

Sirs,

My name is Kevin Cavanaugh, I am a Patrol Officer with the Wilmington Police Department (978-658-5071, c. 978-808-2227) for the past 8 years. As a member of this department I also serve as a Field Training Officer, a CPR/First Responder Instructor, Training Instructor for our Police Explorers program, and also as a Steward for our patrol officers union New England Benevolent Police Association (NEPBA) Local 1. I am also a lifelong Massachusetts resident and work in the same town in which I grew up and still currently reside.

I am writing to you today in opposition to S2820 based on several factors which I find to be of concern. The first and most glaring factor is the haste and lack of transparency in the writing and passing of this bill within the Senate. The wording of the preamble, establishing an emergency basis as a means to bypass the normal democratic process, indicates that the situation is dire and African American lives are in great danger without it. To be blunt this is simply not true. While there have been serious instances of police misconduct and unlawful killings in other parts of the country, the same does not hold true in the Commonwealth. There are always improvements which can be made in how our judicial system works, but to state that this bill must be passed on an emergency basis is disingenuous at best. Emergency bills (H4745 and S2602) offering protections and hazardous duty pay to first responders and essential workers during the Covid-19 pandemic have still not been ratified.

Qualified immunity is one of the areas of municipal law enforcement which S2820 is attempting to change. There are many misconceptions to what qualified immunity is and how it works. Officers are only “qualified for immunity” if the officer is attacking within the law, within the scope of their training, and within the policies and procedures of their department. Qualified immunity does not protect those officers who are committing crimes, or attacking outside the scope of their authority; it is not absolute immunity.

For municipal police officers qualified immunity allows for the courts to dismiss frivolous cases against officers at the early stage of the trial. S2820 takes that ability away and places the officers in a position to have the judge decide if qualified immunity is present as a fact of the case. Essentially S2820 is going to allow many cases to push further along in the legal process, taking up time and resources of the government and the individual officers, before coming to the same conclusion which should have been decided from the beginning, while at the same time making it easier for plaintiffs to claim that their rights were deprived based on bias. S2820 also allows for plaintiffs to seek legal fees during their cases, bringing about a very foreseeable uptick in predatory lawsuits from attorneys and clients who know that they will not have to foot the bill. That bill will have to instead be footed by the municipalities and the officers themselves.

One of the major talking points which I have heard from supporters of the bill is that even without qualified immunity the municipalities can still indemnify their officers. I will direct your attention to the word “can” within that sentence. Municipalities can indemnify their officers, however they are not required to. Legislators, Town Administrators, Judges, DAs, and even the

Massachusetts State Police are statutorily required to be indemnified, however municipal officers are at the whim of their employers.

SECTION 3 and SECTION 4 of S2820 speak to the administration of the Municipal Police Training Committee and changes in training which are to take place. As an officer who is heavily involved in training I will state that I am happy to receive as much training as this Commonwealth can provide. Training in use of force, de-escalation techniques, biased policing, and policing of special populations (such as individuals with mental health issues, individuals with autism, and individuals with other disabilities) is essential to provide high quality professional police services. Fortunately, we are a state in which those trainings are currently being provided. Recruit academy curriculums already offer extensive courses in each of those areas. Annual in-service training curriculums also focus on these areas on a three year rotating basis, with use of force taught every year, and at least one of the other subjects taught yearly. I would be more than willing to receive extra training in these areas on a yearly basis, however I do not see where the funding for those trainings is coming from, or which other classes would be cut during our in-service period.

SECTION 6 establishes an independent police officer standards and accreditation committee which is made up of an unequal amount of non-law enforcement to law enforcement members. 8 members of this committee will not be law enforcement officers, which already guarantees an unfair influence on the committee. Of the 6 members who will be from law enforcement it is only mandated that 1 be from the rank of patrol officer or detective. 3 of these 6 law enforcement appointees will come from only 3 departments. There are no representatives of law enforcement labor unions. Based on its statutory make up this committee will not be independent, as it has mandated members from special interest groups and less actual law enforcement professionals than none law enforcement professionals. It is asinine to have a professional oversight and accreditation committee with the majority of the members not being in that profession.

This committee has also been granted the power to investigate claims of misconduct and issue non-appealable rulings, which impact the individual officer's professional certification. Just think of that for a second; a committee made up of a majority of members who are not law enforcement professionals, is being given the power to make determinations about the rightness of an officer's actions or conduct, and this determination is not subject to appeal. The very thought that a decision made by a biased committee is not subject to appeal is laughable. This committee, which will be a political and not independent one, will now be able to decide appropriate conduct for law enforcement officers in the Commonwealth without any checks and balances. This is the reason that Civil Service and Labor Law are in existence, to be able to make decisions about an officer's conduct that is not tainted or influenced by political pressures. Making this committee's decisions not subject to appeal to a truly independent arbitrator should be shocking to everyone's sense of fairness and justice.

The haste with which this bill has been constructed, the lack of transparency in the process up to this point, and the virtue signaling of many clauses without actual funding to

accomplish them or means of moving forward is discouraging. The people of the Commonwealth of Massachusetts deserve better than this from their legislators. Open dialogue from all sides would be a welcome way to improve law enforcement within the Commonwealth, which is already on the cutting edge of professional policing nationwide. Instead this bill is a thinly veiled attack on law enforcement in general and municipal police officers in particular. When the Senate could have had an inclusive discussion with all stakeholders and figured out an appropriate way to provide for training and oversight, they instead pushed through S2820, which has alienated every officer in this state and made us fearful of the consequences of performing our duties. Duties, which I might add, that the citizens and legislature of this Commonwealth have called on us to do. Duties which force us into tough positions, making split second decisions with few good choices, and the only protections which we feel we have are now being denigrated beyond reason.

Sirs, I ask that you and your colleagues vote “no” on this bill. I ask that you utilize your reason and realize that this is not the answer which is needed to provide more protections for members of minority communities in the Commonwealth. I ask that you understand that by stripping away the protections for the innumerable good officers who serve our citizens you are guaranteeing an exodus of those same officers who are willing to lay down their lives for their communities, but are not willing to face financial ruin for themselves and their families at the same time. Please vote “no” on S2820, and help us move forward with a collaborative process to provide all of the citizens of our great Commonwealth fairness and justice.

Respectfully,
Kevin Cavanaugh
Patrol Officer
Wilmington Police Department