

SENATE No. 2469

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE · BOSTON, MA 02133
(617) 725-4000

KARYN POLITO
LIEUTENANT GOVERNOR

January 16, 2020

To the Honorable Senate and House of Representatives,

I am filing for your consideration a bill entitled “An Act Advancing Reform within the Massachusetts State Police.” This legislation supports our Administration’s reform and modernization efforts currently underway within the State Police by providing new tools that will improve accountability and discipline within the Department and enhance diversity in the Department’s recruitment and promotional practices. These initiatives are both critical elements in building a State Police Department that is entitled to the public’s confidence and that will be equipped for the policing challenges of the future.

This bill makes a number of changes to provisions governing the appointment and promotion of uniformed members of the Department. To begin with, the bill seeks to broaden the pool of candidates available for initial appointment to the State Police Academy by establishing a State Police cadet program to provide cadets with up to two years of intensive on the-job training in the skills necessary to become a Trooper. Following the model of other successful cadet programs, such as in the City of Boston, the State Police cadet program will be designed to attract and qualify candidates for the Academy from a wide range of backgrounds who might not otherwise pursue appointment through the Department’s traditional, exam-only route.

The legislation also updates the rules governing promotions of uniformed members to officer positions. Consistent with the recommendations of a 2018 special legislative commission, the bill eliminates the oral interview as a scoring component in ranking members

seeking elevation to the ranks of lieutenant and captain, a change intended to focus the promotional decision on objective evaluation of professional qualifications and to exclude unintended, subjective considerations. The bill also adjusts the rate at which members earn promotional credits for longevity in service, with the goal of providing that promotions to the rank of officer will be made from a broader pool of talented Troopers, particularly at the levels of sergeant and lieutenant. Finally, the legislation removes the requirement that the Governor look exclusively within the State Police when appointing a colonel, a change that will ensure that the leader of the Department is selected from as large a group of well-qualified candidates as possible.

The bill also seeks to improve accountability within the Department by enhancing the Colonel's ability to address and correct misconduct by uniformed members. To address the most serious forms of misconduct, the bill clarifies the Colonel's legal authority to act immediately to suspend without pay any Trooper who has been charged with a criminal offense, who has been referred to a prosecutor's office for investigation, or who is accused of misconduct that violates the public trust. The law also establishes a new civil penalty with treble damages for any police officer who knowingly receives payment in exchange for a fraudulent claim of hours worked. The legislation would also permit the Department to impose lower levels of discipline through a simplified, timely, internal process.

The citizens of the Commonwealth deserve a State Police force worthy of their trust. They are entitled to trust that opportunities to join the force are open to the best candidates and that the process by which Troopers rise through the ranks rewards the most qualified. And they are entitled to trust that there will be fair but strict consequences for misconduct within the Department, particularly when that misconduct undermines the legitimate expectation that police officers should, at all times, serve with honor and fidelity to the laws that they have sworn to uphold.

The improvements proposed in this legislation will substantially advance the ongoing work of rebuilding the public's trust and confidence in the Massachusetts State police. I urge your prompt enactment of this legislation.

Respectfully submitted

Charles D. Baker,
Governor

SENATE No. 2469

Senate, January 21, 2020 -- Message from His Excellency the Governor recommending legislation advancing reform within the Massachusetts State Police

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act advancing reform within the Massachusetts State Police.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to support the continuing reform and modernization of the Massachusetts State Police, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3 of chapter 22C of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out, in lines 6 and 7, the word “he” and inserting
3 in place thereof, in each instance, the following words:- the colonel.

4 SECTION 2. Said section 3 of said chapter 22C, as so appearing, is hereby further
5 amended by striking out the second paragraph and inserting in place thereof the following
6 paragraph:-

7 The colonel shall be appointed by the governor, upon the recommendation of the
8 secretary of public safety and security, and shall be a person qualified by training and experience
9 to direct the work of the department. At the time of appointment, the colonel shall have not less
10 than 10 years of full-time experience as a sworn law enforcement officer and not less than 5

11 years of full-time experience in a senior administrative or supervisory position in a police force
12 or a military body with law enforcement responsibilities. Such appointment shall constitute
13 appointment as a uniformed member of the department and shall qualify the colonel to exercise
14 all powers granted to a uniformed member under this chapter. The colonel shall serve at the
15 pleasure of the governor and shall devote his or her full time during business hours to the duties
16 of the office.

17 SECTION 3. Section 10 of said chapter 22C, as so appearing, is hereby amended by
18 striking out, in line 27, the words “reached his twenty-first birthday” and inserting in place
19 thereof the following words:- attained the age of 21.

20 SECTION 4. Said section 10 of said chapter 22C, as so appearing, is hereby further
21 amended by striking out, in said line 30, the words “he has reached his thirty-fifth birthday” and
22 inserting in place thereof the following words:- the person has attained the age of 35.

23 SECTION 5. Said section 10 of said chapter 22C, as so appearing, is hereby further
24 amended by striking out the third paragraph and inserting in place thereof the following
25 paragraph:-

26 No person shall be enlisted as a uniformed member of the state police except in
27 accordance with the provisions of this section and section 11; provided further that, other than
28 for an appointment made pursuant to section 3, no person employed as a police officer for an
29 agency other than the department of state police, including but not limited to, any agency of the
30 commonwealth or any of its political subdivisions, shall be allowed to transfer into a position as
31 a uniformed member of the state police.

32 SECTION 6. Said section 10 of said chapter 22C, as so appearing, is hereby further
33 amended by striking out, in lines 52, 54, 61, 63, and 65, the word “he” and inserting in place
34 thereof, in each instance, the following words:- such officer.

35 SECTION 7. Said section 10 of said chapter 22C, as so appearing, is hereby further
36 amended by striking out, in lines 66 and 71, the word “his” and inserting in place thereof, in each
37 instance, the following words:- such officer’s.

38 SECTION 8. Said chapter 22C, as so appearing, is hereby further amended by inserting
39 after section 10 the following section:-

40 Section 10A. The colonel may establish a cadet program within the department and may
41 admit as a state police cadet, for a period of full-time “on the job” training, any citizen resident in
42 the commonwealth who:

43 (i) is not less than 19 nor more than 25 years of age;

44 (ii) would otherwise be found suitable for appointment for initial enlistment as a
45 uniformed member of the state police pursuant to sections 10, 11, and 14, with the exception of
46 the physical fitness standards;

47 (iii) has passed a qualifying physical fitness examination, as determined by the colonel;

48 and

49 (iv) has passed a qualifying examination, as determined by the colonel.

50 Such qualifying examination shall be conducted under the direction of the colonel, after
51 consultation with the personnel administrator, who shall determine its form, method and subject
52 matter, and such qualifying examination shall fairly test the knowledge, skills, and abilities

53 which can be fairly and reliably measured and which are actually required to perform the
54 primary or dominant duties of the position of state police cadet.

55 Any person who has attained the age of 19 on or before the final date for the filing of
56 applications for the state police cadet program shall be eligible to take the qualifying
57 examination for the state police cadet program. No person who has attained the age of 26 on or
58 before the final date for the filing of applications for the state police cadet program shall be
59 eligible to take the qualifying examination for the state police cadet program.

60 Admission as a state police cadet shall not be subject to the civil service law or rules; nor
61 shall a state police cadet be entitled to any benefits of such law or rules. The colonel shall report
62 in writing forthwith to the secretary of public safety and the personnel administrator any such
63 admission as a state police cadet made under the provisions of this section. Such admission shall
64 be for a term of service of not less than 12 months as determined by the department and may be
65 terminated at any time, and shall be terminated whenever a state police cadet fails to maintain a
66 passing grade in any course of study the colonel determines the state police cadet should
67 undertake. A state police cadet shall be required to meet the physical fitness standards required
68 for appointment for initial enlistment as a uniformed member of the state police within 12
69 months of the state police cadet's admission to the state police cadet program. A state police
70 cadet shall be an at-will employee. A state police cadet shall receive such compensation and
71 such leave with pay as the colonel shall determine in consultation with the personnel
72 administrator. The colonel shall establish requirements for successful completion of the state
73 police cadet program.

74 The colonel shall determine the duties and responsibilities of state police cadets. A state
75 police cadet shall not carry arms, nor shall a state police cadet have any power of arrest other
76 than that of an ordinary citizen. A state police cadet shall be considered an employee of the
77 commonwealth for the purposes of workers' compensation.

78 A state police cadet shall not be subject to or entitled to the benefits of any retirement or
79 pension law nor shall any deduction be made from a state police cadet's compensation for the
80 purpose thereof; but a state police cadet who successfully completes the state police cadet
81 program and is appointed to the department of state police pursuant to section 11 of this chapter
82 shall have their state police cadet service considered as creditable service, as defined in section 1
83 of chapter 32, for purposes of retirement, provided the state police cadet pays into the annuity
84 savings fund of the retirement system such amount as the retirement board determines equal to
85 that which the state police cadet would have paid had the state police cadet been a member of
86 said retirement system during the period of training as a state police cadet.

87 SECTION 9. Section 11 of said chapter 22C, as so appearing, is hereby amended by
88 striking out the first sentence and inserting in place thereof the following sentence:-
89 Appointments for initial enlistment as a uniformed member of the state police shall be made
90 from a list established as the result of a competitive examination conducted under the direction
91 of the colonel, after consultation with the personnel administrator, who shall determine its form,
92 method, and subject matter.

93 SECTION 10. Said section 11 of said chapter 22C, as so appearing, is hereby further
94 amended by inserting, in lines 19 and 20, after the word "his", in each instance, the following
95 words:- or her.

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

98 Notwithstanding the preceding 3 paragraphs, the colonel may appoint for initial
99 enlistment as a uniformed member of the state police any person who has successfully completed
100 the state police cadet program pursuant to section 10A and is willing to accept such appointment.
101 Any such appointment for initial enlistment as a uniformed member of the state police shall
102 terminate that person's admission as a state police cadet. Not more than one-third of the total
103 number of appointments to the state police in any single recruit training troop shall be made
104 under the provisions of this paragraph. The colonel shall report in writing forthwith to the
105 personnel administrator any appointment made under the provisions of this paragraph.

106 SECTION 12. Section 13 of said chapter 22C, as so appearing, is hereby amended by
107 striking out, in line 1, the word "Any" and inserting in place thereof the following words:- (a)
108 Discipline by Trial. Any.

109 SECTION 13. Said section 13 of said chapter 22C, as so appearing, is hereby further
110 amended by inserting, in line 10, after the word "him" the following words:- or her.

111 SECTION 14. Said section 13 of said chapter 22C, as so appearing, is hereby further
112 amended by adding the following two subsections:-

113 (b) Administrative Suspension Without Pay. Notwithstanding the provisions of
114 subsection (a), the colonel may administratively suspend without pay a uniformed member who
115 has served for 1 year or more where: a criminal complaint or indictment has issued against the
116 uniformed member; the uniformed member has been referred by the department to any
117 prosecutorial agency for review for prosecution; or there are reasonable grounds to believe that

118 the uniformed member has engaged in misconduct in the performance of that member's duties
119 that violates the public trust. Prior to such administrative suspension, the department shall
120 provide the uniformed member notice of and the underlying factual basis for such administrative
121 suspension. After such notice, the colonel or the colonel's designee shall hold a departmental
122 hearing at which the uniformed member shall have an opportunity to respond to the allegations.
123 Following the departmental hearing and upon a finding that there are reasonable grounds for
124 such administrative suspension without pay, the colonel may administratively suspend without
125 pay such uniformed member forthwith. A uniformed member may not appeal such
126 administrative suspension without pay under sections 41 to 45, inclusive of chapter 31, but may
127 appeal such administrative suspension without pay as provided in section 43 of this chapter.

128 A uniformed member who is administratively suspended without pay pursuant to this
129 section may seek a review by the colonel or the colonel's designee of such administrative
130 suspension without pay after 1 year from the date of such suspension, and every year thereafter,
131 or sooner if the uniformed member can demonstrate a material change in circumstances. The
132 decision of the colonel or the colonel's designee after such review may not be appealed under
133 sections 41 to 45, inclusive of chapter 31, but may be appealed as provided in section 43 of this
134 chapter.

135 (c) Administrative Discipline. Notwithstanding the provisions of subsection (a), the
136 colonel may impose on a uniformed member who has served for 1 year or more any permanent
137 discipline that does not involve a suspension of pay, loss of accrued vacation time, loss of rank
138 or seniority, or termination without provision for a trial by board. Prior to imposing such
139 discipline, the department shall provide the uniformed member notice of and the underlying
140 factual basis for such discipline. After such notice, the colonel or the colonel's designee shall

141 hold a departmental hearing at which the uniformed member shall have an opportunity to
142 respond to the allegations. Following the departmental hearing and upon a finding that there are
143 reasonable grounds for such discipline, the colonel may impose such discipline forthwith.

144 A uniformed member may not appeal an order imposing discipline pursuant to this
145 subsection under sections 41 to 45, inclusive of chapter 31, but such an order may be appealed as
146 provided in section 43 of this chapter.

147 SECTION 15. Section 20 of said chapter 22C, as so appearing, is hereby amended by
148 striking out the first sentence and inserting in place thereof the following sentence: - The colonel
149 shall prescribe a training program for persons who shall be enlisted for the first time in the
150 department such that no person, with the exception of the colonel, shall exercise police powers as
151 such a uniformed member until he or she shall have been assigned to and satisfactorily
152 completed such training program.

153 SECTION 16. Section 23 of said chapter 22C, as so appearing, is hereby amended by
154 inserting, in line 8, after the word "All" the following words:- admissions,

155 SECTION 17. Said section 23 of said chapter 22C, as so appearing, is hereby further
156 amended by inserting, in line 10, after the words "positions of" the following words:- cadets,.

157 SECTION 18. Said chapter 22C is hereby further amended by striking out section 26, as
158 so appearing, and inserting in place thereof the following section:-

159 Section 26. The colonel may promote uniformed members of the state police who are
160 deemed eligible for promotion by the colonel to the title of noncommissioned officer, lieutenant
161 or captain. All promotions shall be based upon a uniformed member's total promotional score.

162 Such total promotional score shall be based on the sum of scores earned on a competitive
163 promotional examination and from longevity.

164 (1) Competitive promotional examination:

165 (i) A member's competitive promotional examination score shall be calculated as
166 follows:

167 the number of points awarded to the member for correct answers on such examination
168 divided by the total number of possible points to be earned on the examination, multiplied by
169 100, multiplied by 0.75.

170 (ii) For a member who is a veteran, a member's competitive promotional examination
171 score shall be calculated as follows:

172 the number of points awarded to the member for correct answers on such examination
173 divided by the total number of possible points to be earned on the examination, multiplied by
174 100, plus 2, multiplied by 0.75.

175 (iii) No member shall be eligible for promotion unless the member has attained a mark of
176 at least 70 percent on the competitive promotional examination.

177 (iv) Promotional examinations for each of the following titles shall be open to all
178 members as follows:

179 Noncommissioned officer: such examination shall be open to all members who have
180 completed at least 5 years of service as a uniformed member immediately before the final date
181 for the filing of applications for such examination, and have completed, in the immediately
182 preceding year, 1 full year of service in the next lower rank, or title.

183 Lieutenant: such examination shall be open to all members who have completed at least 1
184 year of service in the next lower rank, or title, immediately before the final date for the filing of
185 applications for such examination, and have completed at least 8 years of service as a uniformed
186 member prior to the final date for filing applications for such examination.

187 Captain: such examination shall be open to all members who have completed at least 1
188 year of service in the next lower rank, or title, immediately before the final date for the filing of
189 applications for such examination, and have completed at least 12 years of service as a
190 uniformed member prior to the final date for filing applications for such examination.

191 (2) Longevity: for promotion to each of the positions listed below, a member's longevity
192 score shall be calculated as follows:

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

197 Lieutenant: a member shall be granted 1 longevity point for each full month of service
198 since appointment to the department, up to a maximum of 180 months, computed as of the final
199 date for the filing of applications for such promotion. A member's longevity score shall be the
200 total longevity points granted divided by 180, multiplied by 25.

201 Captain: a member shall be granted 1 longevity point for each full month of service since
202 appointment to the department, up to a maximum of 240 months, computed as of the final date
203 for the filing of applications for such promotion. A member's longevity score shall be the total
204 longevity points granted divided by 240, multiplied by 25.

205 Prior to making any promotions in accordance with the provisions of this section, the
206 colonel shall publish and distribute in the orders of the department for each title in the
207 department a list of the members who are eligible for promotion to each such title in the order in
208 which each member shall be considered for such promotion; provided that such order shall be
209 based upon the final determination by the colonel in accordance with the provisions of clauses
210 (1) and (2) of the first paragraph. Each such eligible list for promotion shall be used by the
211 colonel from which to fill vacancies for a period of 2 years from the initial date of said
212 publication; provided, however, if a new eligible list shall not have been established after such 2
213 year period, each such eligible list shall continue to be used by said colonel for promotions until
214 a new eligible list shall have been established. Any promotion to a vacancy occurring in any title
215 for which an examination is conducted in accordance with the provisions of this section shall be
216 made from the first 3 members on such list who is eligible for such promotion and is willing to
217 accept such promotion.

218 SECTION 19. Chapter 231 of the General Laws is hereby amended by inserting after
219 section 85AA, as so appearing, the following section:-

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

223 (b) Any police officer who: (i) knowingly submits to a state agency, state authority, city
224 or town a false or fraudulent claim of hours worked for payment and receives payment therefor;
225 or (ii) knowingly makes, uses or causes to be made or used a false record or statement material to
226 such a false or fraudulent claim of hours worked for payment that results in any police officer

227 receiving payment therefor; or any person who conspires to commit a violation of this section,
228 shall be liable to that state agency, state authority, city or town for a civil penalty of 3 times the
229 amount of damages that the state agency, state authority, city or town sustains because of such
230 violation.

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

232 (d) A civil action for damages under this section may not be brought (i) more than 4
233 years after the date on which the violation occurred; or (ii) more than 4 years after the date when
234 facts material to the right of action are known or reasonably should have been known by an
235 official of the state agency, state authority, city or town who is authorized to approve the
236 initiation of an action for damages, but in no event more than 6 years after the date on which the
237 violation is committed, whichever occurs last. A civil action for damages under this section may
238 be brought for acts that occurred prior to the effective date of this section, subject to the
239 limitations period set forth in this section.

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

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

250 SECTION 20. This act shall take effect upon its passage.