

LOCAL 364
INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

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July 16, 2020

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

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

RE: Senate Bill 2820

Dear Representatives:

Local 364, IBPO represents all full time, permanently employed police officers of the Springfield Police Department. There are presently approximately four hundred twenty members. Our members are deeply concerned by numerous provisions of Senate Bill 2820. We believe that bill was drafted by persons unfamiliar with police issues, and passed with no public input which could have allowed the flaws in the Senate bill to be discussed and corrected. We appreciate the opportunity which the House is offering us to comment.

We urge the House to make no attempt to legislate limits on qualified immunity. This body of case law is well-developed in the federal courts to fairly hold police officers accountable in the inevitable dilemmas which they face in situations where the law is unclear. Recent criticism of qualified immunity seems based on the assumption that it unfairly limits officers from liability. This is simply untrue. Qualified immunity merely protects an officer in situations where the law is unclear. Officers must often act in urgent, dangerous situations. If the law is unclear in that situation, and the officer makes a good faith, reasonable decision, they should not be held liable because some appellate court, with the benefit of extensive legal briefs, legal memos from highly qualified law clerks, and months to mull the law, vote 5 to 4 that the officer should have acted differently, in the split second they had to act. Moreover, any legislative change in qualified

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Immunity will affect only claims based on state law, and result in different qualified immunity standards for federal and state claims. Typically, civil rights claims proceed in federal court with both state and federal claims. Jury instructions in such cases are already so confusing and cumbersome that juries are hard-pressed to digest them. If the Legislature changes the elements of qualified immunity for state law claims, a judge will have to give different instructions for the state and federal claims, further risking jury confusion.

The proposed composition and role of the Police Officer Standards and Accreditation Committee (POSAC) is a problem. As contained in the Senate bill, the POSAC would be composed primarily of persons with no familiarity with or expertise in police issues. The composition of the POSAC should be balanced by persons with familiarity and expertise in policing issues. Further, the group would sit in judgment of police officers, who would have no right to an impartial review. Appeal pursuant to G.L.c. 30A is extremely limited, and does not afford a de novo hearing before an impartial adjudicator. A c.30A appeal can only reverse a most egregious flaw in the POSAC proceeding, and cannot review credibility determinations. POSAC should conduct no hearings. Any hearings regarding licensure for certification should be referred by the POSAC to the Division of Administrative Magistrates to conduct the hearing.

In addition, the Senate bill does not require the POSAC to defer to the disciplinary appeal procedures. When the Civil Service Commission or an arbitrator finds there was no just cause for discipline imposed by the employer, that finding is binding on the employer for all purposes. It should be binding on the POSAC as well. An officer now must face a hearing before the employer, if appealed a hearing before a Civil Service hearing officer or an arbitrator. If the Senate bill is adopted, the officer would then face a third hearing before POSAC at which license or certification, and thereby employment, is at risk. This is unfair. The outcome of any appeal of discipline by an officer should be binding on the POSAC.

The concerted effort, stimulated by events occurring outside our state, to improve police training and procedures should produce beneficial changes in policing in Massachusetts. The headlong rush to just do “something” by July 31 is turning this opportunity into too-hasty, poorly vetted, flawed legislation. Something this important should go through the normal process of soliciting meaningful input from all stakeholders.

The Executive Board,
Local 364, International Brotherhood of Police Officers