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POLICE DEPARTMENT

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July 17, 2020

Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chairwoman Cronin and Chairman Michlewitz:

I am writing this morning to say that as a proactive, progressive police chief, I have always embraced change that betters the profession of police officers and enhances the safety of community and police/community relations. However, any organizational change needs to be well thought out, with input from all parties, and the legal/liability concerns considered through an open, public dialogue. I am saddened that the Massachusetts Senate failed to meet those criteria when they voted for broad sweeping changes to the law enforcement profession under the cover of darkness when many of us were asleep. Such action does not bring us closer together but divides us further apart.

In the interest of expediency, I would like to comment on three bulleted issues: qualified immunity, school resource officers, and a new section suggested by Mass. Chiefs, provided to offer practical front line experience and insight to the Senates 89-page bill. While I will address these three limited topics, I want to make my support known of the Massachusetts Chiefs of Police letter dated July 16, 2020 and submitted to this Committee. I fully support their comments in their entirety toward Senate 2820:

Qualified Immunity:

There is a huge misconception around the legal principal of qualified immunity which is that qualified immunity protects bad police officers. Rather, the opposite is true. Qualified immunity protects good police officers who are out protecting their communities in a proactive manner. Qualified immunity only becomes an issue if the law or legal principal is not known and when it does become an issue in any case, the judge "balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223 (2009). There has been over 50 years of jurisprudence that has interpreted qualified immunity. The question becomes why the state would want to change it in the pre-dawn hours, after a long senate session without public input. Rush decisions have significant consequences and several consequences that will indeed happen because of the passage of this language is: increased lawsuits, municipalities not being able to obtain liability insurance which could then lead to municipalities becoming bankrupted. What is not realized is qualified immunity does not just protect individual police officers, but it protects schoolteachers, fire departments, school districts, municipalities, correction institutions, building inspectors, Town Managers, and a slew of other public sector employees.

I would ask you to consider the following hypothetical: What if there was a bill introduced that eliminated absolute immunity for any Senator or member of the House of Representative? How would you vote? It is obvious that you would vote no in order to protect your family, and your assets as you reasonably perform your duties to the citizens of the Commonwealth.

I want to end where I began, which was the huge misconception around qualified immunity, which is qualified immunity protects bad police officers; it does not. What protects bad police officers are bad arbitration decisions that overrule the Chief's discipline of an employee who has violated clearly established rule and regulations. Just in Boston alone, over the last several years, there have been numerous cases in which Officers were reinstated by an arbitrator overturning the Commissioner's discipline. Please do not take my comments as advocacy of elimination of arbitrations for public employees; rather, this is an example of one aspect of what we may and should examine before rushing a bill through the legislature.

School Resource Officers:

School Resource Officers have enhanced school/police relations on every level. The police department in Winthrop, like many others across the state, bring into the school more than a law enforcement presence. We are collaborators in every aspect of the school operation. For example, we are currently working with the Superintendent on school reopening during the current pandemic, we have provided technical assistance and finance resources to ensure school can reopen safely. We have brought into our schools social/emotional support services through our public health/police collaborations. We have established Communities for Restorative Justice to handle discontentment and violations of the law that can be handle through a restorative community approach instead of charging a child and creating a juvenile record. These are the type of things we bring into the school with the cooperation and request of the Superintendent. As mentioned in the Mass. Chiefs letter, we act in "in consultation with" the Superintendent on the assignment of the officer who is placed at the school, provide specific training and the officer's yearly evaluation.

The comments that have been publicly made by the Massachusetts Teachers Association (MTA) are quite frankly irresponsible and reckless. It also shows their ignorance as to what investments Police Departments have made towards the care and education of children. MTA must have forgotten about the school violence that has occurred over the last several years across our nation that has called for more police protection in the schools. Also, let us not forget the lessons that we have learned from students like Phoebe Prince whose death led to sweeping changes about bullying in schools. That legislation requires cooperation between schools and the local police.

Any change to the current legislative mandate to the position of School Resource Officers could further divide and deteriorate the relationship between police and school departments that should be concerned with how we strengthen the relationship for the betterment of the child who wants a safe learning environment.

[Recommended New Section] Amends GL Chapter 32 Section 91(g):

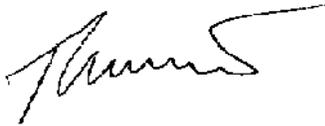
I cannot stress enough how Police Training has and is currently being transformed by the current MPTC Interim Executive Director Robert Ferullo. Director Ferullo has developed forums on Civil Rights and Domestic Violence which has not been the practice over the last several years. He continues to listen to

Chiefs on the need for additional training and specialized training that is specific to Massachusetts Police Officers and not borrowed or brought in from another state that has no practical value to the Massachusetts Police Officer. This has not always been the case when it has come to police training. Director Ferullo's practical street experience, administrative experience and the understanding that each police chief must answer to the community, makes him uniquely qualified to retain this position. After he leaves, other Chiefs with the same experience would be able to fulfill these tasks as well.

So, I urge you to add the section the Mass. Chiefs of Police have suggested which amends G.L. Chapter 32, Section 91(g).

I appreciate the opportunity to give my practical experience and the sentiment and feelings of not just me but my entire staff here at the Winthrop Police Department.

Respectfully Submitted;

A handwritten signature in black ink, appearing to read 'Terence M. Delehanty', with a long horizontal stroke extending to the right.

Terence M. Delehanty
Chief of Police