

July 16, 2020

The Honorable
Sheila Harrington
First Middlesex District
Mass. House of Representatives
24 Beacon Street, Room 237
Boston, MA 02133

Dear Representative Harrington,

I would like to thank you for meeting with some of the police chiefs from your district. In consideration of debate for a Police Reform addressed by the House of Representatives we would urge you not to change or remove the qualified immunity protection. We ask that you apply language from Amendment #51 to the Senate Bill S.2800 that would have stricken the POSAC section of the Bill S.2800 and replace it with the Governor's language filed in his original POSAC bill.

We are concerned and opposed to efforts to change the qualified immunity protections for police officers. Qualified immunity is a foundational protection for the policing profession and any modification to this legal standard will have a devastating impact on the ability of the Police to fulfill their public safety mission.

Qualified immunity provides police officers with protection from civil lawsuits, so long as their conduct does not violate clearly established law or constitutional rights of which a reasonable officer would have known. Further, qualified immunity does not prevent individuals from recovering damages from police officers who knowingly violate an individual's constitutional rights. Qualified immunity is an essential part of policing and American jurisprudence. It allows police officers to respond to incidents without pause, make split-second decisions, and rely on the current state of the law in making those decisions. This protection is essential because it ensures officers that good faith actions, based on their understanding of the law at the time of the action, will not later be found to be unconstitutional.

Some of the benefits to the language from the Governor's Bill are:

- Included input from Law Enforcement and Black and Latino caucus',
- Creates balanced and objective process for certification and de-certification of police officers,
- Requires POSAC membership 1/2 racially diverse,
- Certifies every officer in Commonwealth,
- Makes Law Enforcement accountable for their conduct

Some of the shortcomings of S.2800:

- Widespread undefined authority: unlimited subpoena power without oversight and authority to conduct investigations,
- Language does not provide process or standard of proof for investigations, could step into DA and police internal investigations,
- Creates an arbitrary process, subpoenas can be issued by the Chair alone or just 3 members,
- There is no standard to the basis for investigation

The Use of Force language moves away from the US Supreme Court case, *Graham v. Connor*, which established that the amount of force used by police had to be Objectively Reasonable is being changed to Necessary. Also, the Reasonable Officer standard is being replaced with Reasonable Person standard. The Senate bill is leaving the “reasonable officer” standard and replacing it with “reasonable person”.

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer rather than with the 20/20 vision of hindsight”. *Graham v. Connor*

The new language changes the amount of force to “Necessary” from “Objectively Reasonable”.

Necessary is subjective (who makes that determination?)

Objectively Reasonable was established under the 4th Amendment decided by USC, *Graham v. Connor*,

- “Allows for the fact that police officers are often forced to make split-second judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”
- An officer’s evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer’s good intentions make an objectively reasonable use of force constitutional. See *Scott v United States*, supra at 138 citing *United States v. Robinson* 44 U.S. 18 (1973)

These language changes have very serious implications as to how officers perform their duties and how they will be judged in a court of law.

This is very important legislation and we need to get it right and not rush something out just to do something. We appreciate you considering the above points and use of the information when formulating the House of Representatives Police Reform Bill.

Respectfully,

Chief Michael F. Luth, Groton
Chief David Scott, Pepperell
Chief William A. Murray, Ayer

Chief Fred Alden, Ashby
Chief James W. Dow, Dunstable
Chief James P. Sartell, Townsend