

SENATE No. 2975

Senate, December 10, 2020 -- Message from His Excellency the Governor (pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts) returning with recommendation of amendment the engrossed Bill relative to justice, equity and accountability in law enforcement in the Commonwealth (see Senate, No. 2963).

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

December 10, 2020

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Section 3 of Article XC, of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Senate Bill No. 2963, “An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth.”

On June 17, 2020, I filed House Bill No. 4794, “An Act to Improve Police Officer Standards and Accountability and to Improve Training.” That bill was the product of nearly a year of work, but its filing was made more urgent by the calls for justice and reform that followed the killing of Breonna Taylor and George Floyd this past Spring. Like the bill before me, the central provision of the legislation I filed was the creation of a mandatory certification process for police officers to improve professionalism, accountability, and fairness in policing. Forty-six other states in the United States have adopted similar certification requirements.

As I wrote when I filed H.4794, “This bill makes law enforcement more accountable for their conduct and provides the public with direct insight into officers’ performance history which not only creates greater transparency in law enforcement but also gives departments greater ability to hire or promote only qualified applicants. Taken together, these measures enhance public safety by giving police departments greater ability to employ only officers with the most

up-to-date, community-oriented policing skills that best serve the public.” I continue to support these goals, goals that are the subject of long-standing collaborative efforts between the Baker-Polito Administration, including the Executive Office of Public Safety and Security, and the Black and Latino Legislative Caucus.

I appreciate the Legislature’s work in enacting a bill that advances these aims. I also appreciate the Legislature’s decision to include in this bill key provisions of the State Police reform legislation that I filed in January. Those reforms will accelerate the process of improvement that is already underway at the Massachusetts State Police.

My review of this bill has focused particularly on ensuring that the Massachusetts Peace Officers Standards and Training Commission (“POST Commission”) created by the Legislature to certify and decertify law enforcement officers can succeed. While I had proposed a Commission that would be located within the Executive Office of Public Safety and Security, the Legislature has determined that the Commission should be independent. I am prepared to accept that determination, as long as the Legislature ensures that the tasks it has assigned to the Commission are achievable and that the Commission has all the resources it needs to succeed in its important work.

Overall, I do believe this bill promotes improved police accountability. But S.2963 contains numerous provisions that were not included in H.4794, many of which are not central to creating a system of accountability for law enforcement. I am not proposing to amend most of these provisions, even where I disagree with the individual policy decisions they reflect. There are nevertheless a small number of proposals in S.2963 that I cannot accept because they introduce barriers to effective administration and the protection of public safety without advancing the central goal of improving police accountability and professionalism. The amendments I propose below address these issues.

- The bill disrupts a successful model of shared state and municipal oversight for police training by removing the Municipal Police Training Committee from its current location in the Executive Office of Public Safety and Security, and placing all of the training work under the oversight of the majority-civilian Commission. I do not accept the premise that civilians know best how to train police. My amendment proposes to restore the Municipal Police Training Committee to its current location and responsibilities.

- The bill proposes a POST Commission with no position designated for labor representation. I propose such a designation for one seat, without disrupting the Legislature’s proposed 3-6 split between police and civilians.

- The bill should go a step further in imposing a firm timeframe within which police departments should complete internal affairs investigations before the POST Commission takes control of an investigation, while also offering an accommodation if the Commission

determines there are reasonable causes to justify additional time for completion of an internal affairs investigation.

- The bill's proposal on facial recognition and definition of "bias-free policing" both fail to balance legitimate oversight of policing with the necessary work of solving crime and keeping the public safe.

- o I propose to enhance the study of facial recognition already proposed in the bill while striking out the law change that drastically limits its use by any public agency. The restrictions on the technology, with only significantly limited exceptions for law enforcement, ignores the important role it can play in solving crime. For example, in the last few years here in Massachusetts, a child rapist and an accomplice to a double murder are both now in prison thanks to facial recognition technology.

- o I also propose additional clauses to the definition of bias-free policing to clarify that definition.

- Finally, simply from a practical standpoint, the bill cannot be implemented as enacted because it does not allow any time to accomplish the organizational changes necessary to launch the POST Commission, which include the hiring of staff, the development of an entirely new and extensive digital database, and the development of complex regulations and policies. I propose that all sections involving organizational change take effect with the new fiscal year, on July 1, 2021.

In the coming days, I will also be filing a proposed supplemental appropriation to ensure that the Commission has the financial support it needs during fiscal year 2021.

I sincerely hope the Legislature will re-enact S.2963 with these changes. If they are not addressed, I do not intend to sign the re-enacted bill.

For the reasons stated above, I recommend that the bill, S.2963, be amended as follows:-

Amend the bill by striking out sections 3, 5, 7-8, 12, 14, 17, 19-20, 24-29, 31-36, 40, 55-56, 60 62, 66, 71, 74-76, 81-82, 88-89, 93, and 121.

And amend the bill by striking out section 4 and inserting in place thereof the following section:-

SECTION 4. Chapter 6 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out section 116 and inserting in place thereof the following section:-

Section 116. There shall be a municipal police training committee within the executive office of public safety. Members of said committee shall be as follows:-- 5 chiefs of police to be appointed by the governor from nominations submitted by the Massachusetts Chiefs of Police

Association, 1 of whom shall be from the western Massachusetts region, 1 of whom shall be from the central Massachusetts region, 1 of whom shall be from the southeastern Massachusetts region, 1 of whom shall be from the northeastern Massachusetts region and 1 of whom shall be from the Massachusetts Bay Transportation Authority, 1 chief of police selected by the Massachusetts Chiefs of Police Association, 1 police officer to be appointed by the governor from nominations submitted by the Massachusetts Police Association executive board and the Massachusetts Police Training Officers Association executive board, 2 sheriffs to be appointed by the governor, the chair of the Massachusetts Association of Minority Law Enforcement Officers, the president of the Massachusetts Association of Women in Law Enforcement, the commissioner of police of the city of Boston, the colonel of state police, the attorney general and 1 person to be designated by the secretary of public safety, or their respective designees. All such appointments shall be for terms of 3 years with their successors appointed in a like manner.

The following persons shall be advisory, nonvoting members of the committee: the personnel administrator, the commissioner of correction, the commissioner of youth services, the commissioner of probation, the chairman of the parole board, the executive director of the committee on criminal justice, the chief justice of the trial court, the chief justice of the district court department, the commissioner of education, the chairman of the criminal law committee of the Massachusetts Bar Association, or their respective designees, and the special agent in charge of the Boston office of the Federal Bureau of Investigation, if consent is given by the director of said bureau, or his designee. The governor shall appoint 6 additional advisory, nonvoting members of the committee, 1 of whom shall be an administrator of a city or town, 1 of whom shall be a clerk of the superior court, 1 of whom shall be a member of the committee for public counsel services, 1 of whom shall be a social worker, 1 of whom shall be a mental health clinician, and 1 of whom shall be a district attorney of a district, or their respective designees.

The committee shall elect a chairperson annually and shall, as needed, provide nominations for the selection of an executive director to the secretary of public safety. The secretary shall select an executive director from the nominations submitted by 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 committee shall set policies and standards for the training of the following, in accordance with applicable laws and regulations, including the training mandated by this chapter, section 36C of chapter 40, sections 96B and 97B of chapter 41 and section 24M of chapter 90:

- (i) municipal police officers and candidates for such appointment;
- (ii) Massachusetts Bay Transportation Authority transit police officers, and candidates for such appointment;
- (iii) police officers of the department 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 committee shall set policies and standards for the screening of all applicants for admission to committee-certified academies. The committee shall set policies and standards for background investigations for all persons appointed to committee-certified academies and initial appointments of those persons, which investigations shall require at a minimum verification against the national decertification index or the database of decertified law enforcement officers maintained by the Massachusetts peace officer standards and training commission established in section 2 of chapter 6E.

The committee and the division of police certification established in section 4 of chapter 6E shall jointly establish minimum certification standards for all officers, pursuant to section 4 of chapter 6E.

The committee, in consultation with the Massachusetts peace officer standards and training commission established in section 2 of chapter 6E, shall promulgate rules and regulations for the use of force by law enforcement officers consistent with sections 14 and 15 of chapter 6E.

The committee shall maintain records of training for all officers for whom the committee sets policies and standards for training, issue confirmation of satisfactory completion of training, and provide for extensions or waivers of training requirements for good cause and maintain records of any such extension or waiver and the reason. The committee shall provide records of completion of training to the Massachusetts peace officer standards and training commission established in section 2 of chapter 6E.

The committee shall coordinate with the center for responsive training in crisis intervention established pursuant to section 25 of chapter 19 on all behavioral health-related training.

The committee shall identify training requirements and develop guidance for meeting those 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, as well as for the operations of a headquarters and regional training centers, and for the delivery of standardized training at the centers.

The committee may promulgate regulations pursuant to chapter 30A as necessary to implement sections 116 through 118.

And amend the bill in section 10, by striking out, in line 330, the words “committee on police training and certification” and inserting in place thereof the following words:- municipal police training committee.

And amend the bill in section 16, by striking out, in line 353, the words “committee on police training and certification” and inserting in place thereof the following words:- municipal police training committee.

And amend the bill in section 23, by striking out, in lines 395 and 396 and in lines 417 and 418, the words “committee on police training and certification established in section 4 of chapter 6E” and inserting in place thereof, in each instance, the following words:- municipal police training committee.

And further amend section 23, by striking out, in line 425, the words “committee on police training and certification” and inserting in place thereof the following words:- municipal police training committee.

And further amend section 23, by striking out, in lines 426 and 427, the words “and subject to the approval of the Massachusetts peace officer standards and training commission.”.

And further amend section 23, by adding the following words:-

Section 116K. (a) The municipal police training committee shall develop and establish, within its recruit basic training curriculum and its in-service training curriculum available to in-service trainees, a course for police training schools, academies and programs for the training of law enforcement officers on mental wellness and suicide prevention. The course, which shall consist of 2 hours of total instruction annually, shall teach law enforcement officers how to: (i) utilize healthy coping skills to manage the stress and trauma of policing; (ii) recognize the symptoms of post-traumatic stress disorder within themselves and other officers; and (iii) recognize the signs of suicidal behavior within themselves and other officers.

(b) The course shall include information on the mental health resources available to help law enforcement officers and shall be designed to reduce and eliminate the stigma associated with law enforcement officers receiving mental health services.

(c) The course of instruction shall be developed by the municipal police training committee in consultation with appropriate groups and individuals having an interest and expertise in law enforcement mental health and suicide prevention.

(d) All law enforcement officers shall annually attend and complete a course on mental wellness and suicide prevention.

And amend the bill in section 30, by inserting after the words “professional level.”, in line 531, the following sentence:- This definition shall include policing decisions made by or conduct of law enforcement officers that: (1) are based on a law enforcement purpose or reason which is non-discriminatory, or which justifies different treatment; or (2) consider a person’s race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level because such factors are an element of a crime.

And further amend section 30, by striking out, in lines 540 and 541, the definition of “Committee.”

And further amend section 30 by striking out the sentence in lines 560 & 561, and inserting in place thereof the following sentence:- “Division of certification”, the division of police certification established pursuant to section 4.

And further amend section 30 by striking out, in lines 564 through 568, the definition of “Imminent harm.”

And further amend section 30 by striking out, in lines 583 and 584, the definition of “Necessary.”

And further amend section 30 by striking out, in lines 600 through 605, the definitions of “Totality of the circumstances” and “Training director.”

And further amend section 30 by inserting after the words “the rank of sergeant”, in line 616, the following words:- who is a labor union representative appointed from a list of 3 nominations submitted by the Chair of the Massachusetts Law Enforcement Policy Group.

And further amend section 30 by inserting after the words “(2) establish”, in line 710, the following words:- “, jointly with the municipal police training committee established in section 116 of chapter 6,”.

And further amend section 30 by inserting after the words “(6) establish”, in line 716, the following words:- “, in consultation with the municipal police training committee established in section 116 of chapter 6,”.

And further amend section 30 by striking out, in lines 787, 788, and 789, the words “training and”.

And further amend section 30 by striking out, in lines 790 and 791, the words “including a basic recruit training curriculum and an in-service training curriculum for law enforcement officers”.

And further amend section 30 by striking out, in lines 791 through 793, the sentence “The head of the division shall be the training director, who shall be appointed by the committee on

police training and certification.”, and inserting in place thereof the following sentence:- The head of the division shall be the certification director, who shall be appointed by the commission.

And further amend section 30 by striking out lines 794 through 829.

And further amend section 30 by striking out, in line 830, the words “committee-certified”.

And further amend section 30 by inserting after the words “police schools, programs or academies”, in lines 830 and 831, the following words:- approved by the municipal police training committee pursuant to section 118 of chapter 6, or the training programs prescribed by chapter 22C,.

And further amend section 30 by striking out, in lines 834 through 838, the sentence “The committee, subject to the approval of the commission, shall set policies and standards for the screening of all applicants for admission to committee-certified academies and shall set policies and standards for the screening for all applicants for certification and recertification as law enforcement officers, including, but not limited to, standards on background investigations for all applicants.”

And further amend section 30 by striking out lines 839 through 846.

And further amend section 30 by striking out, in lines 847 and 848, the words “The committee shall, subject to the approval of the commission,”, and inserting in place thereof the following words:- The division of police certification and the municipal police training committee established in section 116 of chapter 6 shall jointly.

And further amend section 30 by striking out, in lines 850 and 851, the words “designed by the committee and approved by the commission”, and inserting in place thereof the following words:- approved by the municipal police training committee.

And further amend section 30 by striking out, in line 857, the words “administered by the committee and”.

And further amend section 30 by inserting after the words “oral interview”, in line 859, the following words:- administered by the commission.

And further amend section 30 by striking out, in line 876, the word “committee”, and inserting in place thereof the following words:- division of police certification.

And further amend section 30 by inserting after the words “of said trainings”, in line 882, the following words:- , as provided by the municipal police training committee established in section 116 of chapter 6, and the department of state police.

And further amend section 30 by striking out, in line 901, the word “committee”, and inserting in place thereof the following words:- division of police certification.

And further amend section 30 by striking out, in line 905, the word “committee,” and inserting in place thereof the following words:- division of police certification in consultation with the municipal police training committee established in section 116 of chapter 6, and.

And further amend section 30 by striking out lines 914 through 948.

And further amend section 30 by striking out, in two instances in line 1149, the word “committee”, and, in each instance, inserting in place thereof the following word:- commission.

And further amend section 30 by inserting after the figure “(h)” in line 1152 the following words:- An appointing agency shall complete an internal affairs investigation into officer misconduct and issue a final disposition within one year of receiving a complaint or notice from the commission of the complaint being filed. The commission may, upon a showing of good cause, extend the time to complete the investigation.

And further amend section 30 by inserting after the words “shall suspend the hearing”, in line 1156, the following words:- . Any such suspension of the hearing shall not exceed 1 year from the officer’s notice to the commission, provided however that at any time during which the hearing is so suspended and upon a showing of good cause by the officer, the Commission shall further suspend the hearing for a period of not less than six months and not more than the Commission determines is reasonable.

And further amend chapter 30 by striking out, in lines 1189 and 1190, the words “committee on police training and certification” and inserting in place thereof the following words:- municipal police training committee.

And further amend section 30 by striking out, in line 1237, the words “The committee on police training and certification shall promulgate rules and regulations, subject to the approval of the commission, for the administration and enforcement of” and inserting in place thereof the following word:- The municipal police training committee established pursuant to section 116 of chapter 6, in consultation with the commission, shall promulgate rules and regulations for the use of force by law enforcement officers consistent with.

And further amend section 30 by striking out, in line 1238, the words “, subject to the approval of the commission,”.

And further amend section 30 by striking out, in line 1489, the word, “referred,” and inserting in place thereof the following word:- preferred.

And amend the bill in section 57 by striking out, in line 1558 and 1559, the words “Promotional examinations shall be open to a uniformed member who is a: (i) noncommissioned

officer” and inserting in place thereof the following words:- Promotional examinations for: (i) the title of noncommissioned officer shall be open to a uniformed member.

And further amend section 57 by striking out, in line 1562, the word “lieutenant” and inserting in place thereof the following words:- the title of lieutenant shall be open to a uniformed member.

And further amend section 57 by striking out, in line 1565, the words “a captain” and inserting in place thereof the following words:- the title of captain shall be open to a uniformed member.

And further amend section 57 by striking out, in line 1569, the words “noncommissioned officer” and inserting in place thereof the following words:- uniformed member.

And further amend section 57 by striking out, in line 1571, the words “such promotion” and inserting in place thereof the following words:- promotion to the title of noncommissioned officer.

And further amend section 57 by striking out, in line 1573, the word “lieutenant” and inserting in place thereof the following words:- uniformed member.

And further amend section 57 by striking out, in line 1575, the words “such promotion” and inserting in place thereof the following words:- promotion to the title of lieutenant.

And further amend section 57 by striking out, in line 1577, the word “captain” and inserting in place thereof the following words:- uniformed member.

And further amend section 57 by striking out, in line 1579, the words “such promotion” and inserting in place thereof the following words:- promotion to the title of captain.

And amend the bill in section 63 by striking out, in line 1619, the words “and training”.

And amend the bill in section 64 by striking out, in line 1624, the words “training and”.

And amend the bill in section 65 by striking out, in line 1632, the words “training and”.

And amend the bill in section 79 by striking out, in lines 1764 through 1766, the words “the training director of the committee on police training and certification established in section 4 of chapter 6E or a designee” and inserting in place thereof the following words:- the executive director of the municipal police training committee established in section 116 of chapter 6 or a designee; the certification director of the division of police certification established in section 4 of chapter 6E or a designee.

And amend the bill in section 79 by striking out, in lines 1794 and 1795, the words “Massachusetts peace officer standards and training commission established in section 2 of

chapter 6E” and inserting in place thereof the following words:- municipal police training committee established in section 116 of chapter 6.

And amend the bill in section 84 by striking out, in lines 1934 and 1935, the words “committee on police training and certification established in said chapter 6E” and inserting in place thereof the following words:- municipal police training committee established in section 116 of chapter 6.

And amend the bill in section 99 by striking out, in line 2110, the word “June” and inserting in place thereof the following word:- September.

And amend the bill in section 102 by inserting after the words “effective date of this section.”, in line 2143, the following words:- Notwithstanding section 4 of chapter 6E of the General Laws or the preceding sentence, a law enforcement officer, as defined in section 1 of said chapter 6E, 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 December 1, 2021, and is appointed as a law enforcement officer as of December 1, 2021, shall be certified as of the effective date of this section.

And further amend section 102 by striking out, in line 2147, the words “Massachusetts peace officer standards and training commission” and inserting in place thereof the following words:- municipal police training committee.

And further amend section 102 by striking out, in lines 2152, 2160, and 2162, the words “committee on police training and certification” and inserting in place thereof in each instance the following words:- municipal police training committee.

And amend the bill in section 105 by striking out, in line 2316 and 2317, the words “by the Massachusetts Department of Transportation” and inserting in place thereof the following words:- in the Commonwealth.

And further amend section 105 by striking out, in line 2344, the words “and (viii)” and inserting in place thereof the following words:- (viii) provide recommendations for the appropriate and acceptable use of facial recognition technology for beneficial purposes in law enforcement, the public sector, and other contexts; and (ix).

And amend the bill in section 115 by striking out, in lines 2619 and 2620, the words “committee on police training and certification, established in section 4 of chapter 6E of the General Laws” and inserting in place thereof the following words:- municipal police training committee.

And further amend section 115 by striking out, in lines 2624 and 2625, the words “committee on police training and certification” and inserting in place thereof the following words:- municipal police training committee.

And amend the bill in section 118 by striking out, in line 2708, the words “committee on police training and certification” and inserting in place thereof the following words:- municipal police training committee.

And further amend section 118 by inserting after the words “assistance. The”, in line 2715, the following words:- municipal police training.

And amend the bill in section 119 by striking out, in line 2718, the words “committee on police training and certification” and inserting in place thereof the following words:- Massachusetts peace officer standards and training commission established in section 2 of chapter 6E.

And amend the bill by striking sections 122 and 123 and inserting in place thereof the following 3 sections:-

SECTION 122. Sections 1, 4, 6, 9, 18, 30, 37-39, 67-70, 73, 80, 84-86, and 102 shall take effect on July 1, 2021.

SECTION 123. Subsection (d) of section 15 of chapter 6E shall take effect on September 1, 2021.

SECTION 124. Subsection (a) of section 14 of chapter 6E shall take effect on December 1, 2021.

Respectfully submitted,

Charles D. Baker,
Governor