

Dear Massachusetts legislators,

My name is Jennifer Fairbairn. I graduated from Assumption College with a B.S. in Political Science. I will also be pursuing a Masters in Political Science in the Spring of 2021, in Washington, D.C. I have worked at the Worcester Regional Research Bureau and other public policy think tanks in Washington D.C. over the last year.

First, I'd like to say thank you for the opportunity to give feedback on Massachusetts's police reform legislation.

I believe police reform, particularly the four points to Rep. Garlick's bill, is crucial for holding police accountable for misconduct and abuse of power. Instances like the specialized narcotics unit of the Springfield, Massachusetts, Police Department using excessive force in violation of the Fourth Amendment of the Constitution is despicable. And we should hold those officers accountable.

My objection, however, is that what is done by a few police officers, or one unit, should not be the cause for a state-wide reform. I believe Reform Bill S.2800¹ has been passed with a lack of transparency and time for input from the public. Eddy Chrispin, president of Massachusetts Association of Minority Law Enforcement Officers also stated that the recent police reform bill that did not appeal to public input: "Not only am I a police officer, I am a black man and I am probably better able to speak to concerns of people of color than Senator (William) Brownsberge."

I would also like to give some input on point #4 of Rep. Garlick's bill: "Adopting clear statutory limits on police use of force and requiring an independent investigation of officer-related deaths."

I think it is crucial that we do investigate officer related deaths. This includes both death of victims and deaths of officers who die while on duty. In May, The FBI Released the 2019 Statistics on Law Enforcement Officers Killed in the Line of Duty.² The report showed that 48 officers died as a result of felonious acts. The statistics additionally show:

Of the 48 officers,
45 were male
3 were female
40 were white
7 were black/African American
1 was Asian.

Of the 48 officers feloniously killed,

¹ <https://malegislature.gov/Bills/191/S2800>

² <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2019-statistics-on-law-enforcement-officers-killed-in-the-line-of-duty>

- 15 died as a result of investigative or law enforcement activities
 - 6 were conducting traffic violation stops
 - 4 were performing investigative activities
 - 2 were drug-related matters
 - 2 were interacting with wanted persons
 - 1 was investigating suspicious person or circumstance
- 9 were involved in tactical situations
 - 3 were barricaded/hostage situations
 - 3 were serving, or attempting to serve, search warrants
 - 2 were serving, or attempting to serve, arrest warrants
 - 1 was reported in the category titled “other tactical situation”
- 5 were involved in unprovoked attacks
- 4 were responding to crimes in progress
 - 2 were robberies
 - 1 was larceny-theft
 - 1 was reported in the category titled “other crime against property”
- 3 were involved in arrest situations and were attempting to restrain/control/handcuff the offender(s) during the arrest situations
 - 3 were assisting other law enforcement officers
 - 2 with vehicular pursuits
 - 1 with foot pursuit
- 3 were responding to disorders or disturbances
 - 2 were responding to disturbances (disorderly subjects, fights, etc.)
 - 1 was responding to a domestic violence call
- 3 were involved in vehicular pursuits
 - 2 were ambushed (entrapment/premeditation)
 - 1 was serving, or attempting to serve, a court order (eviction notice, subpoena, etc.).

Additionally, I do not think we should abolish qualified immunity. This is because we already can sue officers for misconduct, even with qualified immunity. In *Pierson v. Ray* (1967), the Supreme Court justified the need for qualified immunity. And in *Harlow v. Fitzgerald* (1982), qualified immunity standards were expanded from an official's subjective state of mind to whether or not a reasonable person in the official's position would have known their actions were in line with clearly established legal principles. After 1982, even with qualified immunity, numerous civil suits have been filed. This shows that qualified immunity does not need to be abolished to hold police officers accountable.

Let me also point to the fact that Senate Republicans in Massachusetts have objected to the bill. Likewise, the June debates in Congress show that this issue is far from clear-cut.

Additionally, Worcester has published a guide for police use of force already in 2018.³ It can be found [here](#). The report relies on the national standard of “objectively reasonable” response to the situation, judged by the police officers at the scene. With that said, the Supreme Court has ruled

³ <http://www.worcesterma.gov/wpd-policy-manual/operations/use-of-force.pdf>

that there is great difficulty in delineating clear statutory limits on police use of force. Consider the 1989 Supreme Court case *Graham v. Connor*, 490 U.S. 386 (1989)⁴ where the Court ruled unanimously that

The notion that all excessive force claims brought under 1983 are governed by a single generic standard is rejected;

and

The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are '*objectively reasonable*' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions.

Thank you for allowing for public input on the issue.

Please reach out with any questions at 617-774-7999; or via email at j.6171393@gmail.com.

Respectfully,
Jennifer Fairbairn

⁴ <https://caselaw.findlaw.com/us-supreme-court/490/386.html>