



# Burlington Police Department

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VIA: Testimony.HWMJudiciary@mahouse.gov

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RE: Public comments regarding S. 2820

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I appreciate the opportunity to finally voice my concerns over the proposed Senate bill regarding police reform. I will begin by stating for the record that Massachusetts law enforcement is not without its issues and can certainly benefit from some changes. Everyone and every profession needs to change with the times, and we are no different. However, in order to achieve meaningful reform and obtain the necessary buy-in from all of the necessary stakeholders in this endeavor, everyone must be heard. It seems that the only stakeholders not heard from by the Senate were the representative law enforcement personnel that have the expertise, experience and willingness to participate in making the profession better. Aside from what the Senate may say, we were given no voice and we are being painted as the enemy – likely creating a contradictory effect with this legislation. As a point of clarification, I understand that this bill was passed by a 30-7 vote in the Senate. As such, my disappointment with the Senate in this letter is directed at the 30 who voted in favor. The seven who listened and credited the legitimate arguments against some areas of the bill have my respect and appreciation.

I would like to point out the areas of concern that I have with S. 2820.

**1. Emergency Status of the bill**

The preamble to the Senate bill contains emergency language. This emergency preamble is being advanced to the detriment of meaningful reform. While admittedly there may be some instances of racist behavior in MA, there is no emergency that any Senator can point to, with clarity of purpose or factual basis, to illustrate any such emergency exists in MA. Every police officer I speak with has conceded that the actions of the officer in Minneapolis were abhorrent and inexcusable. However, no such action has occurred in MA, and this legislation is being rushed to appease a fraction of the Senate's constituency in the hopes they gain political capital. The problem is the haste with which this bill was passed in the Senate serves only to undermine the opportunity we have, together, to implement reform that achieves the desired and necessary results.

2. **Police Officer Standards and Accreditation Committee (POSAC)**

While I am not against the creation of the POSAC, I have a serious issue with the makeup of the committee. The bill states the committee shall be comprised of fourteen members. There are fifteen members illustrated (lines 283-297) and only six of the members are law enforcement personnel; the remaining 9 are from different segments that have an arguably divergent backgrounds and experience with law enforcement, despite the requirement that they have a familiarity with the police and/or criminal justice system. The unfairness of the makeup of this board is egregious for a few reasons. First of all, no other professional board is made up of other members rather than professionals within the given service. For example, the Board of Registration in Medicine is made up of doctors; the Board of Realtors is made up of realtors and real estate brokers; the Board of Bar Overseers is made up of attorneys. The common-sense approach of this is plain to see: those being judged for misconduct should be subjected to peer review. It only makes sense that someone be judged on professional conduct or misconduct by those who have the experience and vested interest in keeping their profession in top order. Look no further than science and education where any experiment, hypothesis or thesis is tested before peers. It makes sense and should remain. To dictate otherwise paints the picture that we do not handle our own, and this is inaccurate and offensive. The makeup as contemplated in S. 2820 immediately puts law enforcement officers at a distinct disadvantage; real or implied; and puts an adversarial slant on the power of the committee. A POSAC is a great idea. Let's formulate it in a way that makes sense and allows the police to show we do have an earnest desire to keep our ranks filled with honorable, honest and hard-working professional police officers.

Second, the power of the committee is far-reaching and confusing. The POSAC has the power, as illustrated in the text of S. 2820, at lines 319-321 inclusive, of receiving complaints of "officer misconduct" from any person and may conduct an investigation independent of the appointing authority. Yet, there is no definition of officer "misconduct." As a current police administrator who handles disciplinary issues, there must be a sensible limit on the type of complaints that may be independently investigated by POSAC. Every department has a process for filing complaints and we should be allowed to handle minor complaints as we see fit. We know our officers and likely know the root of the causes for complaint. Some are misguided actions and will be corrected. Others may be the result of harassment by the complainant. Any officer can attest to the fact that there are far more frivolous complaints than justified complaints. For instance, if an arrested person believes that an officer was rude to them during booking because they were not allowed to make multiple phone calls or sit in booking instead of a cell, does this rise to the level of a complaint that may be investigated by POSAC. We already know from the language of the bill that the prisoner may file the complaint with POSAC. What happens then? Is this really what we envision our POSAC doing with its time? Minor, frivolous complaints should stay within the department at the appropriate level of the organization. A definition of "misconduct" must be included in the interest of efficiency and direction to minimize the risk that the POSAC is flooded with ridiculous and frivolous complaints against officers. As contemplated in the Senate bill, serious misconduct will be reported to POSAC, as it should, and will then trigger the other mechanisms for discipline and disclosure. Remember too, there will be a study related to

departments' joining the Massachusetts Police Accreditation Commission with a goal of full Accreditation. The standards allow for variations in how departments handle complaints; but it instills best practices which must be followed and the department will be audited for compliance during their assessments.

Most concerning about the POSAC is the fact that the Senate believes the chairperson of the POSAC, appointed by the Governor, may convene a panel of the whole body or a subcommittee (no number set forth) by which disciplinary hearings may be held. What due process rights are instituted for a police officer when their complaint may be conveniently placed on display before three members of the POSAC that have no genuine like or respect for the officer or law enforcement as a profession? Are we really to believe that a member of the ACLU will listen with an unbiased ear regarding a frivolous complaint against an officer when no one from the ACLU can likely name one practice of law enforcement with which they agree? And, why would we give such free-reigning power to the chairperson to effectively nullify members of the panel that he or she may not agree with ideologically? Nowhere in any other law has such patent unfairness been relegated to writing. By allowing this version of the bill to remain, politics and ideology has been injected into it, creating suspicion amongst the police and it is fraught for abuse by those who may seek to exploit us.

Furthermore, the collective bargaining rights of countless officers have been extinguished. Where is the fairness in not allowing an officer to appeal to civil service if they are a civil service employee? What faith are you showing to the Civil Service Commission by leaving in-tact their right to oversee actions of appointing authorities, but not the POSAC?

Equally troubling with the POSAC is the fact that an officer may be de-certified for certain disciplinary issues. I will not argue that some are common-sense and necessary. However, the text of this bill is overly broad and will result in unintended consequences and increased litigation in the court system. For example, in Section 225 at lines 462-463, the bill references false arrest. Does this introduce the possibility that a police officer may be disciplined and decertified if a clerk-magistrate decides not to find probable cause on an arrest and the district attorney's office decides not to appeal? Have we not left our officer out on a limb? If the committee has no inside understanding of how the court system works, how can they objectively rule on this type of disciplinary issue? In line 465, the bill states an officer can be disciplined for receiving a reward or gift on account of official service. We are already governed by the state ethics laws. Why is this necessary as it only further complicates existing law? Are officers able to assert a defense based on the ethics law to save themselves at a hearing before the POSAC? More troubling than this is the language that allows for decertification for an officer who has "repeated sustained complaints of misconduct" (line 478-479, page 23). Again, the term "misconduct" must be narrowly and specifically defined in the statute.

### **3. Public Records changes**

Section 49 of the bill, at page 52, at line 1109-1110 inclusive, I find it disheartening that the public records law will change to allow for public disclosure of discipline against an

officer. However, in this same legislation, the Senate feels it is appropriate to shield from law enforcement, through an outright prohibition against school department personnel and **school resources officers** (yes, actual members of our own agencies) from sharing information related to suspected gang activity of students *or their families*. Where is the balance of officer safety and due process? How is it that a police officer that is reprimanded may lose all privacy, but a police officer assigned to the schools is prohibited by statute from complying with his or her own department policies in sharing information necessary to keep other officers safe, in the veiled interest of protecting the privacy of persons known to be involved in criminal activity? This is a bright line example of the Senate's ill-guided attempts at reform as they have made this a competing piece of legislation creating an "us versus them" mentality.

#### **4. Citations & Receipts**

In regards to Section 52 at page 53, relative to a change in Chapter 90: the Senate would like to require police officers to fill out receipts any time they stop a vehicle and do not issue a citation or a warning. Many times in my career, I have stopped drivers for the sole purpose of quickly educating them on something they did incorrectly. Many of you have experienced this very thing. My motivation is to make sure they incorporate safe habits into their driving. The ability to exercise discretion is key – as it allows a quick interaction for enhanced safety of the officer and motorist. It also means less time of exposure of the violator to the motoring and/or surrounding public, as the violator is often a member of the community in which they are stopped. They get to go along their way with a quick admonition and likely appreciate the interaction being handled in this manner more than receiving anything in writing. With the passage of this section, I can guarantee I, along with thousands of other officers, will resort back to writing an actual citation or warning – and this has nothing to do with color. It has to do with efficiency. If I have to write anyways, it might as well count toward production. Again, this is an unintended consequence of this bill.

Additionally, instead of making it the responsibility of the police officers to record the race and ethnicity of motorists, make it easy and require this information on the license. What good are your data collection efforts when the data coming in is prone to inaccuracy? This is a simple fix, yet the Senate wants to handcuff the police so that the issue of race can be pointed back in our direction. Why? You have the power to legislate this and resolve all doubt in favor of accurate records. For whatever reason, you choose not to and throw back onto the police the responsibility of handling it; whereas many senators have come out and said that we expect too much of our police with improper training and funding. Make a stand and correct this problem and the unintended consequences of incorrect data collection.

#### **5. Use of Force**

To me, one of the most ill-advised sections of this law is found in Chapter 147A as illustrated on page 60 at line 1289 related to the definition of "imminent harm." Imminent harm, as defined in this section, obliterates the current legal principle related to "fleeing felon." I want you to imagine what this definition does to a police officer. By

definition in this bill, imminent harm “shall not include fear of *future* serious physical injury or death.”

Imagine if you will a school shooter. The saddest part of this commentary is that every one of us can actually picture it. I work in Burlington. And my oldest daughter attends the school, with my other children in different schools in town. If I was called to an active shooter in this school and entered at a point where I saw the shooter and engaged, knowing he was committing or did commit murder, and the shooter stopped shooting – but actually failed to listen to my directions and commands and began to walk toward the pre-school that is housed within the Burlington High School; under the fleeing felon rule I could shoot him if I had reason to believe he was going to escape and continue to cause serious bodily injury or death on others and I had no other means to stop him. Under this proposed change, I could not neutralize him as a threat. Now, maybe well intended Senators believe that the world functions in a manner that would never require a police officer to shoot someone who is not actively engaged in a use of force; threatening death or serious bodily injury. But, I have just illustrated that it can happen – and this language ties our hands. Imagine for yourself if you have a child or grandchild in that school or pre-school and saw this unfold on video – the fact the officer knew, through objective reasonableness – that the shooter was headed toward the younger children – and the cop did nothing. The horror is unbelievable, and yet it brings up another question: is there still legislative immunity with this bill? Or, is it truly that the police are the only segment in the crosshairs? What happens when the parents of these murdered children sue the police? You have taken away our ability to act under the law where every officer I know will still act accordingly. Then, they will likely be sued because they knowingly, willingly and intentionally disregarded your ill-advised and reckless statutory wording.

In Section 2 (d) there is a prohibition on chokeholds. I do not disagree with this prohibition, but I strongly disagree with the fact it is a total prohibition. By the terms of this bill in lines 1311-1314 inclusive, a chokehold is never allowed. There is no allowance for a chokehold if it is our only option. What if that is the only thing that an officer can do to save his or her own life? Or that of another? What if every possible means has been tried and exhausted and the only thing that keeps me from stopping a person from taking my gun from me, or from a person trying to do so to another officer or citizen, is a chokehold and you have prohibited it. I now have to endure a long legal action when I have been trained, since day 1, to use any “tool of immediate means” to meet deadly force. We do not have to train on chokeholds, just like we don’t train throwing rocks. I need only mention that Sgt. Chesna from Weymouth was killed with a rock. When you are in a fight for your life, any tool of immediate means may save your life. Whether it is a rock, a flashlight, a key, or the ground. Imagine whatever you will – but in a fight for your life, you will use any means possible. By taking away, through total prohibition, a reasonable alternative to our own death, you have instead opened us up for frivolous litigation. Had we been invited to the table; this likely would not be the case today. Would any of you not fight for your own life in such a circumstance? Or is it fair to ban chokeholds for every member of this society? Why not criminalize the actions regardless of who commits it?

Ultimately, this bill serves some of its intended purposes. However, what it also does is makes clear to me and thousands of other police officers, that we are the perceived problem. At what point are you going to make our lives and safety a priority? When are you going to enact laws that make a statement in support of the police? For instance, you mandate that we deal peacefully with protests. I agree – we should. But, when those protests take a bad turn, and we are having projectiles thrown at us; bodily fluids thrown at us, and assaulted; does it not scream fairness to stiffen penalties against those aggressors, as you have for us?

#### 6. **Body worn cameras**

In lines 1588-1590 inclusive, there is language that requires regulations recommended by the taskforce include “provisions preventing an officer from accessing or viewing any recording of an incident involving the officer before the officer is required to make a statement about the incident.” I implore you to look at this differently. It is very difficult as a police officer to find that most of this legislation is not aimed at us as the enemy – a paternalistic approach at reforming law enforcement as if we are the problems of society. It is disgraceful and illustrates that many of the Senators have never been in a situation that causes a true fight or flight physiological and psychological response; where we experience auditory exclusion, tunnel vision, slowing of time and PTSD. The mere wording of this section does nothing more than paint us all as liars – who would create a narrative that fits the picture on the camera. Maybe, as I have invited many of them to do but without any response, Senators should come in and participate in a shoot-don’t shoot exercise for 20 minutes in order to get as close as possible to what we go through in stressful situations. Has it occurred to any of you that there are physical and psychological elements involved in use of force incidents? Has anyone ever wondered why an officer involved in a shooting may have no idea how many times he or she shot their weapon? Have any of you ever been in a motor vehicle crash and had no idea what happened? By forcing an officer to write a report based totally on an imperfect memory, further clouded by stress, is unfair. And it leaves no alternative conclusion than the desire to catch an officer in a perceived lie. The only explanation is that your own implicit bias against us leads you to the conclusion that we will lie to fit the video; when in essence it is very often that we have the same response as anyone else; which is based on pure fight or flight to the exclusion of good memory of minute details.

#### 7. **Qualified Immunity**

I will leave this issue mostly alone because there are many more qualified experts to speak about this. But, I will state for the record that qualified immunity is not an issue in MA, and by working language into this bill, the Senate will create more frivolous lawsuits, impeding officers’ ability to do their jobs and remain productive in their profession. When I connected with a Senator that voted for the bill and asked about qualified immunity, the exact response I got in writing is: *The qualified immunity piece, which definitely needs to be rewritten in the bill, I totally agree AND it is being worked on, is making qualified immunity qualified vs. total.* How does this make sense? The Senator admits that the piece of legislation, arguably most concerning to law enforcement, is acknowledged to be lacking in its desired effect but was passed anyway. Is this supposed to give any citizen faith in the transparency of our legislative process? Let’s look back at

what one of the senators said during the debates as he spoke about qualified immunity. First off, he cites a case from 1991. If we have to go back to 1991 to illustrate a problem, then there is no emergency. Secondly, when he recites the facts of the case with dramatic inflection in his tone, it is hard to remember that the police officer at the time was acting under a search warrant, signed by a Judge or magistrate. There is leading jurisprudence throughout this country that favors warrants and when warrants are issued, any minor questions on the case, whether related to probable cause or ministerial error, will be decided in the officer's favor. Obviously, the fact the defendant was hiding drugs in her body cavity is not a minor or ministerial error and was very likely a material matter of concern to the Judge. The Senator then opines that it is not reasonable to believe the defendant would have been hiding drugs as described in the case but as police officers, I can guarantee that we have seen things not one of you would believe. That is again why we should have had representation during this process. Had this case come up, maybe we could have leant our professional insight to its relevance. To judge the officer from the vantage point of hindsight, with no background as to the case itself, is reckless. And he did so for the strict purpose of causing shock for the members of the public and other Senators who were listening and likely do not understand the basic concept of qualified immunity as it applies to law enforcement. For the Judge or magistrate to have given a search warrant to search that defendant's person – there was probable cause advanced by the officer. Whether you believe it could happen is immaterial. There was obviously information that led the officer to believe there was probable cause and the Judge agreed. How is this on the officer?

Another Senator during this same hearing seems to express concern about officers shooting someone that advance upon them with a pen. Well, as already stated, anything can be a deadly weapon depending on how it is used. And we must remember a police officer may use deadly force when confronted with deadly force; which includes in its definition the possibility of serious bodily injury. Let's ask any corrections officer if a pen can cause serious bodily injury. Her statements on the senate floor were incendiary and misguided and paint a picture that is not realistic. I have yet to meet anyone with real world experience that does not believe a pen could cause at least serious bodily injury.

My last point of contention with this bill is regarding the acquisition of military equipment. Senator Cindy Friedman sent a letter to her constituents explaining why she voted for this bill – and within it she explained that the police in her district are becoming more guardians than warriors. She is not incorrect in her statement. But, to think that the police will no longer ever need to react as warriors is misguided and dangerous.

Why would you put into a bill a stipulation for a public hearing, which puts us at a distinct disadvantage. Let me show why through an example. Assume the fire service was able to acquire military equipment that could defeat a biological terror incident. But, this legislation makes it imperative that they air this equipment and the technology out to the public – allowing anyone to see it and know the intricacies of why they may require it. Well, the by-product of what you've done should be obvious. The ill-intended now know how to change course and defeat this technology; or they at least know to go somewhere else where the technology is not in use. Is this the result we are after? Have

there been incidents in MA that requires such a drastic and draconian provision in this law? See, it is my opinion that this bill has lost its way on some of these measures. We, as police officers, must train for the worst and hope for the best. To do otherwise leads to drastic failure. Just like we carry guns – we do so for that one in tens of thousands of incidents that may require its use. But at least we have it. Why are we so against other equipment and tools that may become necessary? This world has changed and not one of you can honestly deny that it is safer than it was when we were all growing up. Another point that was made was the fact that we, as police officers, are “mean to start with.” Well, if we cannot deny the fact that there are evil actors in this world, then why deny the fact that police officers that have command presence and good tactics are the way to defeat these very people?

To sum up my concerns for you I will say that the passage of this Senate bill takes direct aim at every good police officer. Although, as much as they say they support us, the Senate’s actions speak to us much louder and clearer than their minimalist attempts at patting us on the back. We have said that we agree the system has some problems that need to be addressed. But, the police are not the system – we are one part of it. Imagine if the police had the ability to make a law that said only members of the legislature need to attend training on lynching and racism. Would it not label each of you as a racist? That is what the Senate is doing and I, on behalf of every police officer, ask you to reconsider this effect. If we truly want to fix a system, then the entirety of the system needs to be involved and in play. If you write the laws that we enforce, and the judges impose the sentences written in the laws, and probation and parole act under their statutory authority, why are the police the only profession requiring this training? The training is not the issue – but the unilateral, paternalistic virtue signaling, employed by the Senate in aiming just at the police is the direct issue. Lead by example.

It is very difficult for me to try to argue some of these points because the Senate has the best of both worlds. They can use the terms “racist” and “racism” as a sword and a shield. If the police try to argue facts, such as black on black crime and the true numbers of white on black police killings, etc, we are labeled racist. If we ask them to consider our point of view, by not labeling every cop a racist, their response has been “If the police can feel they are all lumped into the same category, why can’t people of color say the same thing?” Well, the answer of course is that they can. The difference, however, is that they had a seat at the table and were allowed to discuss these issues. When I bring this issue to the forefront, I am told that hearings had already been held on different bills but the topics are being brought forward now – so our voice was heard. Well, I’m sorry to say that inviting public discussion on the data collection portions of the “Hands Free” bill is not the same as this legislation. This bill takes direct aim at every law enforcement officer in this state – and we deserved to be a leading stakeholder in determining its construction.

I will repeat one last time for purposes of getting the point across. The police are not against correcting bad behavior and getting things right. Unlike what some may think, we are not the enemy. We live and work in our communities, raising our children and making sacrifices like everyone else to make ends meet; to send our kids to college; and



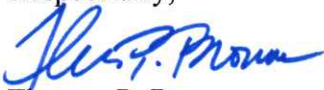
be productive members of our communities and good neighbors. It is very hard to defend our positions to people who fail to listen. While we agree we have some changes to make, others must admit it to. When we are called to a scene and it happens to involve a person of color, what are we supposed to do? Has anyone taken into account that maybe the police and the system is not as racist as it seems? I can state as fact that the officers I work with go out of their way to treat people of color with the utmost respect in daily interactions. No one wants to be labeled as racist and it is way too easy to do so. If a caller reports a crime and the person is black, should we not respond? Of course not, but when we do, the leading piece of information necessary to tell the story - the fact a witness actually called the police - is too often left out of the story, which can make it appear that we are acting proactively with a racist motive. This creates an impossible barrier for us to overcome. It is up to you to correct these wrongs and we will work with you. But if we want true reform, then work towards making the correct and lasting changes that have the desired effect on the system; and that means the entire system, not rushing through this legislation that has the possibility of becoming a missed opportunity to keep Massachusetts law enforcement ahead of the curve.

One of my main fears with the passage of this bill is the fact that some officers within this Commonwealth will be paralyzed and will fail to act when it is necessary and proper. The taboo subject that needs to be remembered, and every police officer understands this: a proper use of force is not meant to be pretty - it is meant to be effective and certain. This is a reality. And certain aspects of this bill, due to a complete ignorance of what we are asked to do, is potentially tying our hands to the detriment of officer safety.

In no other profession is it possible to go from the penthouse to the outhouse as quickly as law enforcement - and when the worst in society occurs again - as we all know it will - we will still be here serving with honor and dedication. That is the one thing the Senate cannot take away from us!

Thank you for your time and consideration.

Respectfully,



Thomas P. Browne  
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Burlington Police Department