) without significant financial ramifications. I would ask that Attorney Keston's rather well-written summary of the law and its impacts be reviewed as a critical piece of evidence. The Senate seeks to create a mechanism through the state courts that will cripple communities financially while providing little in the way of true reform that betters people's lives. To the contrary, it will cause a mass retreating from progressive policies and a defensive retrenched mindset will be solidified. This is to say nothing of the significant impact it will have on recruitment and retention of ***good*** employees which will suffer. In the end, the issue of qualified immunity can best be summarized in the statistic that under the current law, only approximately 4% of cases are dismissed at the federal level due to qualified immunity rulings by judges. Taking it away at the state level will create a larger problem than it attempts to solve. It is commonly being described as absolute immunity, a concept that Judges and District Attorneys have, which it is **not**.

Other concerning elements of the bill involve the banning of certain information sharing between the schools and police which I believe should be better left to the local communities. In Mansfield we have a strong relationship with our schools, and support their first goal of providing a safe and comfortable environment for the children there. All 3 of my children have attended or are currently attending the Mansfield Schools including one who has special needs. Understanding the special needs community, we have endeavored to reach out to them and crafted a special needs response that has as its goal to tailor a response to a particular child and family needs. To accomplish this we have worked closely with the Special Education Parent's Advisory Council and the School department. This relationship exposes us to a great amount of information. Information is the lifeblood of Community Policing, and restricting access to it for people who are tasked with helping is a dangerous practice.

The IACP issued a statement on the misguided approaches to Police Reform that the senate bill falls squarely into. It articulates that measures are being taken that will drive wedges between the communities and the police departments that serve them. Any proposed solutions should begin with the three-fold approach of: 1. whether this is the measure of success, 2. Is this what the community wants,

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and 3. What is the evidentiary basis to this point. Comprehensive Police reform is a topic I have spent an entire career trying to study and enact. Here in Mansfield, I have worked closely with advocacy organizations and social workers to provide real-time solutions to the quality of life and crime issues that our community members face. As part of our partnership with New Hope, they funded a position through a grant that provided a social worker who was dedicated to the area police departments as a resource for our domestic violence response, which is oriented towards support, and coordination of resources. When that grant ran out, we feared losing that position and immediate contact with that organization- one we leaned on regularly for assistance. When a civilian position became available in my department, we hired that social worker, allowing her to continue her work. Discussing it with Marcia Szymanski, the regional director we found this to be a solution that benefits not only our PD and New Hope (so we can continue that partnership), but also (and more importantly) our community members. Any Police reform act should include an expansion of grant opportunities to hire civilian staff in areas of specialization such as Domestic and family violence, opioid and other addiction, and mental health. As a society, we need officers to be readily available to respond, but access to advanced subject matter experts in the fields is also critical.

Partnerships, coupled with a community oriented mindset, and entrepreneur's heart to reimagine solutions will carry the day, not law suits and exclusion of information. Any law and Police reform act should have as its basic tenet the goal to engender team and coordination concepts, not create new fiefdoms and exclude. I recently was featured in Police Chief Magazines 2020 "Great Ideas" edition talking about some of these topics.

What is being discussed at its core is a fundamental reimagining of the business model of the 21st century Police department, and this has been my passion for over 20 years. I ask you to seize on this opportunity to provide a bill that builds off of the successes of the agencies as I have described here and doesn't use the opportunity to provide damaging rhetoric to an already uncivil national conversation. I hope to hear from you on this topic(s) I have discussed in the near and distant future.

Respectfully,

Ronald Sellon

Police Chief

Mansfield Police Department

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BOXBOROUGH POLICE DEPARTMENT

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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.

My primary concern is the speed at which this bill is moving and foregoing the usual debate or consideration. This bill is going to affect everybody that lives, works or visits Massachusetts, and it deserves careful, thoughtful, debate, and we don't have the ability to do a redo. So, I feel strongly that we need to get it right the first time.

I have faithfully served as a police officer in Massachusetts for 24 years and I am proud to say that we provide some of the most thoughtful and forward-thinking law enforcement that is often modeled throughout the country. Our advancement in the services we provide did not happen overnight. Massachusetts has some of brightest minds and top-notch educational institutions in the country and we are accustomed to collaborating on issues.

The Massachusetts Chiefs of Police association has identified several issues with Senate 2820 (attached). If these concerns are not carefully mitigated, this bill will have a permanent deep impact on every single soul in Massachusetts.

Sincerely,

Warren B. Ryder

Warren B. Ryder
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.

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

THE COMMONWEALTH OF MASSACHUSETTS
House of Representatives
24 Beacon Street
State House, Boston 02113 - 1054

LINDSAY N. SABADOSA
STATE REPRESENTATIVE
1ST HAMPSHIRE DISTRICT

Claire Cronin, Chair of the Judiciary
Room 136
24 Beacon Street
Boston, MA 02116-3803
July 14, 2020

Re: Policing Legislation

Dear Chair Cronin:

Thank you for taking on the enormous task of crafting legislation to respond to the national calls for action following the death of George Floyd, Breonna Taylor, and so many before them at the hands of our police. Our constituents have demanded that we act, not with half-measures, but with bold policy initiatives that will start to put an end to 400 years of wrongs in this country. I am proud to be part of the legislative body that is taking on this enormous task, and thank you for the tremendous work you are doing to bend the arc of justice.

It is critical that we follow the lead of our siblings of color as we proceed to do this work, and so I write to you today to ask that all four components of the Massachusetts Black and Latino Caucus' agenda be included in this omnibus bill, which includes 1) creating a special commission on peace officer standards and training, 2) developing an Office of Diversity and Equal opportunity, 3) establishing a commission on structural racism, and 4) setting clear statutory limits on police use of force, including fully banning chokeholds and other tactics that can have deadly consequences. Many of these points were already included in the Senate legislation, which I hope will be a starting point for the House so that we can have a fully conferenced bill to submit to the Governor before July 31.

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I would be remiss, however, after watching nearly seventeen hours of debate in the Senate if I did not underscore the importance of some of the pieces of the legislation that were most debated.

QUALIFIED IMMUNITY

While there is an extraordinary amount of misinformation on qualified immunity, this is a key component of any reform work and one that, I feel, we must address in this bill: the elimination of qualified immunity. Qualified immunity is not required by any constitution or statute. It is a purely judicial doctrine which was unavailable to police or other public officials under constitutional law until 1967 when it was established by the Warren Court in Pierson v. Ray. In 1974, the Court expanded the scope of qualified immunity in Scheur v. Rhodes, a case brought by the families of students killed at Kent State, when it ruled that qualified immunity would apply to all suits under Section 1983 (established by the Civil Rights Act of 1871, i.e. the Ku Klux Klan Act) not just to constitutional claims similar to common law claims that allowed for a good faith defense. This ruling allowed National Guard members who killed students during a protest to not be held liable for their actions.

However, in 1982, the Court deemed that any inquiry into an officer's good faith was irrelevant in Harlow v. Fitzgerald, using clearly established law as the metric for objective reasonableness of an official's conduct. This made qualified immunity available in all cases, to all defendants, unless the violation of rights was "clearly established." In 1985, the Court explained what this standard means in practice: qualified immunity provides "ample protection to all but the plainly incompetent or those who knowingly violate the law." These are problematic rulings that did little to protect civil rights, particularly when coupled with broad leniency for excessive use of force.

In Massachusetts, the SJC's narrow interpretation of the Massachusetts Civil Rights Act to limit civil rights violations to threats, intimidation, or coercion has led to behavior such as public strip searches from not being considered a civil rights violation by the Courts. Qualified immunity has, in effect, moved far from its intended purpose, which was to encourage police diligence and to protect police from reasonable mistakes. It has now eroded the protection of civil rights to only "clearly established" rights, requiring the dismissal of a case unless "every reasonable official would have understood that what he is doing" violates a clearly established right. To clarify, this means that suits are dismissed that arise from misconduct most non-police consider unacceptable based on a Qualified Immunity legal technicality that the immunized conduct failed to exactly replicate the facts of a prior appellate decision finding that such conduct violated the clearly established right. As we have seen in the mass protests across this country, people now feel that police are "above the law" and our Courts have supported that belief with narrow rulings. It is the Legislature's duty to address this.

While I appreciate that some have expressed concern that changing anything about qualified immunity would lead to economic hardship, none of the proposed legislation changes MGL Ch. 258, § 9 or Ch. 258, § 13. State and municipal employees are indemnified by employers "except an intentional violation of the civil rights of any person" (MGL, Ch. 258, § 13.). Despite claims to the contrary, no one's home is at risk due to damage awards due to homestead laws and the fact that the employer is found liable, not the employee. Additionally, our cities and towns,

through collective bargaining, provide liability insurance for our officers, generally up to $1 million, including the State Police. In fact, public servants who violate civil rights laws bear very little risk of financial consequences for bad behavior, underscoring the need for the four points mentioned above in addition to the elimination of qualified immunity.

The risk of inaction on the topic of qualified immunity is substantial. Qualified immunity is a clear way in which our judicial system perpetuates systemic racism by letting government actors off the hook for violating civil rights. The doctrine's practical purpose is to make it impossible for victims to have their day in court. Dismantling systemic racism requires reforming qualified immunity, and I hope that this will be an important component of any legislation the House takes up.

SCHOOL RESOURCE OFFICERS

As schools across the state try to grapple with how they move toward antiracist policies, one of the issues they grapple with is policing in schools. While we often see the image of an officer with a friendly looking dog in attempts to ease the public's mind about these programs, this is highly traumatic for children whose families are justice-involved or who have interacted with the Department of Children and Families. We know children need mental health and socio-emotional support as they return to school in the era of COVID-19. Instead, our state's ratio of students to counselors (304:1) fails to meet the nationally recommended ratio of 250:1.

Having an officer at a school means having arrests at schools. I have heard first-hand from constituents how race plays an enormous role in these interactions and how students are often arrested for school violations. The priority should be to remove police from schools entirely. The definition of a "school resource officer" (SRO) in M.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 the absence of this, school committees should be allowed to decide, by annual public vote, whether to assign police to schools. This solution is imperfect but in a state with strong local rule, we should allow communities, like my own, that do not want to have a SRO to opt-out. Additionally, superintendents should be required 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. Further, there should be no information-sharing by school staff and school police to the Boston Regional Intelligence Center and other gang databases. Provisions of this nature were included in S2800 by two clarifying amendments to support the principles of the underlying bill, and I hope that they will be included in the House bill as well to give our districts local control and provide much needed transparency.

BANNING TEAR GAS AND OTHER CHEMICAL AGENTS

While the Senate bill redrafted an amendment to ban teargas and the use of other chemical agents, I feel strongly that the House should instead fully ban them. It is unconscionable that although banned for warfare across the world, in the United States, arguments are made to use these agents against our own people. Especially at a moment of a global pandemic where their

use can exacerbate the transmission of disease, it is time to ban their use and to demand that our police rise to the occasion of using less dangerous methods of de-escalation. This ban should absolutely extend to our prisons and houses of correction, where the use of chemical agents is far too common.

PRISON USE OF FORCE

It is impossible to draft a bill that talks about racism and policing without going on to address the many issues with the DOC. I was part of the group of legislators who went to Souza-Baranowski Correctional Center in January when the prison was put on lockdown and swat teams roamed the halls. I interviewed incarcerated persons who had been abused, pepper sprayed, bit by dogs, and had rubber bullets shot at them. It became very clear that excessive use of force was not an anomaly at SBCC but often a planned reality.

Therefore, I would ask that the House bill include language that establishes clear limitations on the use of physical force by correctional officers. The commission established by S2800 should also collect and analyze data on the use of force against inmates, and the department of correction and sheriffs should provide the commission access to any and all reports written pursuant to 103 CMR 505:13 (1) and (2) or successor provisions. That commission should ascertain whether the information provided is uniform, standardized, and reasonably complete and, if not, should recommend policies to increase uniformity, standardization, and completeness. Additionally, incarcerated persons and their families should be able to have access to these videos upon request. I would support language that requires an inmate and the inmate's legally designated representative to have the right to obtain a copy of all records relating to any use of force incident involving the inmate including, but not limited to, written reports, investigations, video and audio recordings and photographs and to require that records relating to any use of force incident involving an inmate be a public record, establishing to what extent.

JUVENILE REINVESTMENT FUND

I was delighted to see the Justice Reinvestment Act Workforce Development Fund included in S2800 and in S2820. The Justice Reinvestment Act Workforce Development Fund would reinvest savings from criminal justice system reforms into evidence-based programs for job creation, training, and placement to create economic opportunity in communities where policing and incarceration are highest. The fund would be managed by a 13-person board of directors, who would vet and distribute grants to eligible workforce development programs. At least 6 of the 13 members of the board would represent the target beneficiaries, ensuring that our key stakeholders – people with these lived experiences – are at the decision-making table.

It would support communities most impacted by policing and mass incarceration in Massachusetts. Target beneficiaries include youth, emerging adults, veterans, victims of violence, people living in poverty, and people with significant barriers to employment; for example, adults without high school diplomas, individuals convicted of felonies, and people with disabilities. The fund formula takes the difference between the combined population of the DOC and HOCs in FY19 (2020) multiplied by the rate of total population growth for the Commonwealth since FY19, and the actual combined population of the DOC and HOCs in that

year. The secretary of EOHED would multiply said difference by the average marginal cost rate per inmate, which EOPSS would calculate annually based on the actual rates used by the DOC and HOCs for their budgets. The comptroller would transfer an amount equal to one half of the product of this calculation to the fund, but not more than $10 million and subject to appropriation annually

However, S2820 includes a $10 million cap on this fund that would not do enough for our communities. Without this limit on the reinvestment formula, the Justice Reinvestment Workforce Development Fund could invest upwards of $38.4 million in communities this year. In comparison, the proposed FY21 DOC budget is $674 million. To add a layer of nuance, in 2012, there were 11,723 prisoners in Massachusetts Department of Corrections and in 2019 it was 8,784, a 25% decline while incredibly the budget for the DOC went up 20% from $579,378,000 to $679,493,942 for FY 2019. This just speaks to the need to lift this cap.

TRANSITIONING AWAY FROM POLICE RESPONSE

Cities and towns across the country are starting to find ways to move away from a police response for calls that would instead benefit from a trained social worker. However, embedding social workers in the police departments has not shown to work and has led to social workers taking on a corrections mentality. Social workers are also not allowed to control situations and are subject to the direction of police if they are allowed to respond to calls. As such, I believe it is time the state moved to the Community Emergency Response Team.

Every city and town must have equitable access to a response team that is composed of on-call social workers that have the appropriate expertise in mental/behavioral health, and substance misuse. Communities may work together to provide these services based on their population and geography. Emergency dispatch services should immediately direct calls falling within the Mandatory List of Emergency Calls to the Community Emergency Response Teams. These calls shall include but are not limited to: family trouble, truancy, domestic disputes, elder abuse, child abuse, substance misuse and overdose, psychiatric/mental health problem, suicidal thoughts, noise complaints, wellness checks, loitering, squatting or trespassing, shoplifting, larceny under $250, disorderly conduct, disturbing the peace, receiving stolen property, minor driving offenses not including moving violations, breaking and entering into vacant or abandoned property, destruction of property, public intoxication, drunk and disorderly conduct, minor in possession of alcohol, drug possession, and drug possession with intent to distribute. The Community Emergency Response Teams are able to liaise with other relevant agencies including Domestic Violence Units, DCF, Elder Abuse, and other agencies at their discretion. These teams should operate under the Department of Public Health. Importantly, the Community Emergency Response Team should operate independently from and not fall under the authority of any police agency.

The Community Emergency Response Team should be composed of qualified social workers as defined as an individual with a Masters in Social Work or Social Welfare degree from a CSWE (Council of Social Work Education) accredited institution with expertise in mental health, behavioral health, substance misuse, crisis intervention, de-escalation techniques, antiracist practices, and implicit bias. The Community Emergency Response Team may also include other licensed clinicians and paraprofessionals.

A Commission should be formed to ensure the Community Emergency Response Teams have appropriate training. This Commission should be composed of the National Association of Social Workers MA Chapter, Cape Verdean Social Work Association, the Greater Boston Association of Black Social Workers, Latinx Social Workers Association, the Massachusetts Peer Support Network, Visioning BEAR Circle Intertribal Coalition, Families for Justice as Healing, Boston Users Union, Western Massachusetts Learning Community, NAMI, Jane Doe, MOAR, or their designee to establish best practices and a training protocol. The Commission should be chaired by the Commissioner of the Department of Public Health or her designee.

The National and Statewide Social Worker organizations should collaborate to conduct training or contract training to other agencies, as appropriate. The training must include training on mental health, behavioral health, substance misuse, crisis intervention, de-escalation techniques, antiracist practices, and implicit bias.

The state 911 commission and state 911 department should adhere to the Mandatory List of Emergency Calls and, in consultation with the Commission, establish policy and protocol for the appropriate direction of 911 calls to the Community Emergency Response Team. Emergency dispatchers should be trained to determine the appropriate response to incoming calls and determine when referrals should be made to the Community Emergency Response Team. Once a call is received, the Community Emergency Response Team should determine whether other emergency services, including police, are necessary for any call that falls within the Mandatory List of Emergency Calls. The Commission should establish best practices and a training protocol for dispatchers, and the National and Statewide Social Worker organizations should collaborate to conduct training or contract training to other agencies as appropriate. To facilitate this, each PSAP should be capable of transmitting a request for community emergency response, law enforcement, fire fighting, medical, ambulance or other emergency services to a Community Emergency Response Team or public or private safety department that provides the requested services.

The Community Emergency Response Teams should be paid for by block funding from total existing local police department budgets as well as an additional fee for all calls to which the team responds. The police departments will also be billed for all necessary follow-up calls as well as MassHealth, Medicaid or private insurance as applicable and appropriate. To ensure their service is cohesive across the state, all response teams should have access to a centralized database of records of all calls answered that could be in compliance with HIPAA. As such, this database should not be accessed by any law enforcement agency for any reason. Finally, the Community Emergency Response Teams should submit quarterly reports to cities and towns and DPH highlighting the number of calls and the category of calls. This will verify the efficacy of the program and allow funding to be properly distributed if the balance of calls tips towards the Community Emergency Response Teams and not the police.

As I understand this is a larger idea, one possible solution would be to include a pilot program for the Community Emergency Response Teams in the legislation, which would allow the state to work out all of the details of the program before moving to a full state-wide model.

UPDATING THE 911 COMMISSION

The 911 commission is currently made up predominantly of law enforcement personnel. This makes it difficult for training to include a recognition of calls that need a crisis response and not a police response. Updating and shifting the balance of the 911 Commission to include members from the National Association of Social Workers MA Chapter, Cape Verdean Social Work Association, the Greater Boston Association of Black Social Workers, Latinx Social Workers Association, the Massachusetts Peer Support Network, Visioning BEAR Circle Intertribal Coalition, Families for Justice as Healing, Boston Users Union, Western Massachusetts Learning Community, NAMI, Jane Doe, and MOAR would be an important step to creating long-lasting institutional change.

DECARCERATION

The COVID-19 pandemic poses a grave and immediate threat to incarcerated people, who are housed in close quarters with no ability to engage in social distancing. Incarcerated people are particularly vulnerable to the impacts of COVID-19, as many are elderly and have medical conditions that put them at serious risk. The environment in prisons and jails is not conducive to promoting health and welfare during this pandemic and immediate measures must be taken to decarcerate in order to save lives and reduce the spread of COVID-19. An Act regarding decarceration and COVID-19, which I filed back in March, appropriately balances public safety needs against the imminent public health threat of COVID-19 and takes immediate and necessary steps to release people from incarceration so that they can care for themselves and their communities.

As there are new outbreaks and a threat of resurgence, moving at least some components of this bill are critical. Particularly, parole reform is critical and we cannot speak of policing reform without acknowledging the years and years of policy that lead to mass incarceration. If any piece were to move forward with this bill, I would ask that we do something for those who are eligible for either parole or medical parole and suffer from dementia. Because of their illness, they are unable to request a proxy to file on their behalf and the DOC does not submit petitions. The DOC does not share information on the number of incarcerated individuals with dementia, rightly, because of HIPPA but at the same time these people are caught in a dystopian nightmare of being too ill to help themselves and being stuck in prison because of that inability to act. I would ask that for incarcerated individuals with documented cases of dementia, the DOC be required to inform counsel and, if the person does not have counsel, request an attorney be appointed through CPCS or Prisoners' Legal Services so that a guardian may be appointed on grounds that the incarcerated person is unable to make decisions on his/her own. This would avoid any individual who is parole eligible from spending additional years in prison or a house of correction simply because of a debilitating illness that prevents them from taking action on their own.

FACIAL RECOGNITION

Finally, I would ask that this legislation include an unequivocal ban on the use of dangerous facial recognition technology. The dangers of face surveillance and systemic racism in policing are clear and I represent a district that has already banned its use. I hope that the final legislation will do so as well.

Thank you very much for your thoughtful consideration of all of these points. This legislation is incredibly important and I am grateful for the opportunity for this hearing and the ability to submit testimony. I am, as always, available for any and all questions, and I look forward to working together to pass a strong bill that will protect the most vulnerable residents of the Commonwealth.

Kindly,

Lindsay N. Sabadosa
State Representative, 1st Hampshire

c/c Aaron Michlewitz, Chair of House Ways and Means
Robert DeLeo, Speaker of the House

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July 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.

First let me thank you for your service and allowing me to submit this testimony. As a member of the Law Enforcement Community in Massachusetts for more than twenty years, I am letting you know that I stand against S2820 as re-written and presented to the House. There are several impacts of SB2800 / SB 2820 that will be completely detrimental to Law Enforcement.

I support uniform training standards and policies for police although this version of the bill as written will undermine Public Safety and limit the ability of Police officers to do their jobs. The Senate's push to get this through without a public hearing or input is unprofessional and disheartening at the least.

Massachusetts police officers are some of the most highly educated and professionally trained members of law enforcement in the country. I agree that there is more work that needs to be

done when it comes to creating standardized police training nationally but this Bill as presented is not the way get that started. The board created in this bill is unlike any of the other regulatory boards in the state. As written, there is no feasible way the board can provide regulatory due process. The proposed members lack sufficient experience in law enforcement and should not be creating policies and standards relative to such. Qualified immunity is not in place to protect bad police officers, and never has been. The overwhelming majority of officers do what is right and this version of the bill lumps all police officers into the same category of bad police officers, who would not be protected by qualified immunity anyways.

Chief Denise Wickland

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Town of Palmer, Massachusetts
POLICE DEPARTMENT

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July 17, 2020

Honorable Aaron Michlewitz
Committee on Ways and Means
State House Room
Boston, Ma. 02133

Honorable Claire Cronin
Committee on Judiciary
243 State House Room 163
Boston, Ma. 02133

Dear Chair Aaron Michlewitz and Chair Claire Cronin,

On behalf of the members of the Palmer Police Department 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 it relates to Section 4, I believe that one of the first elements of empathy is an understanding of others. A requirement to train officers in all areas of conflict resolution must span all cultures and all aspects of the human condition to be most effective. While I wholeheartedly support this provision, I find it offensive and counter-productive that the legislature would essentially statutorily define law enforcement agencies as "Racist institutions" by making them the exclusive entity required to participant in such training.

As it relates to Section 6 (police Officer standards & Training) I am sure that you are aware that the state of Massachusetts is one of only four other states in the country without a POST or POSAC type system. It is reasonable that police, like many other professions in Massachusetts, require some type of certification and or licensing. This concept has been wholeheartedly supported by the Massachusetts Chiefs of Police as well as other law enforcement practitioners for many years now. As a Chief of Police, I am a strong advocate for a POST like system that would work to enhance police training by setting minimum standards, setting standards of maintenance for certification and licensure as well as provide regulation for training programs

and curricula. Additionally, the creation of a system that would require departments to track fired and problematic officers to make sure they are not unknowingly hired by a department would be beneficial to all police agencies and the profession as a whole.

Of concern in section 6 is the ambiguous language as it relates to "*independent investigations and adjudications of complaints of officer misconduct.*" The failure to specify what "*misconduct*" is will result in application of this section that is very subjective. It lacks any mechanism of oversight which subjects it to a high level of scrutiny. The legislature should endeavor to use language that is clear, unequivocal, and expresses to the best of their abilities their intentions so as to avoid misapplication of this provision.

The language used in this section as well as elsewhere in this Bill eliminates just cause protections for police officers, thereby eliminating Due Process Rights. Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. However, the language in this Bill would legalize bias against individual police officers by creating a board of non-law enforcement arbiters who are inherently political and arguably anti-police. This is contrary to all other professional boards in the commonwealth that consist of a majority of a specific trade's practitioners, those best suited to judge performance.

A board consisting of individuals with a background in law, use of force, psychology, defensive tactics, and force science would be much more reasonable and, would ensure the due process rights of police officers. I am sure that you would agree, allowing unqualified civilians who lack experience and expertise in policing as well as use of force situations, to judge police officers who are acting under extreme conditions in rapidly evolving events, lacks common sense and would be unjust. The results of such a process would bring irreversible harm to the policing profession and do nothing to reform it.

In relation to Section 10: The doctrine of qualified immunity requires a purposeful, in depth evaluation prior to enacting any changes. Qualified immunity is in no way an "absolute immunity" that would protect an illegal action by police officers. In instances where clear

guidance is not provided by existing laws, qualified immunity protects the officer (and ALL other public officials). Abolition of qualified immunity would have a negative impact on all public employees as well as on the taxpayers of the commonwealth. There is nothing in the doctrine of qualified immunity as it is written that presently works to protect the illegal and unconstitutional actions of any police officer. This doctrine is only available when a reasonable official would not have known that their actions would violate a constitutional right that was clearly established at the time of incident. Therefore, I do not support any changes to the doctrine of qualified immunity.

As it relates to section 50, I am opposed to any changes to chapter 71 section 37P. The Criminal Justice reform act of 2018 is very specific as to the role of police officers in our schools. This act ensures that SROs do not use police powers to address traditional school discipline issues, including non-violent disruptive behavior and restricts law enforcement action in response to certain school-based offenses. Our School Resource Officers are well respected in our schools, working alongside school personnel to ensure that all students are safe and treated fairly.

As it relates to Section 55, Massachusetts officers are not trained or authorized to use choke holds or any type of neck restraint that impedes an individual's ability to breathe to be used during the course of an arrest or restraint situation. However, As it relates to a total ban on so-called "choke holds, " or, "*or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow,*" I believe that a total ban is an extreme response that lacks logical consideration of the dynamics of use of force situations.

In the context of policing where the use of lethal force is constitutionally reasonable under certain circumstances where officers are faced with imminent serious bodily injury or death, a total ban is not practical or logical. A more reasonable approach would include legislation that clearly defines and, limits the use of chokeholds to situations where deadly force is required. Such legislation that is less ambiguous as to the definition of a "choke hold" could include categorizing all types of neck restraints, qualifying them as reasonable only in situations that merit deadly force. A total ban on choke holds or, more specifically, *"other action that involves*

the placement of any part of law enforcement officer's body on or around a person's neck," reduces the non-lethal options available to police in extreme situations which could result in a scenario where lethal force is now the only available option.

I 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 feel free to contact me with any questions. Again, thank you for this important exchange of ideas.

Respectfully,

Christopher J. Burns
Chief of Police
Palmer Police Department

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

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

Re: Senate Bill 2820

Dear Chairman Michlewitz and Chairwoman Cronin,

I am writing to offer testimony 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.

I have heard from a number of constituents regarding Senate Bill 2820. While they have clearly expressed their support in identifying opportunities to improve race relations and to end racism within our Commonwealth and throughout our Nation, they have also expressed serious concerns and objections to several of the changes included in this Bill. I share their commitment to achieving a just society, that naturally welcomes and treats all people fairly and equally, without regard to race. As written this bill would result in additional risks to some groups, particularly to members of law enforcement, most of whom do their work, under great pressures and with extraordinary risks, without advancing what should be the ultimate goal of the Bill.

I am concerned of the collateral and likely unintended consequences of the certain sections of the Bill, for example, reducing and in some cases eliminating the protection of qualified immunity. If included we could lose many well trained, exceptionally performing members of law enforcement and other public safety employees to retirement or resignation. Many people we want to consider law enforcement as a worthy and important profession and as a great career may simply pass. In order to achieve the goals of the Bill we should be showing our support and confidence in those within law enforcement that have been terrific role models, great protectors of our rights, improved community and race relations, and treated people fairly and justly without regard to neighborhood or race.

I don't know of one person who was not horrified and outraged of the cold, callous and criminal conduct of the Minneapolis officers who killed George Floyd. He and anyone else who stood by as George Floyd begged for air should feel the full weight of justice. We know from experiences

and reputation that the despicable actions of these men do not represent that actions of the vast majority of the good and hardworking officers that work every day to protect the citizens of this Commonwealth.

We all welcome changes that will improve race relations and end racism in the Commonwealth is well received. Unfortunately, the far-reaching impacts of this legislation, there may be unintended negative effects on our communities and the people serving to protect these communities. Many of the constituents that have reached out are outraged at the hastily manner in which this legislation was introduced in the Senate. The lack of public comment and ability for stakeholders to express their comments and concerns worries many across our Commonwealth. I believe there is a need for improvement, however I do not agree that a rushed piece of legislation is the correct process to have a fair and long lasting change.

There are other sections of S2820 I believe we can improve upon in order to avoid any negative or unintended consequences, such as due process rights of all officers, civilian intervention when a police officer is acting in the lawful course of their duties, and the inability of the schools to communicate with the school resource officers regarding gang activity. There are several positive changes in S.2820 that will improve race relations in the Commonwealth without diminishing the ability of law enforcement officers to do their jobs.

I welcome the ability to work with Chairman Michlewitz, Chairwoman Cronin and my colleagues in the House to improve race relations and positive community relationships with law enforcement while avoiding any unintended consequences that may occur with how the bill is currently written. I look forward to ending racism throughout the Commonwealth of Massachusetts.

Thank you, Chairman Michlewitz, Chairwoman Cronin and the committee members for taking the time to read my written testimony and I ask you all to strongly consider taking the time in establishing a strong and meaningful piece of legislation that will have a fair and long lasting change in our Commonwealth.

Sincerely,

Alyson M. Sullivan
State Representative
7th Plymouth District
Abington, East Bridgewater & Whitman

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WORCESTER NAACP
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

The mission of the NAACP is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate race-based discrimination.

Public Testament in support of 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.

Thank you to the Massachusetts Senate for passing

The Worcester Branch of the NAACP remains firmly behind the nationwide call for systemic changes to policing, adding the collective statement of our members in the call for Massachusetts House legislators to listen to the voices they hear, see the feet they see in our streets, and take heed of our calls to end the delays and pass S2820.

We are sure you have not only seen the frightening and horrific videos documenting police misconduct across the country, but also seen the data and statistics documenting that Black members of society continue to be disproportionately targeted and treated harshly by the police. While these videos and statistics may be relatively new to some of you, they are far from new to the Black community. And while the types of misconduct and institutional racism may vary between regions, states and police departments our Worcester members carry many of the same fears and trauma as the Black brothers and sisters in Minneapolis, Baltimore, Los Angeles and elsewhere.

For decades we have struggled to sruvive, for years we have asked and petitioned for change, and now we are in the streets imploring our local, state and federal leaders to make real and substantive changes today.

It is because we have seen incomplete and incremental change in the past that we are asking you today to pass S2820, as is, without delays, without calls for new studies, without excuses.

Crucial to the policing reform we seek is an end to qualified immunity for police officers. As currently defined and practiced it is only a roadblock to police accountability and justice that only exacerbates the wounds being inflicted on the Black community. We stand with our parent organization which strongly supports H.R. 7120, the "George Floyd Justice in Policing Act." which end qualified immunity on the Federal level. Massachusetts should lead in addressing police violence. A watered down bill, that doesn't address qualified immunity, is not what we are asking you as Representatives to pass. We reocmmend that you follow the recommendation of the Black and Latino Caucus.

We also ask that you support the Justice Reinvestment Trust Fund which would decrease the number of people incarcerated by our state and reinvest the savings into community employment in neighborhoods that have been most impacted by policing and mass incarceration. In particular, we ask you eliminate the $10 million per-year cap on reinvestment that the Senate imposed.

We support the many other provisions within the bill passed by the senate to reduce the police forces.

Please know our Worcester members are watching, and want to see these changes passed by the Massachusetts House of Representatives every bit as much as member of the Black community are working elsewhere to achieve similar goals to save Black lives. Please stand-up for the Black community today by promptly passing this important legislation.

The Worcester Branch stands in solidarity with the New England Area Confernce (NEAC) of the NAACP to raise up Black voices at this important moment in history and do whatever we can to save Black Lives. Your support for this legislation shows that you believe that Black Lives Matter.

Sincerely,

Fred Taylor
First Vice-President,

Town of West Brookfield

POLICE DEPARTMENT-TOWN HALL

WEST BROOKFIELD, MASSACHUSETTS 01585

(508) 867-1405 Telephone

(508) 867-1406 Fax

C. Thomas O'Donnell, Jr.
Chief of Police

July 17, 2020

Via email to: Testimony.HWMJudicary@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 an equitable, fair and just commonwealth that values Black lives and communities of color.

I would like to thank the chairs for this opportunity to offer testimony on the bill under consideration. I fully support the effort to address the concerns of Black community and other communities of color, and applaud the legislatures efforts to address these critical and uncomfortable issues. My concern is that, with the need to seen as having done something, some sections of SB2820 were rushed and perhaps, while well intentioned, not as well thought out as they should have been.

As the Central Mass representative to the Municipal Police Training Committee, I fully support the concept of Massachusetts becoming a POST state. I do have concerns though over the form presented in this bill. Personally, I had hoped that POST (something the Chiefs association has advocated for over a number of years) would have been the natural successor to the MPTC, where it would have been given the ability to certify, and decertify officers for cause. Instead, we are offered a system where the MPTC is still responsible for developing training and a separate bureaucracy will be developed to certify/decertify officers. It seems to me that it would have been a better use of taxpayer money to house that function under the MPTC umbrella.

m also concerned with the language around the ability of the POSAC to conduct independent vestigations. There is no language on the types of complaints that the POSAC would be able to vestigate. Of special concern is the language of lines 487 to 490, that allows the POSAC to take action ainst an officer without being bound by the results of a local disciplinary hearing, or grievance. I see e possibility of conflicts and litigation arising from different results.

e many of my colleagues, I do have concerns with the proposed changes to Qualified Immunity. alified Immunity was never intended, and does not function as total immunity. Simply, the concept o protect those who were following established law, or procedure that was later determined to be ong. It was never meant to, and I don't believe does, protect those whose conduct is clearly egious. The language presented in SB2820 is very confusing, at least to me. If I understand the reach the law as well, not only would Qualified Immunity be less available to me, but my wife who is a rse, and my stepson a paraprofessional in the local school system could be sued without protection. I r that if law suits proliferate, regardless of the merit of them, many of our insurance companies will use to indemnify us.

ally, because I respect the fact that you are under a severe time crunch, I would like to address the ke up of various new boards under the bill. In nearly all instances, the MCOPA is limited to one seat he table. I would respectfully request that consideration be given to having at least 2 seats on any rd or committee. Massachusetts has a great diversity in the size of its police agencies. Many of us a y small agencies (my own is only six full time officers, including myself and three part time officers). utions to problems that work well in our major cities and larger towns, may not be possible in the re rural parts of our commonwealth. Having a voice for smaller agencies at these tables is critically portant.

ank you of your time and the opportunity to be heard. I sincerely have a deep appreciation for the rk you are about to undertake. It cannot be understated how critically important this is to the dents of the commonwealth.

t wishes,

homas O'Donnell, Jr

ef of Police

Representative Aaron Michlewitz July 17, 2020
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 Chair Michlewitz and Chair Cronin:

Thank you for the opportunity to submit testimony relative to 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.”

My name is Richard Abate and I have been a police officer for 15 years. There is not a police officer I know that does not think that reform is necessary. However, I have many concerns about a sweeping 71-page bill that seems to have been hastily put together with little input from all stakeholders involved.

As a union member I have concerns about the 3 major issues that I am sure you are receiving from all collective bargaining units in the State: due process, qualified immunity and the composition of the POSAC. I will let the numerous testimonies that I am sure you are receiving on those issues, and the impact they will have on officers and their families, speak for themselves.

I would like to address the one concern I do not hear much about. My feeling is that this bill has a tone to it that is leading the police profession away from positive interactions between the community and the police.

President Obamas task force on 21st century policing spoke directly to transitioning from Warrior to Guardian. To make that transition all stakeholders should be brought to the table for open, respectful, constructive conversation.

I do not think this process took place in crafting this Bill and I respectfully ask that it does not go forward as currently drafted.

Thank you for your consideration,

Richard Abate

Middleton Police Department

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James A. DiGianvittorio
Chief of Police

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 have been a police officer for the past 35 years and Chief of Police for 13 years. I have held the positions of President of the Essex County Chiefs of Police Association and held the position of President of the Massachusetts Chiefs of Police Association in 2017.

During my time as President of the MA. Chiefs Association I dedicated my time to help create a bill for police training, and that Bill came to fruition in 2018 by way of a dedicated funding source through a surcharge in car rental fees.

I have always believed that Massachusetts has been well above the curve in training our police officers and I feel that we have now being painted with the same wide brush as other law enforcement officers from around the country, I also believe that the training we provide to our officers is the best in the country and we have always and will always support more training and education for our officers.

The Senate Bill version as presently drafted and if adopted will basically undermine all our efforts to provide fair and equitable policing in the Commonwealth.

The men and women who commit themselves to this profession of law enforcement take pride in their role. Every day they are asked to put their lives on the line to ensure the safety of others, and for that they do deserve respect and appreciation.

This should be their day to shine. I tell my officers "Do not tarnish what you have accomplished by losing sight of who you are when you don your uniform. What you have chosen to do is a mission, a calling, no less, as guardians of the public safety. Do not take the tasks inherent in this noble and distinguished undertaking lightly".

Every day of their life in uniform, they will be referred to as law enforcement officers, although only a small portion of what they will be doing on the job is enforce the law.

We need promote mutual respect with the general public, build bridges in our communities. One way we can do this is through supporting community-based problem solving along with a willingness to take principled stands in the face of bias, injustice, racism, hatred, and acts of violence.

We must continually remind ourselves to be vigilant, courageous and bold during this time of uncertainty. "We are all in this together". It's time for the law enforcement culture to embrace a "Guardian-rather than a Warrior" mentality.

However, the State Senate Bill talks about Qualified Immunity "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. The Senate Bill will tie officers' hands and make them second guess their actions which could lead to death or serious bodily injury.

As a Police Chief, I believe that it is my duty to establish and encourage good community relations between my department and the people of my town. It is the duty of all law enforcement officers to build bridges among our communities, not walls.

The answer to our nation's current problems will not come from assigning blame to all of law enforcement. It will not come from deepening the divide between our citizens and those that are working to protect them. We must remember the words of Dr. King, that "returning violence for violence, multiplies violence, adding deeper darkness to a night already devoid of stars."

I have an unwavering faith that the law enforcement community can be instrumental in assisting our communities through this transitional period. The Senate and the House need to take a step back and not have such a "knee jerk reaction' to the problems that they perceive as problems without first obtaining statistical data to the contrary.

The International Chief of Police Association Past President, and Retired Wellesley Police Chief, Terrence Cunningham spoke about the concept of historical injustice and how acknowledging it will allow us to move forward and bridge the current gap of mistrust between law enforcement and communities of color. For when we acknowledge how we got here and what brought us to this point, only then can we establish a deeper sense of trust. A trust that will foster enhanced relationships with mutual empathy and respect.

I also believe that we must be proactive and motivate our police departments to develop new ways of deploying services. Re committing to the concept of community policing for example. Our police departments must understand the benefits of involving our community in the process from the beginning. Promoting police-community partnerships and cooperative problem solving are ways that police can address crime and quality of life issues affecting the communities they serve.

I encourage officers of all ranks to engage in some form of community service or outreach, both on duty and off duty; I encourage police chiefs around the commonwealth to promote the practice of transparency and communication between our department and our residents.

The culture of a police department begins at the top.

The Chief establishes the tone for everything from the style of uniform to policies governing the use of force and procedures for dealing with victims and suspects. I believe in a three-step method of policing. The first step is addressing how the police force interacts with the public. The second is how the public perceives the police in our community. And the most important of all is how the chief interacts with the department.

Working in all directions is essential because one won't work without the other. None of these steps will be a "quick fix" However, improving interactions with the public and exemplifying standards of professionalism and integrity are all crucial to build an effective police force in the 21st century.

Well-known football coach Vince Lombardi once said, "The achievements of an organization are the results of the combined effort of each individual".

All of these actions serve to humanize police officers in the eyes of the public and establish positive and repeatable interactions, with our communities in this State.

Our culture employs the term hero far too loosely. We over use it for movie stars, politicians, and professional athletes. While such individuals might have a unique, singular ability and while they might on occasion engage in heroic efforts, they are not our true heroes. Our true heroes are the men and woman of law enforcement who demonstrate professionalism under the most trying circumstances, who in the face of danger run towards the threat not away from it.
"Our Police Officers are our true heroes".

This is what makes the police officers in this state a cut above the rest.

Thank you,

Chief James DiGianvittorio

ERNEST F. MARTINEAU
CHIEF OF POLICE

CITY OF FITCHBURG
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July 17, 2020

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

Dear Chairwoman Cronin and Chairman Michlewitz:

On behalf of the Fitchburg Police Department 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 Chief of Police for the City of Fitchburg and President of the Central Massachusetts Chiefs of Police Association, I endorse the opinion and stand in unity with the Massachusetts Chiefs of Police Association. Your honorable body has been given a brief list of bulleted comments in hope of providing some potential insight from our law enforcement/policing perspective. I truly believe that our perspectives will not fall upon deaf ears in your governance.

I am a firm believer that one should not accept the status quo but should embrace change with honest dialogue. The legislation before your honorable body should require just that. Community engagement, trust, and transparency are the norm and not the exception. I ask that you do not dismiss the accomplishments made in Massachusetts just to say that we did something. Let's collectively build upon our accomplishments to make Massachusetts more equitable, fair, and a just Commonwealth that values Black Lives and Communities of Color.

Respectfully submitted,

Ernest Martineau
Chief of Police
City of Fitchburg

ADL NEW ENGLAND

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:

I am writing on behalf of ADL New England (the "Anti-Defamation League") to express our strong support for many of the provisions in S.2820 designed to increase police accountability and curb the school-to-prison pipeline.

In particular, ADL New England urges you to:

1. Adopt strict limits on police use of force;
2. End doctrines that shield police from accountability for civil rights violations;
3. Prohibit government use of biased face surveillance technology; and
4. Ensure critical protections to address the school-to-prison pipeline are included in the bill.

As you may know, ADL is a leading anti-hate organization founded in 1913 with a dual mission to stop the defamation of the Jewish people and to secure justice and fair treatment to all. As such, we are committed to working to eliminate bias in the criminal law system, to reduce mass incarceration, and to reform practices that disproportionately impact communities of color, including people of color within the Jewish community. ADL is also a leading non-governmental trainer of law enforcement, training more than 14,000 law enforcement officers on hate crimes, bias, extremism, and terrorism each year. In light of this experience, ADL acutely understands the importance of community trust when it comes to state and local policing efforts.

Here in Massachusetts, we know that fundamental changes to policing are long overdue. This historic moment is not about one killing by the police or about one police department, but rather about the desperate need to dismantle racist systems of oppression that have plagued our nation's institutions, including our law enforcement

ADL New England
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departments, for far too long. We must address police violence and brutality against communities of color and Black people in particular, hold police accountable for civil rights violations, and adopt critical reforms with respect to school resource officers ("SROs") in K-12 schools. These changes are essential for the health and safety of our communities here in the Commonwealth.

First, Massachusetts must establish strong standards limiting excessive use of 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. This is absolutely essential to building community trust, which in turn is fundamental to public safety. Police must also use force that is proportional to the situation, and the minimum amount required to accomplish a lawful purpose. Several tactics commonly associated with death or serious injury, including the use of chokeholds and no-knock warrants, should be outlawed entirely.

In addition, Massachusetts must take steps to ensure that police can be held accountable for civil rights violations. For decades, the judge-made doctrine of "qualified immunity" has been interpreted far too broadly, making it virtually impossible for victims (and victims' families) of police brutality to bring civil lawsuits for damages, even in cases involving excessive use of force resulting in permanent injury or death. Limits on use of force are meaningless unless they are enforceable. We can no longer tolerate a qualified immunity doctrine that denies victims of police violence their day in court.

Moreover, we urge the House to prevent the expansion of police powers and budgets by prohibiting government entities, including police, from using dangerous face surveillance technologies. Face surveillance technologies have serious racial bias flaws built into their systems that have yet to be sufficiently studied and corrected. We should not allow police in Massachusetts to use technology that supercharges racial bias in this manner.

Finally, we urge the House to take critical steps to address the school-to-prison pipeline. We know that the presence of police in K-12 schools leads to the disproportionate suspension and expulsion of students of color and students with disabilities from schools, too often for a school discipline violation. These practices not only harm students directly impacted, but also take a toll on the school's relationship with the entire student body, as well as undermine critical trust between law enforcement and our Commonwealth's young people. We therefore urge the House to modify the statutory definition of a school resource officer ("SRO") to ensure that SROs are placed in local police stations, and simply serve as the primary point of

contact for K-12 schools. In addition, we urge the House to ensure that school committees are empowered to decide, by annual public vote, whether to assign police to schools, and that where SROs are assigned, they are mandated to receive training developed in consultation with experts.

There is broad consensus that we must act swiftly and boldly to address police use of force, strengthen accountability, and advance racial justice. We therefore urge you to pass the strongest possible legislation without delay, and to ensure that it is signed into law this session.

Sincerely,

Robert O. Trestan
ADL New England Regional Director

Testimony submitted to the Joint Committee on the Judiciary
In Support of S.900 An Act relative to expungement and H.1386 An Act relative to expungement, sealing and criminal records provisions
By Colleen Kirby, LWVMA Specialist, Criminal Justice Reform
October 8, 2019

Many young people come into contact with the juvenile justice system each year. Most are from poor neighborhoods and, more often than not, are children of color or children without means. Many have experienced mental illness, learning disabilities, or school failure. This bill allows for expungement for those up to age 21, beyond the restricted reforms the League supported that passed in the last session. This bill expands the number of charges eligible for expungement beyond "one court appearance," making it possible for expungement of cases that do not result in conviction or adjudication (one step less than conviction). It will enable expungement of misdemeanors after 3 years and felonies after 5 years as long as there are no other convictions/adjudications in that time. It will also limit ineligible offenses to those offenses ineligible for sealing. It will allow sealing of juvenile records if the case has been disposed without adjudication. It also ends considering juvenile adjudications as equivalent to conviction so as not to trigger mandatory minimum sentences.

The brain is still developing up through the early 20s, and individuals are more likely to make mistakes in judgement during this time. Most young people who have offended do not go on to offend as adults.[1] Very few individuals are eligible for expungement based on the criteria passed in the 2018 reform bill. Expanding the use of expungement will help individuals with a record access education, employment,[2] mental health care,[3] and housing. Expungement is about giving people second chances, especially young people and people whose offenses are not considered dangerous or whose records are based on offenses that did not require custody. Interacting with the criminal justice system should not result in a lifetime ban from bettering oneself or being able to take care of oneself or one's family. By expanding the use of expungement, we will be giving young people second chances for getting caught doing the type of behaviors typical of many in this age group, and this move should reduce recidivism by encouraging socially beneficial integration.[4]

The League of Women Voters "opposes mandatory minimum sentences for drug offenses" and ascribes to government "the responsibility to provide equality of opportunity for education, employment and housing for all persons in the United States…federal programs to increase the education and training of disadvantaged people…efforts to prevent and/or remove discrimination in education, employment and housing" and to "secure equal rights and equal opportunity for all."[5]

In addition, the League of Women Voters of Massachusetts is in favor of "the use of adequately funded and supervised alternative punishments for offenders where mitigating circumstances exist" and supports "measures to protect the civil and individual rights of the offender and to promote the offender's rehabilitation through individualized treatment" and programs "for prevention, detection and treatment of juvenile delinquency."[6]

Indiana supported extensive expungement reforms in 2014. Since then, many thousands of people have gone through the process for expungement in Indiana, showing how important it is.[7] There have not yet been good follow-up studies on the results, but anecdotally it appears that few return back into the

system.[8] Employers, seeking a bigger workforce in South Carolina, encouraged the passage of extensive expungement laws in 2018[9] which include retroactive application for youth who have committed offenses.[10]

In the last few years, more than 20 states have expanded or added laws to keep people from being held back by their records, including limited reforms in Massachusetts. In Indiana, Latosha Poston of Indianapolis worked in home health care for nearly 20 years making just over $11 an hour. Once her records were sealed, she landed a hospital job as an operating room assistant. "I felt like something was lifted off," she said, "because now I kind of felt like a human."

Background checks are required for jobs, schools, mortgage applications and more, and records follow people for years so they end up in permanent second-class status.[11] Many summer jobs for youth are off limits if they are found to have a record. Nationally, the unemployment rate for formerly incarcerated people is worse than the Great Depression. (see Figure 1) Keeping people from being productive after they leave custody is a drain on the resources of the Commonwealth. Second chances work.[12]

The League of Women Voters of Massachusetts, with 47 local Leagues from Cape Cod to the Berkshires, urges you to report this bill favorably.

Thank you for your consideration.

Figure 1. Unemployment among formerly incarcerated people.
https://www.prisonpolicy.org/reports/outofwork.html

1. https://www.cfjj.org/expungement/
2. https://www.nytimes.com/2015/03/19/opinion/job-hunting-with-a-criminal-record.html?ref=opinion&_r=1
3. Health Impact Assessment: Massachusetts Proposed Expungement Bill, July 2016, MIT and MAPC
4. https://www.themarshallproject.org/2017/01/24/what-we-can-learn-from-the-amazing-drop-in-juvenile-incarceration
5. Impact on Issues https://lwvma.org/advocacy/league-postions/
6. Where We Stand https://lwvma.org/advocacy/league-postions/
7. https://www.nytimes.com/2018/10/07/us/expungement-criminal-justice.html
8. https://ccresourcecenter.org/2017/12/21/expungement-in-indiana-a-radical-experiment-and-how-it-is-working-so-far/
9. https://www.fisherphillips.com/resources-alerts-south-carolinas-new-expungement-law-could-increase
10. https://www.wjbf.com/news/south-carolina-news/sc-lawmakers-override-governors-veto-of-expungement-law-amendment/
11. https://www.npr.org/2019/02/19/692322738/scrubbing-the-past-to-give-those-with-a-criminal-record-a-second-chance
12. https://www.expungema.org/supporters

LEAGUE OF WOMEN VOTERS® OF MASSACHUSETTS

Testimony submitted to the Joint Committee on the Judiciary
In Support of S.825/H.3420 An Act to promote public safety and better outcomes for young adults
By Colleen Kirby, LWVMA Specialist, Criminal Justice Reform
October 22, 2019

In 2013, Massachusetts raised the age of juvenile jurisdiction through age 17, and there has been a 34% decrease in juvenile crime outperforming national decreases in property and violent crimes[1]. Studies have shown that older adolescents processed as juveniles or diverted to community-based programs are much less likely to offend again than if sent to adult facilities[2]. It is time to consider including 18- to 20-year-old youth in our juvenile courts and provide services appropriate for this age group. There would be no change on adult sentencing for serious offenses such as murder or "Youthful Offender"[3] cases as we already have a separate path for age 14 and up. We should also expand the upper age of commitment with the Department of Youth Services (DYS) for emerging adults in a step-wise fashion (18-20) so there is time to rehabilitate older youth entering the system, including extending commitment of "Youthful Offender" cases up to age 23.

The national League of Women Voters "believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime." The League also "supports policies and programs at all levels of the community and government that promote the well-being, encourage the full development and ensure the safety of all children." In addition, the League of Women Voters of Massachusetts (LWVMA) is in favor of "the use of adequately funded and supervised alternative punishments for offenders where mitigating circumstances exist," and supports "measures to protect the civil and individual rights of the offender and to promote the offender's rehabilitation through individualized treatment," legislation to "delineate clear lines of authority and accountability in the state agency responsible for juvenile programs," and programs "for prevention, detection and treatment of juvenile delinquency."[4]

Current research on brain development shows that, up to the mid-twenties, brains are in a critical period of development. Dr. Judith Edersheim, co-director of the Center for Law, Brain and Behavior at the Massachusetts General Hospital, explains there are three differences between adult and adolescent brains.[5] During adolescence, brains are losing "gray matter" in the frontal lobes, where computation, self-control, planning, decision-making and other executive functions occur. Second, the brain develops more "white matter," to increase processing speed and make the brain more efficient, and third, the adolescent brain has more dopamine, which is released when a person seeks out rewards and novelty. "If you don't provide an adolescent with an opportunity to develop a social competency or self-esteem, if you don't put them in contact with pro-social peers, then you're setting trajectories which actually might persist through adulthood," Edersheim said, which is why it is important that teens are provided more guidance during this developmental stage.

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Vermont passed legislation to increase the age for most juvenile offenses to include 18- and 19-year-olds by 2022 and place them under family court jurisdiction where they can refer youthful offenders to community-based programs emphasizing rehabilitation.[6] Massachusetts already has community-based programs like Roca and UTEC proven programs that reduce recidivism for high-risk youth as compared to youth sent to adult facilities.[7]

At least three District Attorneys in Massachusetts support raising the age.[8] Paul Faria, who has worked in corrections for over 30 years and who represents correctional officers for AFSCME Council 93, said AFSCME supports raising the age as long as proper planning and training is in place. "DYS provides services rather than sending to state prison," he said, calling the juvenile system "a lot more hands-on"[9] Although DYS Commissioner Peter J. Forbes has said the department wouldn't weigh in on whether or not to raise the age, he said DYS will be prepared, especially as they already work with some 18-, 19- and 20-year-olds.[10]

An analysis done by Citizens for Juvenile Justice, shows that the number of 18- to 20-year-olds charged with offenses has been decreasing over time, as has the Juvenile Court's caseload.[11] By gradually adding this population to the juvenile courts, there should be no capacity issues since the expected increase in cases will still be lower than what the court processed before 2011 (Fig. 1) and would only match the capacity handled by DYS before 2012 (Fig. 2 and 3) There will need to be significant resources invested to make this transition work, as this is an older population with particular needs the facilities are not currently seeing as much.

Ages 18, 19 and 20 are transition ages where some adult milestones may be met, but not all. Some of these individuals may be in the military or be married, but our society does not bestow all privileges of adulthood at 18. Instead, many milestones that present a significant risk are delayed taking a young person's maturity. For example, young people are prohibited from alcohol, drugs and marijuana until age 21; one cannot carry a gun or be a police officer until they are 21; and young people can remain on their parents' health insurance until they turn 26.. This is also of concern for these young 18 to 20 year-olds who are still maturing.

With current knowledge about brain development, evidence that lower recidivism is possible in Massachusetts using community-based programs for high-risk youth and expanded access to diversionary and restorative justice programs, and that crime decreased when 17-year-olds were included into the juvenile court system, it seems that Massachusetts is ready to gradually raise the age for the juvenile court system to include 18, 19, and 20-year-olds. Older adolescents are a distinct population that would greatly benefit from improved programs and services to guide them to a better path.

For those reasons, LWVMA, representing 47 local Leagues from Cape Cod to the Berkshires, urges this committee to report H.3420/S.825 favorably out of committee. Thank you for your consideration.

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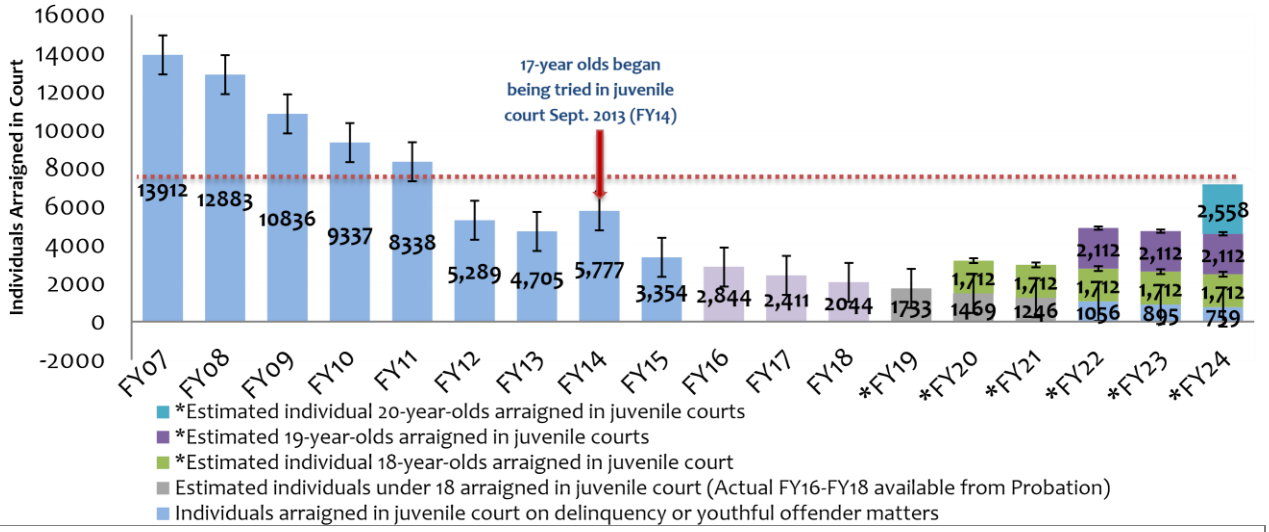
Figure 1. Summary of Key System Trends of Justice Involved Youth and Young Adults in Massachusetts, Citizens for Juvenile Justice, April 2019, p 6 Juvenile Arraignments

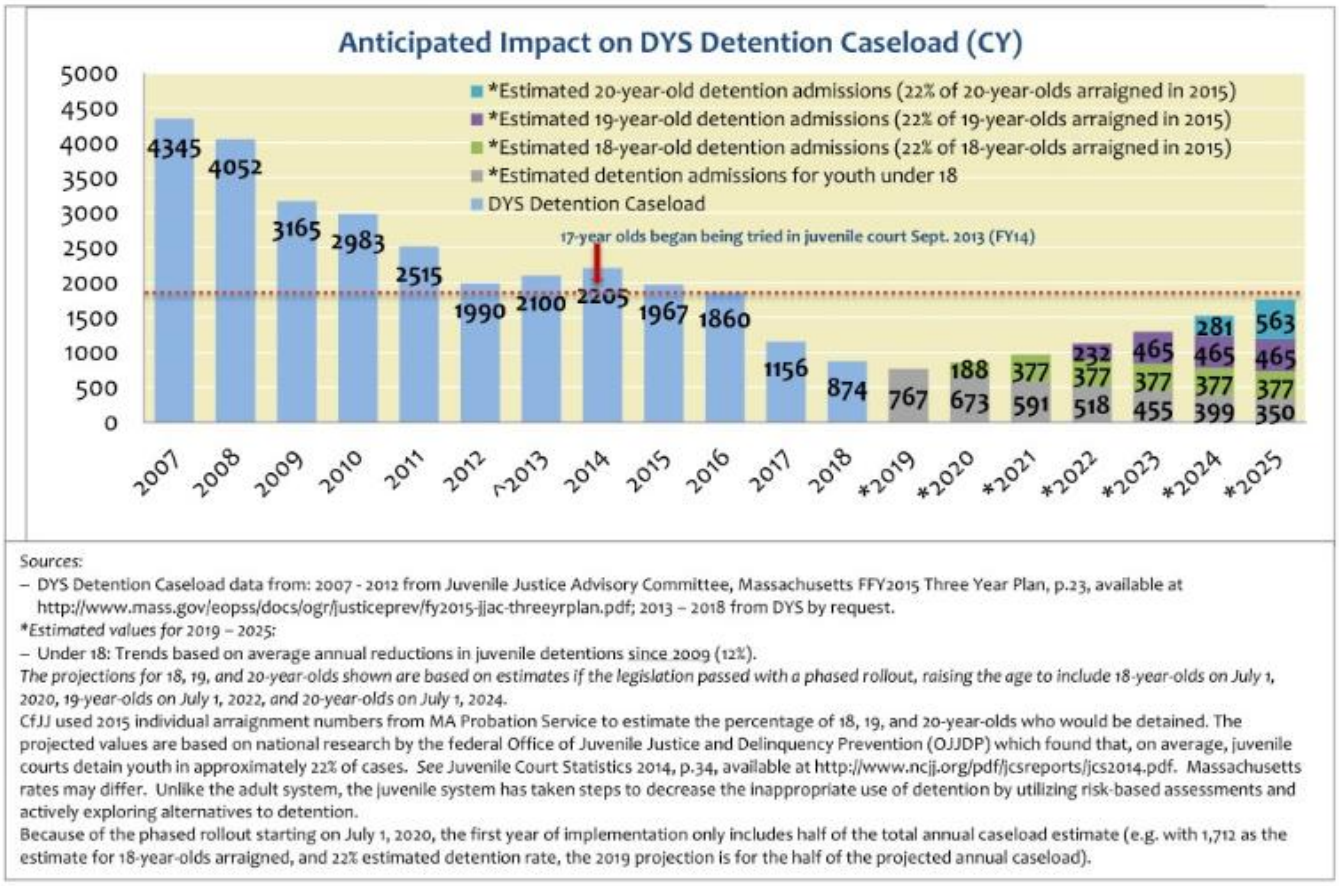


Source: Massachusetts Probation Service, by request ** Estimated values for 2016 – 2024:*

- Under 18 Estimates: calculated based on average annual reductions (15%) in juvenile arraignments since 2009. Probation should have actual (not estimated) data for FY16-18.
- In 2015, there were 1,712 18-year-olds, 2,112 19-year-olds, and 2,558 20-year-olds arraigned in MA (Source: Massachusetts Probation Service). Relying on these values likely overestimates the actual arraignment numbers, as the young adult caseload has been declining over the past decade as well.

Figure 2. Summary of Key System Trends of Justice Involved Youth and Young Adults in Massachusetts, Citizens for Juvenile Justice, April 2019, p 7 Anticipated Impact on DYS Detention Caseload (CY)

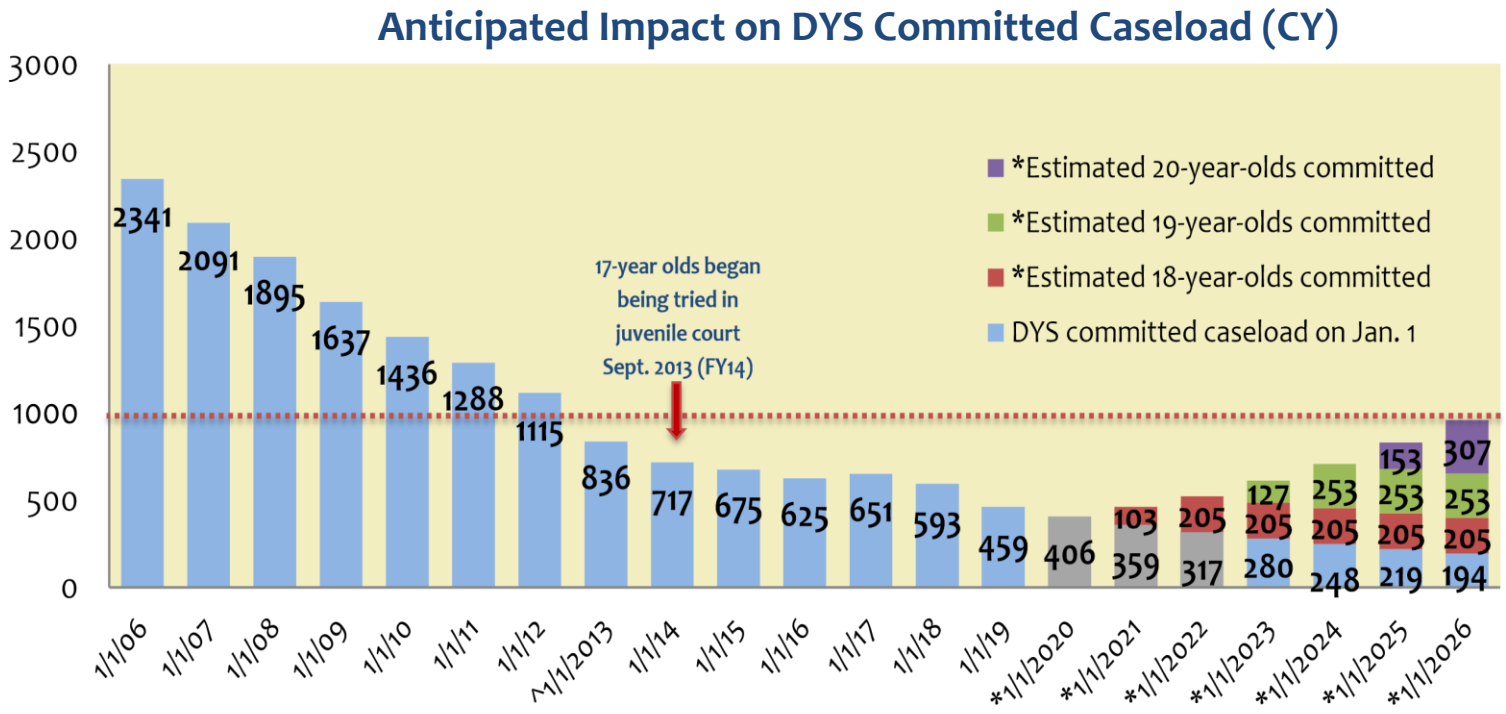
Anticipated Impact of Including 18, 19, and 20-Year-Olds on the Department of Youth Services:



Sources:
– DYS Detention Caseload data from: 2007 - 2012 from Juvenile Justice Advisory Committee, Massachusetts FFY2015 Three Year Plan, p.23, available at http://www.mass.gov/eopss/docs/ogr/justiceprev/fy2015-jjac-threeyrplan.pdf; 2013 – 2018 from DYS by request.
*Estimated values for 2019 – 2025:
– Under 18: Trends based on average annual reductions in juvenile detentions since 2009 (12%).
The projections for 18, 19, and 20-year-olds shown are based on estimates if the legislation passed with a phased rollout, raising the age to include 18-year-olds on July 1, 2020, 19-year-olds on July 1, 2022, and 20-year-olds on July 1, 2024.
CfJJ used 2015 individual arraignment numbers from MA Probation Service to estimate the percentage of 18, 19, and 20-year-olds who would be detained. The projected values are based on national research by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) which found that, on average, juvenile courts detain youth in approximately 22% of cases. *See* Juvenile Court Statistics 2014, p.34, available at http://www.ncjj.org/pdf/jcsreports/jcs2014.pdf. Massachusetts rates may differ. Unlike the adult system, the juvenile system has taken steps to decrease the inappropriate use of detention by utilizing risk-based assessments and actively exploring alternatives to detention.
Because of the phased rollout starting on July 1, 2020, the first year of implementation only includes half of the total annual caseload estimate (e.g. with 1,712 as the estimate for 18-year-olds arraigned, and 22% estimated detention rate, the 2019 projection is for the half of the projected annual caseload).

LEAGUE OF WOMEN VOTERS® OF MASSACHUSETTS

Figure 3. Summary of Key System Trends of Justice Involved Youth and Young Adults in Massachusetts, Citizens for Juvenile Justice, April 2019, p 8 Anticipated Impact on DYS Committed Caseload (CY)



** Estimated values for 2018 – 2026: The projections shown are based on estimates if the legislation passed with a phased rollout, raising the age to include 18-yearolds on July 1, 2020, 19-year-olds on July 1, 2022, and 20-year-olds on July 1, 2024.*

- Under 18: Trend line calculated based on average annual reduction (12%) in juvenile commitments since 2009.

- CfJJ's estimate of the number of 18, 19, and 20 year olds who will be committed is based on historical rates of sentencing: 12% of 17- and 18-year-olds were sentenced to HOCs or to DOC in 2009. This is slightly higher than the 2015 juvenile rate of commitment of 10.3% (calculation based on % individuals juveniles arraigned in 2015 resulting in new DYS Commitments, 345/3,354 = 0.1029 or 10.3%). We opted to use the more conservative estimated rate of 12%, multiplied by 2015 data of 18, 19, and 20-year-old individuals arraigned to project commitment numbers for 2016 – 2018. We do not have more recent data for 2015 HOC/DOC commitments broken down by age.

- Because of the phased rollout starting on July 1, 2020, the first year of implementation only includes half of the total annual caseload estimate (e.g. with 1,712 as the estimate for 18-year-olds arraigned, and 12% estimated commitment rate, the 1/1/2020 projection is for half of the projected annual caseload).

1. Justice Policy Institute, "Raising the Age", Executive Summary, p.8 at http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheagesummary_final_3_6_16.pdf
2. https://commonwealthmagazine.org/criminal-justice/criminal-justice-bill-game-changer-young-adults/

3. "Youthful offender", a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and 18, an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine; provided that, nothing in this clause shall allow for less than the imposition of the mandatory commitment periods provided in section fifty-eight of chapter one hundred and nineteen. (This would expand to older ages as the age is raised.)
4. https://lwvma.org/advocacy/league-postions/
5. http://www.abajournal.com/magazine/article/adult_prosecution_juvenile_justice
6. https://www.csmonitor.com/USA/Justice/2018/0706/Vermont-rolls-out-a-new-idea-to-rehabilitate-young-offenders
7. https://www.telegram.com/news/20190403/unforseen-directions-of-raising-juvenile-court-ages-in-massachusetts
8. https://masslawyersweekly.com/2019/07/03/raise-juvenile-court-age-to-21-das-urge/
9. https://commonwealthmagazine.org/criminal-justice/task-force-weighs-raising-juvenile-court-age/
10. https://www.bostonglobe.com/metro/2019/07/09/crime-bill-would-redefine-juveniles-age/maHshbBT6QaaX9ooVDVidN/story.html
11. Summary of Key System Trends of Justice Involved Youth and Young Adults in Massachusetts, Citizens for Juvenile Justice, April 2019 p. 5-7. https://www.cfjj.org/rta-data

July 16, 2020

Testimony on S.2820 to the House Ways and Means Committee and Joint Committee on the Judiciary
Submitted to Testimony.HWMJudiciary@mahouse.gov on 7/17/20 at 8:50am

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

We are so appreciative of your willingness to consider expanding the youth expungement law from 2018. We know this isn't necessarily in the original scope of a police standards and accountability bill. However, after George Floyd's tragic murder and with everything happening in the streets of our communities, our young people have mobilized in a powerful way by relaunching the **Expungement Movement**. The fact that the Senate moved to expand the expungement law has instilled hope in the hundreds of young people at UTEC and our various partner organization statewide. We're writing to you to respectfully ask that you include a similar expansion in the House bill.

Our UTEC organizers have secured close to 90 statewide organizations, unions, business groups, and gun violence prevention advocates to join in coalition to support the expansion. We know that over the last two sessions nearly half of the current members of the House have cosponsored legislation to give young people a second chance. We have also seen that very few young people have been eligible, which we know wasn't the original intent of the law.

Each year UTEC serves over 175 justice-involved emerging adults and it is a tragic reality for so many of them to experience negative police encounters. After looking at all of the CORI records of our members, these interactions nearly always lead to a juvenile or criminal record that stays with them forever – even if their cases were dismissed.

Expungement is more than forgiveness; it is a tool in the toolbox of Gun Violence Prevention and Safe and Successful Youth Initiative grantees who rely heavily on workforce development programming to support a young person to positive outcomes. These models are finding success in cities like Brockton, Boston, Lowell, Lawrence, Haverhill, and many more. We also ask that you consider the massive benefits of this expansion, including the increase in mental health benefits for people of color as was noted in an **MIT Health Impact Assessment** (attached).

Now is an even more important time to consider this because of the COVID-19 pandemic and the harsh impact it has had on employment. Many folks who live with a criminal record would be uniquely helped in their search for new jobs as we continue to grapple with the coronavirus.

Please consider an expansion to the existing expungement law as the House takes up S.2820 to address the major barriers our young people face as our program seeks to achieve our outcomes of reducing recidivism, increasing employment and increasing education opportunities. This is the best time to do it as so many people are focused on racial justice. We appreciate your continued support and leadership.

Thank you for your consideration,

Gregg Croteau
CEO, UTEC Inc.

Geoff Foster
Organizing Director, UTEC Inc.

WORCESTER COMMUNITY ACTION COUNCIL
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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,

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.

Our criminal justice system is not immune to structural racism and we join you and all members in the great work needed to set things right. The unfortunate reality is that 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.

Most recently one of our Case Managers from WCAC's Job & Education Center shared the story of a young Latino whom he'd helped secure a cleaning position at UMass. The young man was let go after one week due to something on his CORI from when he was 16. He is now 21. Here is a young man willing and able to work but being restricted due to something he did as a juvenile.

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."

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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,

M. Campbell

Marybeth Campbell
Executive Director

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Testimony to House Judiciary and House Ways and Means on
Senate 2800 7/17/20

July 16, 2020

Dear House Judiciary Chair Claire Cronin and House Ways and Means Chair Aaron Michlewitz and Committee Members,

This bill the Legislature moves toward passing comes out as a response to the most massive set of marches and rallies Massachusetts has ever had. Tens of thousands of people have been out in streets and squares in cities and towns across the Commonwealth and often more than once. This legislation must have as a goal that it is a response to the reckoning of how we need to reshape our institutions to shed the institutional racism that is there.

There are many good institutions and good people but still so much is not right for too many people. For example, even AG 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.

So, we need changes passed. And by July 31. We want to be able to say we did answer the call to respond to the generations of injustices that have occurred on these issues in our state.

Here are some of the elements that we hope will be in the House passed bill:

1. Use of Force: Having strong use of force standards as set out in Rep. Miranda's bill, *An Act to Save Black Lives*, including complete bans on the most violent police tactics.

2. Qualified Immunity Changes: Putting strict limits on qualified immunity to ensure that police can be held accountable when they violate people's rights; the Senate bill has such language towards this goal.

3. Justice Reinvestment: We support including Justice Reinvestment provisions for funding re-entry employment and prevention programs as the prison population declines, and we ask that the legislature be free to allocate more than the $10 million per year that the Senate set as a cap. Our communities have been decimated by the psychological and economic effects of over-incarceration, and need substantial reinvestment to rebuild. In the face of Massachusetts' $700 million annual prison spending, limiting that reinvestment to $10 million is a slap in the face.

4. Expungement: We support expansion of the right to expunge juvenile records because the current law is unworkable and limits expungement to juveniles who had a single charge

on their record although police routinely file more than one charge in cases they file. At present, even charges that were dismissed or ended in a not guilty funding can't be expunged if the person had more than one charge and young adults often have more than one case. The consequences of saddling youth with a CORI when they turn 18 that will limit their changes to get a job.

5. Banning Facial Recognition: We need to ban the use of dangerous facial recognition technology that would supercharge racist policing.

6. Black and Latino Caucus Recommendations: Please include other recommendations made by the Black and Latino Caucus, some of which are among what's above, and we thank them for their hard work on these issues.

We are a federation of faith-based community improvement organizations located in cities and regions across the state. We worked extensively on the Criminal Justice Reform legislation passed in 2018 and other work in this area before and since then. Our affiliates are Brockton Interfaith Community, Essex County Community Organization, Worcester Interfaith, United Interfaith Action of SE MA (Fall River & New Bedford), Pioneer Valley Project (Springfield), Prophetic Resistance Boston, and I Have A Future Youth Organizing Project (Boston).

Here is a statement from one of our faith leaders in the City of Worcester.

To Whom it May Concern,

I am the Reverend Judith K. Hanlon senior pastor at Hadwen Park Congregational Church in Worcester Massachusetts. Please, please pass this bill.
It is my belief that the history of policing has built a system that acts more military than protective. And, I believe that after the Emancipation Act, police were a part of the system that continued to enslave black people by rounding them up for prison for no reason and creating the work force that slavery was intended to eradicate.
I think it is very hard for even the very best police officers to protect and serve rather than catch and jail.

Sadly, I can support my opinion. Our church houses a ministry called the LGBT Asylum ministry. Thus, for 11 years, our church has been blessed to be multi-racial, multi-cultural and intergenerational. When some of our young black asylum seekers began to tell me how many times they had been stopped for traffic violations (or for no reason) I couldn't believe it. One of our ministers, Al Green who is a black man from Jamaica and a graduate of Worcester Poly Tech as a civil engineer, has been stopped many times. One of the times, he was asked repeatedly if the car was his. I have never ever, when young or now as an older person, been asked if the car was mine. Al gave him the registration and license and the police officer continued to ask if this was his car. Al was so surprised because the car was nothing that he would have chosen to drive except that he was a student and struggling to both work and complete his degree. The cop did not arrest him but he was left, shamed with the assumption of poverty and crime aimed at him.

One of our young Ugandan men was picked up by State Police. He was not cited for any grievance, but they wanted to see his driver's license. He was driving, as is legal, on his Ugandan license. He was unable to get a license here because he did not yet, have a social security number. The law offers immigrants one year to drive on their license from their home country. I found him distraught and frightened. I met him at the towing company where his car was. I told them that his license was valid. They didn't care, of course. Told me to talk to the State Police. They would not accept my call. The only way for him to get his car was for me to pay $200.00 out of my pocket. If I didn't, the cost would increase daily. I paid it. Michael went to court and of course, the State Police were wrong! I was never able to receive my $200. There is no question that Michael was racially profiled. They refused to listen to him and simply took him in! Who were they serving and protecting?

A gentleman from Uganda who was a doctor there, was stopped 6 times in two months. I don't think anyone who hasn't worked with these amazingly courageous people understand how traumatizing it is to be targeted. One man said to me, "Pastor Judy, in Uganda, I was tortured and beaten by the police because I was gay; in the USA, I fear being tortured and beaten by the police (even killed) because I am black."

Another young man pulled over on Main Street in Worcester at about 11pm, because his mom from Uganda called him. He was arrested and accused of prostitution. He is gay! He begged the office to look at his phone and see his mother's number to prove that he was talking to his mom. He was shamed and the police refused to listen to him. He was black, in a neighborhood where prostitution was happening, but the police officer refused to simply look at his phone.

I could go on and on. We have had black folks speak in church since the death of George Floyd. We have heard from a black police officer who left the force due to racist slurs and pressure from other police officers in the Worcester police department. From them, he was called the "N" word daily!

Please, please reform. I do not believe that we can simply have some training packets and tell racist cops to follow the rules. We need a re-do on what it is to be a police officer and we need a re-do on who we hire.

All that being said, I would not want to be a police officer today. I believe that reform will help good police officers who wish to do a good job but can't due to the archaic and abusive guidelines under which they work.

I would be glad if this law is passed. I hope that many more will be coming in the future that will protect my good and beautiful parishioners; God's children who were made wonderfully by the God of diversity.

With respect and hope.

The Reverend Judith K. Hanlon

Signors:
Isabel Gonzalez-Webster, Worcester Interfaith
Rev. Aaron Payson, Unitarian Universalist Church, Worcester
Rev. Jose Perez, Rock of Salvation Church, Worcester
Rev. Clyde Talley, Belmont AME Zion Church, Worcester
Scott Larson, President, Straight Ahead Ministries , Worcester
Imam Asif Hirani, Muslim Islamic Center, Worcester
Rev. Mark Nilson, Salem Covenant Church, Worcester
Rev. Brent Newberry, First Baptist Church, Worcester
Rev. Rev. Natalie Webb, First Baptist Church, Worcester
Rev. Judith K. Hanlon , Hadwen Park Congregational Church, Worcester
Rev. Tom Sparling, The Journey Community Church, Worcester
Rev. Lina Michel, United Congregational Church, Worcester
Rev. Jose Encarnacion, Christian Community Church & the Shalom Neighborhood Ctr, Worcester
Rev. Dr. Sarai Rivera, District 4 City Councilor and Christian Community Church & the Shalom Neighborhood Ctr.
Rev. Esau Vance, Mt. Olive Pentecostal Church, Worcester
Rev. Dr. Jesse G. Gibson, Throne of Grace Ministries, Worcester
Worcester City Councilor at Large, Khrystian E. King

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I think it is very hard for even the very best police officers to protect and serve rather than catch and jail.

Sadly, I can support my opinion. Our church houses a ministry called the LGBT Asylum ministry. Thus, for 11 years, our church has been blessed to be multi-racial, multi-cultural and intergenerational. When some of our young black asylum seekers began to tell me how many times they had been stopped for traffic violations (or for no reason) I couldn't believe it. One of our ministers, Al Green who is a black man from Jamaica and a graduate of Worcester Poly Tech as a civil engineer, has been stopped many times. One of the times, he was asked repeatedly if the car was his. I have never ever, when young or now as an older person, been asked if the car was mine. Al gave him the registration and license and the police officer continued to ask if this was his car. Al was so surprised because the car was nothing that he would have chosen to drive except that he was a student and struggling to both work and complete his degree. The cop did not arrest him but he was left, shamed with the assumption of poverty and crime aimed at him.

One of our young Ugandan men was picked up by State Police. He was not cited for any grievance, but they wanted to see his driver's license. He was driving, as is legal, on his Ugandan license. He was unable to get a license here because he did not yet, have a social security number. The law offers immigrants one year to drive on their license from their home country. I found him distraught and frightened. I met him at the towing company where his car was. I told them that his license was valid. They didn't care, of course. Told me to talk to the State Police. They would not accept my call. The only way for him to get his car was for me to pay $200.00 out of my pocket. If I didn't, the cost would increase daily. I paid it. Michael went to court and of course, the State Police were wrong! I was never able to receive my $200. There is no question that Michael was racially profiled. They refused to listen to him and simply took him in! Who were they serving and protecting?

A gentleman from Uganda who was a doctor there, was stopped 6 times in two months. I don't think anyone who hasn't worked with these amazingly courageous people understand how traumatizing it is to be targeted. One man said to me, "Pastor Judy, in Uganda, I was tortured and beaten by the police because I was gay; in the USA, I fear being tortured and beaten by the police (even killed) because I am black."

Another young man pulled over on Main Street in Worcester at about 11pm, because his mom from Uganda called him. He was arrested and accused of prostitution. He is gay! He begged the office to look at his phone and see his mother's number to prove that he was talking to his mom. He was shamed and the police refused to listen to him. He was black, in a neighborhood where prostitution was happening, but the police officer refused to simply look at his phone.

I could go on and on. We have had black folks speak in church since the death of George Floyd. We have heard from a black police officer who left the force due to racist slurs and pressure from other police officers in the Worcester police department. From them, he was called the "N" word daily!

Please, please reform. I do not believe that we can simply have some training packets and tell racist cops to follow the rules. We need a re-do on what it is to be a police officer and we need a re-do on who we hire.

All that being said, I would not want to be a police officer today. I believe that reform will help good police officers who wish to do a good job but can't due to the archaic and abusive guidelines under which they work.

I would be glad if this law is passed. I hope that many more will be coming in the future that will protect my good and beautiful parishioners; God's children who were made wonderfully by the God of diversity.

With respect and hope.

The Reverend Judith K. Hanlon

Signors:
Isabel Gonzalez-Webster, Worcester Interfaith
Rev. Aaron Payson, Unitarian Universalist Church, Worcester
Rev. Jose Perez, Rock of Salvation Church, Worcester
Rev. Clyde Talley, Belmont AME Zion Church, Worcester
Scott Larson, President, Straight Ahead Ministries , Worcester
Imam Asif Hirani, Muslim Islamic Center, Worcester
Rev. Mark Nilson, Salem Covenant Church, Worcester
Rev. Brent Newberry, First Baptist Church, Worcester
Rev. Rev. Natalie Webb, First Baptist Church, Worcester
Rev. Judith K. Hanlon , Hadwen Park Congregational Church, Worcester
Rev. Tom Sparling, The Journey Community Church, Worcester
Rev. Lina Michel, United Congregational Church, Worcester
Rev. Jose Encarnacion, Christian Community Church & the Shalom Neighborhood Ctr, Worcester
Rev. Dr. Sarai Rivera, District 4 City Councilor and Christian Community Church & the Shalom Neighborhood Ctr.
Rev. Esau Vance, Mt. Olive Pentecostal Church, Worcester
Rev. Dr. Jesse G. Gibson, Throne of Grace Ministries, Worcester
Worcester City Councilor at Large, Khrystian E. King

WORCESTER FIREFIGHTERS LOCAL 1009

International Association of Fire Fighters

625 CHANDLER STREET • WORCESTER, MA 01602 • OFFICE: (508) 831-0519 • FAX: (508) 797-1690

International Association of Fire Fighters
Professional Fire Fighters of Massachusetts

July 17, 2020

Speaker DeLeo and the Honorable Representatives of the Massachusetts House,

On behalf of Worcester Fire Fighters Local 1009, I testify in opposition of SB2820 as sent to the House of Representatives. Local 1009 supports the ongoing efforts in our community and across the Commonwealth to reassess our social interactions, our beliefs, perceptions, and the way we treat each other. We support the demand that our public safety should be held to the highest of standards. We acknowledge that changes should and need to be made as we move forward together. However, the legislation before the House of Representatives, while largely positive and inclusive of measures that will exact true and meaningful change, is riddled with anti-labor, anti-worker, and grossly unfair treatment of public employees.

This legislation has been consumed by the influence of the Massachusetts Municipal Association (MMA), a political organization purporting an allegiance to the taxpayer but truly dedicated to eliminating worker's rights and abolishing unions. The MMA is using the social discussion occurring across our nation as an opportunity to push forward their longstanding agenda to suppress the protections and due process afforded to our public employees. They are using the demand for police reform to remove longstanding and trusted protections from not only our police but all public employees.

The Senate bill's elimination of Qualified Immunity as we know it, does nothing to reform policing and curb the instances of police brutality. Rather, the change merely makes it more likely cities and towns will spend more tax dollars to defend against lawsuits while also exposing all public employees to more litigation. This change is a direct affront to the public employees who day in and day out perform their jobs to the best of their abilities and in the best interests of the public they serve. This change puts those public employees and their families at risk by eliminating protections afforded to them when they perform their duties in good faith, with professionalism, and within the training they have been provided. Unlike the narrative that extols Qualified Immunity as a shield so that police can abuse their power, it needs to be emphatically clear that Qualified Immunity only protects public employees that use their authority in a manner consistent with law, ethics, and training. Furthermore, the bill's elimination of Qualified Immunity extends beyond our police force to all public employees equally, including our fire fighters.

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Due to influences like the MMA, this bill reaches even farther by eliminating due process and replacing it with an oversight board, half of whose members are individuals not subject to certification. Every other licensing or certification agency in the Commonwealth includes an overwhelming majority of individuals who possess first-hand knowledge about the respective occupations that they are tasked with assessing. This proposed board, which is charged with handing down judgements upon law enforcement officers, also replaces longstanding neutral entities available to all other public employees and unions to ensure discipline is consistent with just cause. This bill fails to protect civil service, arbitration, and the due process that our public servants deserve.

While the debate surrounding police reform is warranted in light of the events that have occurred across this nation, the assault on public employees is not. The opportunistic attacks by self-serving anti-union organizations on our public employees should be stopped and provisions that do not reform policing but only suppress the working people of our communities should be eliminated from this bill.

Sincerely,

Michael Papagni
President
Worcester Fire Fighters Local 1009

Dear Representatives of the House Ways and Means Committee,

My name is Ronald E. Pirrello and I live in Canton. I am writing this letter to voice my concern that again no public hearing was held on this matter and given no other choice, I am submitting this letter as my written testimony. As your constituent, I write to you today to express my disagreement with any hastily-thrown-together legislation that will hamper law enforcement efforts across the Commonwealth and encourage you to vote against Senate bill 2800 submitted to the House of Representatives. It deprives police officers of Massachusetts any basic protections afforded to all other public employees in Massachusetts. It is a rush to judgment being developed behind closed doors. Issues of policing, health and human services, and race are too important to be rushed. Of the many concerns, the following in particular, stand out and demand immediate attention, modification and/or correction. Those issues are:

1. The senate version will seriously undermine public safety because police officers may become more concerned about personal liability than public safety.

The proposed changes to QI will have a serious impact on critical public safety issues.

Unintended and unnecessary changes to QI will hamstring police offices in the course of their duties because they will be subjected to numerous frivolous nuisance suits for any of their actions. Officers may second guess doing what is necessary for public safety and protecting the community because of concerns about legal exposure.

2. The process employed by the senate of using an omnibus bill with numerous, diverse, and complicated policy issues coupled with limited public and policy participation was undemocratic, flawed and totally nontransparent.

The original version of the bill was over 70 pages and had multiple changes to public safety sections of the general laws. It was sent to the floor with no hearing and less than a couple of days for Senators to digest/caucus and receive public comment. This process was a sham.

3. Police support uniform statewide training standards and policies as well as an appropriate regulatory board which is fair and unbiased.

The Governor and supports of the bill promised to use the 160 or so professional regulatory agencies as a guide for police certification. The senate instead created a board without precedent. The 15-member board proposed to oversee, and judge police officers includes no more than six police officers and four of those police officers will be management/Chief representatives. The remainder of the committee will be dominated by groups critical of law enforcement, if not parties that regularly sue police and law enforcement. The civilian members on the board will lack any familiarity with the basic training, education or standards that apply to police officers. All the other 160 boards include a strong majority of workers from the profession supplemented by a few individuals to represent the general public. Imagine if police officers were appointed to a board to oversee teachers licenses!

4. The removal or any change to Qualified Immunity is unnecessary if the Legislature adopts uniform statewide standards and bans unlawful use of force techniques that all police personnel unequivocally support.

All police organizations support major parts of the bill: strengthening standards and training; having a state body that certifies police officers; banning excessive force techniques and enhancing the diversity process. Once we have uniform standards and policies and a statutory ban of certain use-of-force techniques then officers and the public will know the standards that apply to police officers and conduct that is unaccepted and unprotected by QI.

This will also limit the potential explosion of civil suits against other public employee groups Thus reducing costs that would otherwise go through the roof and potentially have a devastating impact on municipal and agency budgets.

5. Police Officers Deserve the same Due Process Afforded to all Other Public Employees

Public employees and their unions have a right for discipline to be reviewed by a neutral, independent expert in labor relations – whether an arbitrator or the Civil Service Commission. This bill makes the Commissioner's decisions or the new Committee's decisions the final authority on certain offenses.

We should affirm the right of all employees to seek independent review of employer discipline at arbitration or civil service.

Thank you for your attention to this important matter.

Sincerely,

Ronald E. Pirrello

Dear Representative Galvin,

My name is Ron Pirrello and I live on Bolivar St in Canton. I am writing this letter to voice my concern that again no public hearing was held on this matter and given no other choice, I am submitting this letter as my written testimony. As your constituent, I write to you today to express my disagreement with any hastily-thrown-together legislation that will hamper law enforcement efforts across the Commonwealth and encourage you to vote against Senate bill 2800 submitted to the House of Representatives. It deprives police officers of Massachusetts any basic protections afforded to all other public employees in Massachusetts. It is a rush to judgment being developed behind closed doors. Issues of policing, health and human services, and race are too important to be rushed. Of the many concerns, the following in particular, stand out and demand immediate attention, modification and/or correction. Those issues are:

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We should affirm the right of all employees to seek independent review of employer discipline at arbitration or civil service.

Thank you for your attention to this important matter.

Sincerely,

Ronald E. Pirrello

7/17/20

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,

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.

Our criminal justice system is not immune to structural racism and we join you and all members in the great work needed to set things right. The unfortunate reality is that 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,

Cliff Freeman, Director of STEM Programs

The Young People's Project, typp.org

857-492-1917, cliff@typp.org

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,

John Wood

1o Gilmore Rd

Southborough Ma, 01772

Jwood01772@yahoo

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Name/address/email

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Thank you,

James W. Connor

1308 Ocean Street

Marshfield, MA 02050

Jameson_0798@verizon.net

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

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Personnel and Administration
Ways and Means
Treasurer, Caucus of Women Legislators

July 17, 2020

The Honorable Aaron M. Michlewitz
Chair, House Committee on Ways and Means
State House Room 243

The Honorable Claire D. Cronin
House Chair, Joint Committee on the Judiciary
State House Room 136

RE: S.2820, The Reform, Shift, and Build Act

Dear Chair Michlewitz and Chair Cronin,

Thank you for the opportunity to provide input and feedback on **S.2820, the Reform, Shift, and Build Act.** I appreciate the opportunity to share concerns and perspectives raised by members of the communities I represent and my local police chiefs, including the Towns of Westborough and Holliston, which have submitted testimony individually. This legislation is critically important to addressing structural inequities and raise policing standards, while ensuring that the Commonwealth can continue to attract and retain the most highly qualified and well-trained public safety professionals. We are at a unique moment in history and your leadership is greatly appreciated. I offer the following comments for your consideration.

First, I fully support the policy recommendations advanced by the Speaker of the House and the Black and Latino Legislative Caucus, and agree that focusing on priorities expressed directly by communities of color is essential, including the establishment of **Peace Officer Standards and Training (POST**), a review of the **Civil Service exam system**, the creation of a **commission on structural racism**, and clarifying statutory limits on **police use of force**.

The bill before us is wide-ranging and I continue to engage with constituents who have questions and concerns. However, I would like to share the most pressing concerns that have been brought to my attention thus far relative to S.2820.

- **Qualified immunity**: I am concerned with current language in S.2820 revising qualified immunity. This is a complex and nuanced area of law. Numerous concerns have been brought to my attention by the public safety community, and these concerns need to be better understood and evaluated.
- **Enhancements to police training:** Ensuring that all of our public safety personnel are trained in the most current standards, including de-escalation, is essential to public safety and the protection of the civil rights of all of our citizens. I support increased opportunities for training and a consistent curriculum that is based in community needs. In addition, based on conversations with local public safety officials, I recommend that your committees consider including requirements that training, to the greatest extent possible, consist of

hands-on training rather than classroom-only hours. When making split-second decisions in the field, the benefits of interactive training may be helpful in leading to improved recall of essential training skills.

- **Increased accountability from the Department of Corrections**: I have several constituents who work at MCI-Framingham as corrections officers. They have consistently shared concerns about the need for improved accountability and transparency at DOC. I support measures to increase transparency around expenditures to ensure they reflect best practices, as well as the principles reflected by our legislative criminal justice reform efforts. I would support measures such as Section 63 and 67 of S.2820, or other similar measures that would improve transparency and accountability of funding and priorities in the department.

Thank you for your diligence and thoughtful work to address structural racism in our Commonwealth. I especially appreciate each of your committees placing a priority on public engagement prior to moving a bill to the floor. Such a commitment to transparency and public process is essential to gaining broad support for this landmark legislation. Please don't hesitate to contact my office with questions.

Sincerely,

Carolyn Dykema

July 17, 2020

To whom it may concern,

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.
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Thank you,

Kristin Cordes
19 Chester Ave. Winthrop, MA 02152
Kristin.cordes@yahoo.com

The Commonwealth of Massachusetts
House of Representatives
24 Beacon Street, Boston, MA 02133

Mary S. Keefe
State Representative • 15th Worcester District
Mary.Keefe@mahouse.gov • (617) 722-2017

Legislative Aide
Nicole Eigbrett
Nicole.Eigbrett@mahouse.gov

July 17, 2020

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

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

RE: Testimony 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"

Dear Chair Michlewitz and Chair Cronin:

Thank you for the opportunity to submit written testimony 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," otherwise known as The Reform, Shift + Build Act. I am grateful for your tireless work to ensure that Massachusetts begins dismantling systemic racism, and hope this is only the start of our anti-racist policy making, rather than the end.

First, I would like to express my strong support for S.2820. It is imperative that we respond with urgency and moral clarity to this unprecedented national movement for racial justice; my constituents will accept nothing less. In the wake of the murders of George Floyd, Breonna Taylor, and countless other Black and brown people across our country and in our communities, we must take decisive action to change how people of color are impacted by policing and the criminal justice system.

As your committees move swiftly to review and redraft S.2820 so that it may be voted on by the House, there are three areas that I would like to see strengthened. I respectfully request that you consider the following changes to the omnibus bill, which are detailed in this letter:

1. Eliminate the $10 million cap and expand funding eligibility to nonprofit social enterprises in the Justice Reinvestment and Workforce Development Fund.

2. Expand and strengthen use of force and public records provisions and ensure that they apply to corrections officers within prisons and jails.

3. Preserve the Senate's proposed reforms to qualified immunity for police officers and all other public employees.

1. Eliminate the $10 million cap and expand funding eligibility to nonprofit social enterprises in the Justice Reinvestment and Workforce Development Fund. I was pleased to see the Justice Reinvestment and Workforce Development Fund in the base language of S.2820 as Section 37. The fund framework is based upon a standalone bill that I filed, H.1651, "An Act to reinvest justice and opportunity in communities affected by incarceration," otherwise known as The Justice Reinvestment Act, and is currently in the House Ways & Means Committee after receiving a favorable report from Labor & Workforce Development. This bill would establish a trust fund to take the money we have saved from lowering incarceration rates by way of recent criminal justice reforms, and reinvesting in communities where policing and incarceration have been highest. The fund would provide grants for job recruitment, training, and placement for people facing high barriers to employment. Ultimately, it reimagines public safety by creating economic opportunity. I respectfully request that you consider two specific changes to the Justice Reinvestment and Workforce Development Fund when you review the bill and release it to the House.

The first change is removing the $10 million cap on the fund in subsection (c)(3), line 952 of S.2820. The fund formula in my original bill doesn't include this cap, and the reasoning being that our state prison and county jail populations continue to decrease. We see that in 2012, there were 11,723 prisoners in the Department of Correction (DOC), and in 2019 there were 8,784 prisoners. This amounts to a 25% decline in our prison population, while incredibly, the budget for the DOC increased by 20% over that same period. The DOC budget went from $579 million to $679 million for FY19. Rather than increasing funding for the DOC and Houses of Correction (HOCs), we could take the savings from lower incarceration rates and offer workforce development grants in predominantly poor communities of color around our state. The cap of $10 million would have too little impact in making the broader change we envision for all of these communities. It is also insignificant compared to DOC's budget, which is proposed to be $674 million for FY21.

The second change is to expand program eligibility for funding, so that "participation in a nonprofit employment social enterprise" would qualify for funds in subsection (e), line 957 of S.2820. Nonprofit organizations like UTEC and ROCA provide impactful job training for youth and emerging adults as a diversion from gang activity. This language change would be necessary so that they could qualify for reinvestment funds and expand their successful youth jobs programming.

2. Expand and strengthen use of force and public records provisions and ensure that they apply to corrections officers within prisons and jails. In order to uphold the safety and dignity of people incarcerated in the Commonwealth, I urge you to expand the definition of "law enforcement officer" and "officer" to include state and county correction officers in the entirety of the bill. While I support the use of force provisions within S.2820 as they apply to civilian-facing police officers, we know that excessive uses of force are frequently committed upon incarcerated people by correctional staff, who are also public safety officers. The unintended consequence of not including correctional staff in the law enforcement officer definition could produce an ambiguity that reduces the standards for corrections officers. This definition change would ensure there is equity in the way that the bill is applied to people in the street and to those behind the wall, who are disproportionately Black and brown people, and must not be forgotten in our pursuit for racial justice. In addition to this expanded definition, I respectfully request that you consider two more changes related to use of force standards and access to public records.

The second change is to expand and strengthen the use of force standards for all public safety officers, which would immediately improve matters in correctional settings. Over the past decade I have visited numerous state prisons and county jails in our state. Myself and a number of colleagues visited the Souza-Baranowski Correctional Center (SBCC) this past January following an altercation between guards and prisoners that included a lock down and weeks of uses of force against prisoners. Conversations with currently incarcerated people and returning citizens reveal physical harm, fear, intimidation, coercion, and lasting trauma from corrections officers. It is clear that we must create uniform standards for use of force across the Commonwealth, in an effort to curtail egregious practices that lead to unnecessary and excessive force, to increase safety, accountability, and to reduce harm.

Rather than tasking these use of force protocols to the commission in section 63 of S.2820, there are three bills this session that provide a framework for excessive force. The bill I filed this session, H.2087, "An Act to create uniform standards in use of force, increase transparency, and reduce harm," outlines exactly such provisions. It creates a floor for standards to ensure that we have a baseline of humane treatment for incarcerated persons that is evidence-based. A number of critical areas are addressed, including use of chemical agents (such as pepper spray and tear gas), use of restraint chairs, use of kinetic impact weapons (guns that fire rubber or otherwise modified bullets), and planned and emergency cell entry. The Senate version of the bill, S.1362, additionally addresses use of dogs to respond to routine incidents and every perceived need for a use of force.

I additionally encourage you to adopt the provisions within HD.5128, "An Act relative to saving black lives and transforming public safety," filed by Representative Miranda. This bill includes correctional officers in the definition of law enforcement and so its protections would apply to incarcerated people. It also provides specific and concrete reforms that would meaningfully change existing law and increase accountability with respect to use of force matters.

The third change is to enact public records and data access provisions in correctional settings to ensure transparency and accountability. Prisons and jails are shielded from public view more than any other public or law enforcement agency. It is a function of racial inequity that incarcerated people do not have ready access to records of uses of force against them, whereas law enforcement has easy and total access to all records that they may wish to use against incarcerated people or to promote heightened security. We saw this in real time with what happened at SBCC. The DOC immediately released video of the correctional officers being assaulted by prisoners, but we have yet to see any of the videos of the 100 or so uses of force against prisoners, much of which was racialized, in the weeks that followed. This gives the public an unbalanced view of the system, and promotes prejudice and racial bias in people's viewpoints of how the prison system works and doesn't work. We need to ensure that use of force records, including video, are accessible to the public so that we can increase the potential for accountability of individual officers as well as agencies.

Although the commission in section 63 of S.2820 would make recommendations on public records relating to use of force incidents, most of this information is readily available from DOC and county Sheriffs, and could be made public immediately. The provisions in subsections (v) and (z) of my bill, H.2087, provide a strong framework of transparency and accountability. It would require data from use of force incidents to be published publicly on the agency's website and guarantee the prisoner's right to access these records as public records. Furthermore, in my negotiations with DOC on H.2087, their legal counsel offered very few objections to these

proposed policies. I urge you to consider adopting these measures of transparency along with the stronger use of force standards to ensure the safety of incarcerated people.

3. Preserve the Senate's proposed reforms to qualified immunity for police officers and public employees. I, like many of our colleagues, have paid close attention to the conversation on qualified immunity and how it impacts our criminal justice system. In current practice, the court looks to previous case law about constitutional rights violations. If there isn't case law already established covering the action a defendant is accused of, the defendant may use qualified immunity as a motion to dismiss the case before it even moves forward. In this way, the doctrine of qualified immunity prevents justice for survivors of police violence, who are almost never able to prove that their civil rights were violated in court. Survivors of police violence are disproportionately Black and brown people, and so we must reform qualified immunity if we are to dismantle systemic racism.

Therefore, I support the language in Section 10 of S.2820 and urge you to preserve these proposed reforms on qualified immunity in the House version of the bill. The reforms proposed in Section 10 of S.2820 would shift the standard from established case law to a "reasonable belief" that a defendant would have known their action was a violation of civil rights law.

In closing, I appreciate your consideration of my testimony in support of S.2820, The Reform, Shift + Build Act. My requests to improve upon the legislation are with the intent to further dismantle systemic racism in our Commonwealth. As we take this hopeful step forward for racial justice, I'm committed to supporting you and Speaker DeLeo however possible to ensure its passage into law before the end of session on July 31, 2020.

Please do not hesitate to contact me with any questions.

Sincerely,

Representative Mary S. Keefe

LENOX POLICE DEPARTMENT

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Stephen E. O'Brien
Chief of Police

17 July 2020

Chairwoman Cronin,
Chairman Michlewitz,

Re: Senate 2820 as amended

Please accept this testimony about this department's concerns regarding the police reform bill that has come before you. There are several areas that we feel need to be looked at more in depth.

Please take the time to read what we as members of the Massachusetts Chiefs of Police Association have detailed quite thoroughly to benefit everyone across the Commonwealth:

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,
Stephen E. O'Brien
Chief of Police

Massachusetts Advisory Committee to the U.S. Commission on Civil Rights Issues Statement in Regard to Police Killings and Police Practices

June 23, 2020

The members of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights applaud the June 12 statement by the unanimous Commissioners condemning the killings of Ahmaud Arbery, Breonna Taylor, and George Floyd.[1] That same day, the Tennessee Advisory Committee issued a statement mourning the "precious lives taken before their time … [and] are appalled by the cruelty, injustice and despair surrounding the circumstances of their deaths." The Minnesota Advisory Committee also issued a statement demanding justice "for the killing of Ahmaud Arbery, Breonna Taylor and countless other Black, Indigenous and people-of-color at the hands of law enforcement personnel."[2]

Less than 12 hours after these statements were issued another Black man, Rayshard Brooks, was shot in the back and killed by Atlanta police.[3]

We are appalled by these murders and the countless others, both named and unknown, by members of law enforcement as well as private actors throughout our history.

On June 17, Governor Charlie Baker filed the police reform bill, "An Act to Improve Police Officer Standards and Accountability," calling it the "first step in a process that we hope will create a package of reforms that accomplishes the goals that we all share."[4]

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[1] U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Unanimously Condemns the Killings of Ahmaud Arbery, Breonna Taylor, and George Floyd and Calls on the Department of Justice to Enforce Federal Civil Rights Laws that Protect Americans from Unconstitutional Policing Practices*, June 5, 2020, https://www.usccr.gov/press/2020/06-05-Pattern-or-Practice-Statement.pdf.

[2] U.S. Commission on Civil Rights, Minnesota Advisory Committee, *Minnesota Advisory Committee to the U.S. Commission on Civil Rights Urges Police Reform based on 2018 Report on Police Practices*, June 8, 2020, https://www.usccr.gov/pubs/2018/03-22-MN-Civil-Rights.pdf.

[3] The systemic abuse of power by police disproportionately impacts communities of color and is a continuing violation of fundamental human rights. According to the Washington Post, "black people have been shot and killed by police at disproportionate rates." https://www.washingtonpost.com/investigations/protests-spread-over-police-shootings-police-promised-reforms-every-year-they-still-shoot-nearly-1000-people/2020/06/08/5c204f0c-a67c-11ea-b473-04905b1af82b_story.html. *See also* University of Chicago Law School - International Human Rights Clinic, "Deadly Discretion: The Failure of Police Use of Force Policies to Meet Fundamental International Human Rights Law and Standards""(2020), International Human Rights Clinic 14 (noting that the "human rights at stake in policing — the right to life and personal security as well as the freedom from discrimination— are bedrock guarantees, essential for the enjoyment of other fundamental human rights …" and yet none of the police departments studied "met the minimum standards established by human rights law.").

[4] An Act to Improve Police Officer Standards and Accountability and to Improve Training, H. 4794, 191st Gen. Court (Mass. 2020). The Committee notes that on June 19, the Commissioners of U.S. Commission on Civil Rights, by majority vote, supported certain measures in the House of Representatives bill, Justice in Policing Act of 2020. The Commission called it "consistent with the Commission's call to ensure that every community resident should be able to live, work, and travel confident in an expectation that interactions with police officers will be fair, consistent with constitutional norms, and guided by public safety free from bias or discrimination, as stated in our 2018 report,

The Committee is encouraged that Governor Baker is addressing the practice of policing in the Commonwealth, and we hope this bill is indeed a first step in re-training and re-certifying police and toward insuring accountability for abuses. The Committee acknowledges that Massachusetts has not experienced the same type of lethal police abuses towards unarmed Black victims experienced in other states in recent years.[5] At the same time, however, there are reports of continued racial profiling[6] by the Boston police, four years after the Supreme Judicial Court ruled such policing was widespread enough that "an individual, when approached by the police might just as easily be motivated [to flee] by the desire to avoid the recurring indignity of being racial profiled as by the desire to hide criminal activity."[7] Policing in the Commonwealth is seeing its legitimacy threatened and it will take more than one bill to regain it.

We recommend the Commission encourage a thorough review of police practices and labor agreements[8] by every agency within the Commonwealth and an overhaul where appropriate, as well as an overhaul that considers going beyond reform and actually changes the approach to creating and sustaining safe and healthy communities. This new approach must recognize the need to address the myriad other factors that contribute to making and keeping the public safe. Such rethinking must begin with policing but also include the long-term allocation of funds and policy changes to address the troubling social determinants of health that affect our communities, as well as the repeal of laws that do not increase public safety but result in increased and unnecessary interaction between law enforcement and communities of color. Most important, such change must respond to the direct needs expressed by residents to make themselves safe.

We must also be clear that these broader changes, repeatedly requested by residents, cannot and must not await police changes. What is required here is a rethinking of justice that is aligned with the lived experience of those so long over-policed in current practice. Such a re-alignment must include fully and aggressively supporting increased funding and policy changes that result in improvements in health care, education, employment, transportation, environmental conditions, violence and substance abuse prevention programs. Reforming police practices is necessary but not sufficient. If policing is to increase its legitimacy it can only be as one of many tools as we employ to build a more equitable and just Commonwealth.

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Police Use of Force: An Examination of Modern Policing Practices." U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Supports Policing Reform Measures in the Justice in Policing Act of 2020*, June 19, 2020, https://www.usccr.gov/files/2020-06-19-USCCR-Supports-Justice-in-Policing-Act.pdf . The Act provides for greater transparency through data collection and publication. It prohibits certain police practices, like racial profiling and no-knock warrants in drug cases. Nonetheless, the United States "lacks a comprehensive and effective national legal framework that places specific conditions on the use of force and establishes mechanisms of accountability." "Deadly Discretion," *supra* note 3.

[5] "Fatal Force," *Washington Post*, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/ (accessed June 23, 2020).

[6] "City Must Confront Racial Bias of Stop-and-frisk," *Boston Globe*, June 17, 2020, https://www.bostonglobe.com/2020/06/17/opinion/city-must-confront-racial-bias-stop-and-frisk/ (accessed June 23, 2020).

[7] *Commonwealth v. Warren*, 58 N.E.3d 333, 342 (Mass. 2016).

[8] "Don't Let Labor Agreements Thwart Police Accountability," *Boston Globe*, June 4, 2020, https://www.bostonglobe.com/2020/06/04/opinion/dont-let-labor-agreements-thwart-police-accountability/ (accessed June 23, 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,

Thank you for your commitment to racial justice and to the bright futures of young people in our Commonwealth. We the undersigned organizations urge you to **protect the rights of students to privacy and right to learn without fear of surveillance or profiling.** We ask the House to include language (see Appendix A), similar to Section 49 of S.2820, in its final reforming police standards legislation:

- **Students should be free to grow without the constant fear of having their background (race, ethnicity, or immigration status) weaponized against them.** Black and Brown students are more likely to be criminalized and funneled through law enforcement systems than their white peers. Without this language, we will be further entrenching the school-to-prison and school-to-deportation pipelines.
- **Information schools share about students with police departments endangers young people and their families.** The information school officials and school resource officers (sometimes known as school police) share with local law enforcement can be entered into databases, which serve to surveil, criminalize, incarcerate, detain, and deport our students. The attached language clarifies that the restrictions on information-sharing apply to school resource officers.
- **There needs to be clear definitions of what information can be added into reports so as to not criminalize students.** This language serves to limit the information that is shared to be solely about the incident at hand, preventing hearsay and biases from being propagated.
- **Being labeled as gang associated or even affiliated is harmful for students, families, and communities.** The bar for labeling an individual as gang-affiliated is dangerously low, resulting in innumerable false accusations. The repercussions impact all students regardless of immigration status or citizenship. For students with irregular status, any accusation of gang affiliation -- even an unfounded one -- can result in detention or deportation. In immigration court, there is an extremely low bar for evidence and no presumption of innocence until proven guilty. For students with regular status (ex. citizens), being entered into the gang database increases the likelihood of court summons, more punitive sentencing, escalated surveillance, and, indeed, incarceration.
- **The attached language ensures that labelling a student as a** gang associate or member is not up to the discretion of school personnel and SROs. This is necessary to include in the bill to prevent the unjust and biased accusations of gang affiliation that can derail a young person's life. Assumptions about gang affiliation are notoriously flawed for the following reasons. We know that Black and Brown youth are more likely to be labeled gang members, not because of any actions they ever committed, but simply because of racist ideas about who is inherently criminal.

Thank you for defending and protecting the students of Massachusetts.

Respectfully,

Action for Boston Community Development
ACLU of Massachusetts
ADL New England
Bethel Institute for Social Justice/Generation Excel
Black Lives Matter – Worcester
Boston College Legal Services LAB Immigration Clinic
Boston Immigration Justice Accompaniment Network
Boston Teachers Union
Bridge Over Troubled Waters
Center for Law and Education
Center for Public Representation
Center for Teen Empowerment
Charles Hamilton Houston Institute, Harvard Law School
Children's Law Center of Massachusetts
Citizens for Juvenile Justice
Citizens for Public Schools
City Mission Society
The City School
Coalition for Effective Public Safety
Committee for Public Counsel Services
Criminal Justice Policy Coalition
De Novo
Disability Law Center
Dorchester Youth Collaborative
Ending Mass Incarceration Together
Fair Sentencing of Youth
Framingham Families for Racial Equity in Education
Freitas & Freitas, LLP
Friends of Children
GLBTQ Legal Advocates & Defenders
Greater Boston Legal Services, CORI & Re-entry Project
Greater Boston Legal Services, School to Prison Pipeline Intervention Project
Harvard Immigration and Refugee Clinical Program
HIPHOP Initiative Boston
The Home for Little Wanderers
I Have a Future/Youth Jobs Coalition
InnerCity Weightlifting
Jobs Not Jails
Justice Center of Southeast Massachusetts
Justice Resource Institute
Juvenile Rights Advocacy Program, Boston College Law School
Kids in Need of Defense (KIND)
Lawyers Committee for Civil Rights
Louis D. Brown Peace Institute
Massachusetts Appleseed Center for Law & Justice
Mass Mentoring Partnership

Massachusetts Commission on LGBTQ Youth
Mental Health Legal Advisors Committee
META (Multicultural Education, Training & Advocacy), Inc.
MissionSAFE
More Than Words
Mothers for Justice & Equality
Muslim Justice League
My Life My Choice
National Alliance on Mental Illness – MA
North American Family Institute
PAIR Project
Parents/Professional Advocacy League
Prisoners' Legal Services
Project RIGHT
RFK Children's Action Corp
Real Costs of Prison
The Rian Immigrant Center
Roca, Inc.
Roxbury Youthworks
Sociedad Latina
Spectrum Health Services
Strategies for Youth
Student Immigrant Movement
Stuck on Replay
UTEC
Unitarian Universalist Mass Action Network
Violence in Boston
Vital Village Network
We Are The Ones Boston
Young Sisters/Young Brothers United
Youth Build Boston
YW Boston

APPENDIX A. Proposed Language to Protect Students From Profiling

SECTION XX. Section 37L of chapter 71 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by replacing the third paragraph the following paragraphs:-

Supervisors who receive such a weapon report shall file it with the superintendent of said school, who shall file copies of said weapon report only with the department of children and families, the office of student services or its equivalent in any school district, and the local school committee. Said superintendent and representative from the department of children and families, together with a representative from the office of student services or its equivalent, shall arrange an assessment of the student involved in said weapon report. Said student shall be referred to a counseling program; provided, however, that said counseling shall be in accordance with acceptable standards as set forth by the board of education. Upon completion of a counseling session, a follow-up assessment shall be made of said student by those involved in the initial assessment. Such weapon report shall not be shared with the police department or the Chief of Police unless it is related to a school-based arrest or citation, or court referral pursuant to the criteria in Section 37P(b).

School department personnel, public and private contractors working in the schools not considered school department personnel, school resource officers as defined in section 37P, special service officers authorized under Section 282 of the Laws of 1898, and any other individual deputized with special police powers or other powers to function as law enforcement or security in schools or otherwise endowed with the ability to create law enforcement records, shall not disclose to a law enforcement officer or agency, including local, municipal, regional, county, state, and federal law enforcement, through an official report or unofficial channels, including but not limited to text, phone, email, database,

and in-person communication or submit to the Commonwealth Fusion Center, the Boston Regional Intelligence Center, and any other database or system that tracks gang affiliation or involvement, any information relating to a student or a family member obtained through any method, including, but not limited to, reports, observations or conversations with or about a student or from its databases or other record-keeping systems including, but is not be limited to: (i) immigration status; (ii) citizenship; (iii) neighborhood of residence; (iv) religion; (v) national origin; (vi) ethnicity; (vii) native or spoken language; (viii) suspected, alleged, or confirmed gang involvement, affiliation, association or membership; (ix) participation in school activities, extracurricular activities both inside and outside of school, sports teams or school clubs or organizations; (x) degrees, honors or awards; and (xi) post-high school plans. Nothing in this paragraph shall prohibit the sharing of information for the purposes of completing a report pursuant to section 51A of chapter 119 or filing reports related to school-based arrests, citations or court referrals pursuant to the criteria in section 37P(b).”

THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

July 17, 2020

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

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

Dear Chairs Michlewitz and Cronin:

I write today in support of strengthening 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.* Abhorrent recent events around the country have caused a wake-up call to address years of police brutality and racism in our justice systems. I am proud that the Committees are taking swift action on these issues, and am pleased that Speaker DeLeo has elevated reform to one of the top priorities of the House.

We have an opportunity in Massachusetts to rethink how we approach public safety and take steps to reform policing in our state, ensure accountability, and invest in strengthening our communities. S.2820 begins to move Massachusetts in the right direction, strengthening public safety and protecting Black lives.

It is imperative that we listen to communities of color as we focus on addressing police brutality, systemic racism, and the issues that Black and brown people in the Commonwealth face on a daily basis. **I strongly support our colleagues in the Massachusetts Black and Latino Legislative Caucus (MBLLC) and urge the House to pass the policy proposals they have outlined in their plan to address police violence and advance racial justice.**

Specifically, I support the four priority policy proposals of the MBLLC, including creating POST certification, civil service exam reform, creating a commission on structural racism, and adopting clear statutory limits on the use of force including banning tactics such as chokeholds, no-knock

warrants, and use of tear gas. While similar proposals are included in S.2820, including creating a POSAC, which will certify and decertify officers, creating a commission on structural racism, and adopting the use of force standards, civil service reform is not included in the Senate version. I request the committee to include all of the main tenets supported by MBLLC in the bill. I also support including the Senate's reforms to qualified immunity.

In addition, I would like to elevate one of the second-tier priorities of the MBLLC, *An Act Relative to Work and Family Mobility.* As raised in the attached statement from Black immigrant leaders, the link between driving privileges and federal immigration rules is a racial profiling and policing issue. Black immigrant lives are also under attack --included in the top 15 home countries for immigrants in Massachusetts are Brazil, Haiti, Cape Verde, Dominican Republic, and Jamaica. It is also important that key members of the law enforcement community support this bill, including the Massachusetts Major City Police Chiefs Association. **I request that the Committees include language from *An Act Relative to Work and Family Mobility* in the House version of this bill.**

I am grateful that the Committees are taking the steps necessary to consider these complex and critical issues to continue to address racial injustices and police reform. I appreciate all of the work of the Committees to take action on this bill.

Thank you for your consideration, and please let me know if you have any questions.

Best,
Christine

Christine P. Barber
34th Middlesex District

DRIVING FAMILIES FORWARD

Mobility is Freedom!

We are immigrants. We are Black. Our communities need driver's licenses.

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.

WGBH News recently reviewed a Boston Police Department report revealing that, in 2019, 70% of people stopped by the police were Black, even though Black people represent less than a quarter of the city's population. This data clearly demonstrates our reality: our communities are racially profiled and disproportionately policed. For Black immigrants, this over policing has grave consequences as families and communities are torn apart through detention and deportation.

There is no doubt that the socially damaging and unsafe linkage of driving privileges to immigration status is a part of the systemic racism that continues to hold back Black communities. Mobility is necessary. The current pandemic has shown how systemic inequities disproportionately affect Black and Brown communities, many of which are also immigrant communities.

Through the COVID-19 pandemic, our work has been deemed essential. Through the reopening, it is only appropriate that we have the dignity of our lives also deemed essential. Whether it is working in healthcare, construction or the food supply chain, we need to protect the health and safety of immigrants who live and work in every corner of our Commonwealth. The time has come to offer the essential tool of mobility to immigrants who are part of our economic fabric. As we prepare for the second wave of the COVID-19 pandemic, we must learn the lessons from the first. Where there is a risk to one, there is a risk to all.

[Natalícia Tracy, PH.D. Executive Director, Brazilian Worker Center]
[Dalida Rocha, 615 New England Political Director, 32BJ SEIU]

In the spirit of multiracial unity with the Black Lives Matter movement, we, the undersigned, support our Black immigrant neighbors, coworkers, friends, and families by standing in solidarity with the signatories of this statement.

[Julia Mejia, Boston City Councilor At-Large]
[Marie-Frances Rivera, President, Massachusetts Budget and Policy Center]

DRIVING
FAMILIES
FORWARD

[Paulo De Barros, President, Cape Verdean Association of Boston]
[Lee Matsueda, Executive Director, Community Labor United]
[Enrique Pepen, Chair Young Democrats of MA Latino Caucus]
[Danielle Williams, Organizer, Prophetic Resistance Boston]
[Reverend Dieufort J. Fleurissaint, True Alliance Center Inc. & Haitian Americans United, Inc.]
[Andrea Nyamekye & Elvis Méndez, Co-Executive Directors, Neighbor to Neighbor Education Fund]
[Senior Pastor Steve Watson, Greater Boston Interfaith Organization]

From: Kaitlin Porter <kmporter24@gmail.com>
Date: July 17, 2020 at 10:01:16 AM EDT
Subject: [External]: Bill S2800

To Whom It May Concern,

My name is Kaitlin Porter, and I am the wife of a 10 year veteran of the Middleboro Police Department. My husband, Zachary Porter, has proudly served as a Patrolman for his hometown since 2012, after paying his own way through the Plymouth Police Academy. He has wanted to do this job since he was a child, after watching his uncle work for the same department for years. He wears his uniform with pride, does his job knowing he could sacrifice it all at any moment to save another person's life, also knowing that he is protected to do what it takes to save a life.

He has done the impossible job of informing our neighbor that his daughter was killed by a drunk driver; he has seen entire families lose their lives in accidents, doing everything he can to save them from a crushed vehicle after a head on collision; he has talked people down from suicide; he has saved life after life from drug overdoses - an ever-growing problem in this state and country. He has seen more than your eyes would ever want to witness, and this reform bill is attempting to take away all the GOOD that police officers can do on a DAILY basis.

Bill S2800 would not allow my husband to perform any duty of his job without fear of civil lawsuit, so why would anyone want to stay? If your child were to go into anaphylaxis at the park, and a police officer arrived before EMS, you would want them to administer life-saving EPI-PEN, would you not? Bill S2800 would make them think twice about doing anything beyond their scope due to fear of civil litigation.

Police officers, who have a duty to serve their community, should not do so with their hands tied behind their back, with the fear that everything they have worked so hard for will be taken away in an instant for simply doing their jobs.

What happened to George Floyd is an absolute tragedy, but I can assure you, bad cops like that are few and far between and 99.9% are good, hardworking people who signed up for the job so they can HELP people, regardless of skin color. This bill you are trying to pass has nothing to do with Black Lives Matter or equality across communities of color, it's a way to take away the power of the police, but at the end of the day if you do that, there will be no one left to protect us, in all communities.

Cities who have already moved to defund the police and police reform bills are seeing gun violence in excess of 200% over last year's statistics. I urge you, do not let Massachusetts fall into that gory statistic. If you want to be the change, do not pass a bill at 4 am without the input from the community it directly affects. If you cannot put yourself in a dangerous situation and fully understand how you can handle it, then do not try to pass a bill without understanding it's direct cause and effect.

I appreciate your time in reading this email. I urge you to reconsider the removal of qualified immunity for police officers, as it would result in an inability for police officers to proactively do their jobs to the fullest and therefore the communities in the Commonwealth would not be protected to the extent they are now. Massachusetts would turn into another state of chaos, and that is not what this country needs. We need to come together and support those who protect us, because if you ask any police officer in this state, they do not care what the color of your skin is or what community you live in, they were sworn to protect you, and they cannot do so under Bill S2800.

Thank you,
Kaitlin Porter, wife of Patrolman Zachary Porter
Middleborough Police Department
508-947-1212

From: "Hawkins, James - Rep. (HOU)" <James.Hawkins@mahouse.gov>
Date: July 17, 2020 at 10:17:27 AM EDT
Cc: "Major, Tara (HOU)" <Tara.Major@mahouse.gov>
Subject: S2820

Dear Chair Cronin,

I want to share my concerns about S2820.

I am proud of the forward thinking police department in Attleboro which is my district. They have the "POP" team that has officers without guns help people suffering from addiction and other mental health concerns locate treatment and, if necessary, even drive them to treatment. They co-organized with Fuller Hospital a monthly drop in center with local non-profits including addiction and domestic violence. And when there was a BLM protest in Attleboro there was no uniformed presence. When they marched to the police station the chief came out and listened and in the end took pictures with protesters arms around him.

Like most of us, they welcomed the Black And Latino Caucus goals. Training has always been a priority even if limited by budget constraints. Every one of them is just as sickened as all of us by the George Floyd death. Certification would only label them as one of the 99% of police who have never punched someone in the face. And added training would help them be more aware of racial bias and racial injustice. Most saw this as a way to make policing better, more effective, and more sensitive to the community.

However, the changes to QI in the Senate bill sent a chilling message to them. Now they are scared. Suddenly senior police are filling out retirement papers. Younger officers are talking about divorce so their assets can be in the wife's name. And many are thinking about previous careers and maybe there is a safer way to earn a living. I've been to the local police roll calls and all of them feel betrayed. They worked through COVID. Daily they deal with the craziest and most confrontational people in our community. And they would like to know that we have their back.

As a current union member I am troubled by parts of this bill that limit disciplinary appeals and takes away bargaining rights. These are hard won rights that generations of teachers, carpenters, steelworkers, and firefighters count on. As a teacher I feel that unless you have been in a classroom last period on a hot Friday afternoon with 30 fifteen year olds trying to convince them that Pythagorean theorem is way cool you don't know my job and I should have a voice. Much the same policing is a very different job and they deserve a voice. We should not ever be diminishing these rights for anyone. Even the groups that represent minority police do not support these changes. They do little to advance racial justice but take a lot away from a small group of workers.

I think my biggest concern is the changes to Qualified Immunity. I've listened to lengthy explanations of the historical context and the legal cases and maybe there is reason to change it. But this is way, way too hasty. ACLU claims it only affects police but MMA lawyers claim it affects every public employee including teachers nurses and others. I know that when I was a teacher lawsuits were always a threat that we dealt with.

Also the changes in this bill around QI clearly negate the role of civil service. The police chief in Attleboro has complained that civil service procedures have made it difficult to hire and we are presently short staffed. And it's possible that by changing civil service we could change hiring and promotion procedures to help balance racial injustice. Maybe we should tackle this but not with a week's notice.

And ACLU may claim that indemnity clauses will protect police officers from financial harm but that is not true. I listened to a detective yesterday who was sued and exonerated but, while the case was pending for two and a half years all his assets were frozen. This was a young, married officer with children. He may not have had the threat of paying any possible judgement but he he certainly suffered financially during the process. And I can't confirm but I'm hearing that not every community has this indemnity insurance.

I really, really appreciate all the hard work you are doing on this legislation. It would be very wrong to ignore the George Floyd incident and the very real issues of the BLM movement. But I cannot support hastily decided changes to QI that would have such a detrimental effect on all public employees. There are so many unintended consequences to that and we really need a more deliberative and comprehensive review. Please advance this legislation without QI.

Thank you,

Jim Hawkins

State Representive 2nd Bristol/Attleboro

Cell (508) 2260-1436

Jim Hawkins
State Representative
2nd Bristol District | Attleboro
State House | Room 472
Boston, MA 02133
Tel: (617)722-2013 ext. 8932 | Cell: (508)226-1436
James.Hawkins@MAhouse.gov

From: "Whitehouse, Roby" <RWhitehouse@yarmouth.ma.us>
Date: July 17, 2020 at 10:23:44 AM EDT
Cc: "Chip (rbarrett@westfordma.gov)" <rbarrett@westfordma.gov>
Subject: [External]: Senate Bill 2800 testimony

Chair Cronin and Members of the Committee:

I am writing on behalf of New England Chapter of American Public Works Association, a nonprofit membership organization representing public works professionals in New England. On behalf of our 2,000 members, I am submitting this written testimony to ask the House to preserve qualified immunity for municipal employees under Chapter 258 of the Massachusetts General Laws.

Our members are highway officials, including engineers, and superintendents and road and infrastructure professionals, these first responders work hard to protect public health each and every day. Members of Public Works typically work alongside Police and Fire to provide safe roads for communities, whether there is an accident or act of nature, the teams of employees working in Municipalities are there to keep communities safe.

Unfortunately, despite the best procedures and protocols to ensure safe delivery of services on roadways, accidents can occur. Qualified immunity is an important law that our municipal public works employees work under; they need this important protection to ensure they are not held personally liable if a Civil suit were brought against them for incidents occurring in the course of carrying out their duties.

We respectfully ask you to ensure that the police reform legislation that you pass, not remove qualified immunity for other municipal workers.

Feel free to call me at 978-375-5708

Respectfully,

This message is sent on Behalf of New England American Public Works Association President, Richard "Chip" Barrett PWLF

Highway Superintendent
rbarrett@westfordma.gov
Town of Westford
28 North St.
Westford, Ma. 01886

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

BOSTON POLICE PATROLMEN'S ASSOCIATION, INC.

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

July 17, 2020

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

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

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

Dear Chairs Michelwitz and Cronin:

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

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

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

Lack of Due Process

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

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

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

The Composition of the POSAC is improper

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

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

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

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

Thank you for your consideration of our concerns.

Sincerely,

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July 17, 2020

Via Email

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

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

Re: *Testimony of the Boston Police Patrolmen's Association on S.2820, §10 (Changes to the Massachusetts Civil Rights Act and the Judicial Doctrine of Qualified Immunity)*

Dear Ms. Cronin and Mr. Michelwitz:

This testimony is being provided by **Leonard Kesten, Evan Ouellette, and Thomas Donohue of Brody Hardoon Perkins & Kesten, LLP on behalf of the Boston Police Patrolmen's Association**. 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 or other governmental actors. 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. As addressed below, abolishing or modifying qualified immunity along with the other proposed changes to the Massachusetts Civil Rights Act will have important negative unintended consequences for all Massachusetts citizens, courts, and public employees, not just police officers.

Civil rights actions brought against public officials such as 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 any individuals, not just 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." As a result of this heightened requirement, virtually all Civil Rights lawsuits brought against public officials are currently litigated under § 1983 in the federal courts.

A plaintiff alleging that excessive force was used must prove 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 as to whether the official is "on notice" is based on what the "objectively 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 a reasonable person 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 and false arrest in an excessive force case. The only difference between a Civil Rights claim and the State Tort is that the plaintiff 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 likely 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 negative consequences.

UNINTENDED CONSEQUENCES

1. These changes will result in a flood of state court actions

Currently, the majority of civil rights actions against police officers are litigated in the Federal Courts pursuant to § 1983. These cases are not brought in state court pursuant to the MCRA because of the heightened requirement to prove "threats, intimidation, and coercion" as well as a violation of Civil Rights. However, if the proposed amendments are enacted, we expect that plaintiffs will file most, if not all, of these cases in the state court pursuant to the MCRA. This will be a sea change in this litigation.

2. Financial impact on municipalities

The proposed modification of QI, combined with the elimination of the "threats, intimidation, and coercion" requirement as to public officials, will result in an increased number of lawsuits filed in Massachusetts state courts against public officials under the MCRA, rather than federal court. The state court system will be overburdened and will require added resources. 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, Judges and lawyers rely on decades 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 modifies the doctrine, our state courts will have to begin interpreting the meaning of the new language. This is not a simple task and will place first responders in a position of uncertainty about their exposure to civil litigation 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 Senate's stated attempt to "tweak" qualified immunity may not have that effect but will have wide-ranging, unintended consequences. 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.

Very truly yours,

BRODY, HARDOON, PERKINS & KESTEN, LLP

Leonard H. Kesten
Evan Ouellette
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LHK:id

July 17, 2020

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

Honorable Claire D. Cronin, House 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 Chairman Michlewitz and Chairwoman Cronin,

Thank you for your work to address important reforms to policing and justice. I write to you in support of legislation that will comprehensively address the need to create a more just Commonwealth for communities of color and reform our criminal justice system to hold law enforcement more accountable for their actions. 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* includes provisions that would keep black and brown people safe in the commonwealth and protect rights and dignity but also offers opportunity to move further on said values.

- **Expungement**

S.2820 includes language that would allow those with more than one charge on their juvenile record to qualify for expungement provided that they meet certain criteria. Currently, individuals with more than one charge on their juvenile record do not qualify for expungement. I respectfully request language be included in a House bill that would allow those with more than one charge to qualify. Additionally, I request that we allow all records, except those related to murder or sex offenses, to be sealed, reduce the waiting period for sealing juvenile records for cases that did not result in adjudication or conviction, and reduce the waiting period for cases that ended in a felony conviction from seven years to five years.

This session, I filed H.1386 *An Act relative to expungement, sealing and criminal records provisions* with Representative Kay Khan. The additional language mentioned above and

included in this bill is needed to fill gaps that prevent individuals from having the ability to fully re-enter society after they have served their sentence. Having a criminal record can be a barrier to accessing employment, education, and public benefits.

Currently, there are many felonies that are not eligible for expungement. By reducing the list of offenses currently ineligible for sealing to murder and sex offenses, more individuals would have the option to petition the court to hear their expungement case.

Reducing the waiting period for sealing juvenile records for cases that did not result in adjudication or conviction would help individuals access various services that they are unable to with a juvenile record more quickly.

The waiting period for cases and resulting sentences is currently seven years for felonies and there is no distinction between a case that ended with a conviction or non-conviction. By reducing waiting periods, individuals will not have to spend as much time waiting to have their records expunged, which could help to improve their access to public services, education, employment, and housing.

- **Protecting individuals in custody**

An important piece of holding law enforcement accountable is ensuring that police officers and public safety officials are prohibited from engaging in sexual contact with anyone who is in detention, or otherwise in their custody.

S.2800 establishes that an officer who has sexual intercourse with a person in their custody or control is in violation of Section 22 of chapter 265 subsection (b) of the General Laws. I support this. However, this language in the Senate bill does not go far enough in holding law enforcement accountable. I request that House legislation include the prohibition of assault and battery by a police officer against an individual in their custody as well as include penalties for doing so.

Representative Kay Khan and I filed a bill on this issue this session, H.1483 *An Act promoting the safety of individuals in custody.* This bill would prohibit police officers from engaging in sexual contact with an individual who is under arrest, in custody, or otherwise detained and includes a punishment of not more than 5 years in a state prison or a fine of $10,000 or both for violations. The penalty included in this bill, which is not included in S.2800, is an important piece of holding law enforcement accountable.

- **Qualified immunity**

I respectfully request the inclusion of language that limits qualified immunity by not allowing it to apply unless no reasonable defendant could have reason to believe that their conduct would violate the law at the time that it occurred.

- **Additional Provision Support**

There are a number of other provisions in the Senate bill that are beneficial in protecting the rights and dignity of Black and Brown people in our Commonwealth. The creation of a Police Officer Standards and Accreditation Committee would create crucial oversight powers to hold law enforcement accountable for their actions.

The inclusion of strengthening use of force standards banning the use of chokeholds and other deadly uses of force, requiring the use of de-escalation tactics, and creating a duty to intervene are measures that can ensure the increased safety of citizens. The Cambridge Police Department has successfully implemented these changes, and it is important that this change be made uniformly across the entire state.

It is also important that we look at ways to redirect funding from policing to communities. The Senate bill establishes the Strong Communities and Justice Reinvestment Workforce Development Fund which would create increased economic opportunity for those who have been most impacted by excessive policing.

The Senate bill would end the requirement that school districts must employ school resource officers. It would also create important police training requirements, including one on the history of slavery, lynching and racism. Currently, the Cambridge Police Department is the only city in the country that is already providing this training to its officers, and it is done so through the Northeastern University Institute on Race and Justice. Another important measure in the Senate bill is the creation of a commission to study the use of facial recognition and a moratorium on the use of this technology until it has been studied.

The House should also go a step further by applying all limitations to university police equal to local law enforcement and require that university police disclose to their local police authority an inventory of military weaponry. Currently, university police are trained by the state police unless they opt in voluntarily to train with their host community. University police have also been able to acquire military weaponry that the law enforcement in their host community is prohibited from buying. A few years ago, a former Boston Police Commissioner was blindsided when Northeastern University police were in pursuit off-campus with military weapons that the Boston Police Department was prohibited from purchasing. It was not required of the campus police or

the state police to inform the Commissioner of those weapons. University law enforcement should be held to the same standards as local law enforcement.

Sincerely,

Marjorie C. Decker, *State Representative*
25th Middlesex District - Cambridge
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