

Lowell Police Superior Officers Association, Inc.  
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Lowell, Massachusetts 01852

Sent via Electronic Mail to Testimony.HWMJudiciary@mahouse.gov

July 16, 2020

State House  
Chairwoman Cronin and Chairman Michlewitz  
24 Beacon Street  
Boston, Massachusetts 02133

Re: S. 2820, An Act to Reform Police Standards and Shift Resources to Build a More Equitable, Fair and Just Commonwealth that Values Black Lives and Communities of Color

Dear Chairwoman Cronin and Chairman Michlewitz:

I write to you on behalf of the Lowell Police Superior Officers Association, Inc., concerning the aforementioned bill. The Lowell Police Superior Officers Association, Inc. represents Lowell Police Sergeants, Lieutenants and Captains. All positions are regulated by Massachusetts Civil Service Law. All are subject to a current Collective Bargaining agreement with the City of Lowell.

I direct your attention to the Constitution of the Commonwealth of Massachusetts, the model used for the United States Constitution, one of the oldest operating constitutions in the world. The same states “The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following *Declaration of Rights, and Frame of Government*, as the **CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS**.

As you are well aware, the Senate passed this bill without any type of public hearing. Passing such sweeping legislation without public input is repugnant to both public policy and democracy. Such action is completely contrary to government by the people, for the people. It is in direct contradiction with both Constitutions, which have withstood the passage of time. The acts and behavior in the wee hours of the morning by the 2020 Senate is the exact type of behavior by the government the Constitutions protect citizens from.

The Emergency Preamble in the Senate bill states “ Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color of which is immediately necessary to carry out those appropriations or to accomplish other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.” I, as well as all of my colleagues, are unaware of any specific event/s that have transpired in the Commonwealth of Massachusetts that support this assertion.

The Massachusetts Constitution, Part the First, A Declaration of Rights of the Inhabitants of the Commonwealth of Massachusetts, Article 1 states “All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.” The language of the emergency preamble seems to contradict this.

Section 10 of the bill states “Said chapter 12 is hereby further amended by striking out section 11I, as appearing in the 2018 Official Edition, and inserting in place thereof the following section:

Section 11I. (a) A person whose exercise or enjoyment of rights secured by the constitution or laws of the United States or the constitution or laws of the commonwealth has been interfered with, or attempted to be interfered with, as described in section 11H may institute and prosecute in their own name and on their own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section 11H, including the award of compensatory money damages. A person who prevails in an action authorized by this subsection shall be entitled to an award of the costs of the litigation and reasonable attorneys’ fees in an amount to be determined by the court.

(b) A person whose exercise or enjoyment of rights secured by the constitution or laws of the United States or the constitution or laws of the commonwealth has been interfered with by a person or entity acting under color of any statute, ordinance, regulation, custom or usage of the commonwealth or, or a subdivisions thereof, may institute and prosecute in their own name and on their own behalf a civil action for injunctive and other appropriate relief, including the award of compensatory monetary damages. An action under this subsection shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person or entity whose conduct complained of resides or has a principal place of business. A person who prevails by obtaining significant relief after the filing of an action under this subsection shall be entitled to an award of the costs of litigation and reasonable attorneys’ fees in an amount to be determined by the court.

(c) In an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law.” Neither myself, nor my colleagues in law enforcement are aware of any legal definition of “reasonable defendant.” None of my bar colleagues are aware of a legal or layman’s definition of the term. The 2020 version of the Massachusetts Senate has inserted a term into a bill, passed in the early morning hours, without a public hearing. §10 of the Bill calls for a draconian change in qualified immunity for all public officials, not just police officers. Qualified Immunity exists for obvious reasons, to protect public employees being subjected to frivolous and nonsensical lawsuits. Qualified Immunity is just that, Qualified. It appears that the sponsors of this bill refer to Unqualified Immunity, which means it is legally impossible to file suit against certain, individual government actors, such as judges and clerk magistrates. Police officers in the Commonwealth can be, and are sued in both federal and state courts. Qualified Immunity only provides for certain protections. The 2020 version of the Massachusetts Senate, with this bill, eradicates over 50 years of case law, case law that has worked well, all without any public input whatsoever.

The term reasonable defendant appears to be in direct contrast with the term “Reasonable Police Officer,” which is defined in the Seminole United States Supreme Court case *Graham v. Connor*, 490 US 386 (1989). As Justice Rehnquist opined “As in other Fourth Amendment contexts... the "reasonableness" inquiry in an excessive force case is an objective one: the question 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 Court also cautioned, "The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." The 2020 version of the Massachusetts Senate completely ignores the United States Supreme Court, all without a public hearing.

Massachusetts has one of the lowest annual rates for deadly use of force incidents in the Nation, at only 1.2 incidents per million people. Far more people suffer harm as the result of medical malpractice than at the hands of law enforcement. “And one in 20 U.S. adults who seek outpatient care will experience a diagnostic error each year, with about half of the errors considered potentially harmful.” *Singh H., Meyer A.N.D., Thomas E.J. The frequency of diagnostic errors in outpatient care: estimations from three large observational studies involving US adult populations. BMJ Quality & Safety. 2014; 23(9): 727-731.*

The proposed legislation, if passed into law, will have a profound effect on the quality of life of every single person in the Commonwealth. There is far too much at stake to pass a bill of such magnitude with little, or no input from the public. I would respectfully request that the matter be referred to committee, and studied prior to passage. Expediency of this bill will harm the Commonwealth far greater than it will help. As a citizen of the Commonwealth, and as a police officer, I ask that this matter be considered carefully, without a rush to judgment. There are far too many potential unintended consequences of this bill to rush its passage.

Democracy is a value men and women have given, and will continue to give, their lives for. I would ask that the Legislature honor democracy, and those who defend and die for it, by deferring this bill to committee for further study.

I thank you in advance for your attention to this matter.

Very truly yours,

/s/ Thomas D. Kennedy

Thomas D. Kennedy, President, Lowell Police Superior Officers Association, Inc.

cc: Representative Colleen Garry  
Representative Thomas Golden  
Representative David Nangle  
Representative Rady Mom