



"The only Union for Law Enforcement Officers"

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Representative Aaron Michlewitz
Chair, House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

Representative Claire Cronin
Chair, Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Dear Chairwoman Cronin and Chairman Michlewitz:

Thank you for providing this opportunity to submit written testimony on behalf of the Massachusetts Coalition of Police relative to Senate Bill 2820.

The virtual hearing and public input process set forth by The Speaker on this important legislation demonstrates a strong commitment to inclusion and transparency. Unfortunately, the Senate process – in its haste, exclusion of key stakeholders and disinterest in public input – was a disappointment to not only thousands of law enforcement professionals, but to people from all walks of life across the Commonwealth.

The Massachusetts Coalition of Police (MassCOP) is the largest union representing police officers in the state, representing over 4,300 members sworn to protect and serve in 157 cities and towns. We are committed to bringing about constructive reform to policing and law enforcement in Massachusetts and ensuring public confidence in the professionalism of police officers and their respective departments.

The important national conversation prompted by abhorrent and criminal conduct by officers in other states has created an extended moment to reflect on, and an opportunity to improve, police training and standards in the Commonwealth.

We have been fortunate to engage in productive and positive discussions with Governor Baker, members of the Legislature to include the Black and Latino Legislative Caucus and our fellow professionals within the Massachusetts Association of Minority Law Enforcement Officers and the Massachusetts Law Enforcement Policy Group. There is broad consensus and agreement on important measures such as the creation of an independent body to oversee department accreditation and officer certification, standardized training on police procedures and protocols, clear language banning chokeholds and the use of excessive force, a formalized 'duty to intervene' responsibility for all officers, and the promotion of diversity and a commitment to recruiting more people of color into law enforcement.



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It is our strong belief, however, that the foundation of all true reform must be established through accreditation of all municipal police departments and certification of all officers.

We agree with the governor and lawmakers on the need for a comprehensive process for certifying all police officers in Massachusetts. But we also believe that every Massachusetts police department should be held to the highest standards and best practices in law enforcement. Having the confidence of Massachusetts citizens, including and especially communities of color, is critical for police officers as America experiences this period of reflection around social justice and racial equality.

Accreditation enforces a commitment to excellence in training and will standardize best practices for policing. Our leadership and members – the men and women sworn to protect citizens and property in 157 communities - strongly support a process through which all municipal police departments become accredited utilizing the consistent standards of the Massachusetts Police Accreditation Commission.

Certification holds each officer accountable within a fair and reasonable but high set of standards, and with the preservation of their due process rights. Similarly, accreditation for all municipal departments places organizational accountability squarely on each department: limited not only to rank and file officers and their direct supervisors, but extending to police chiefs, commissioners and all those officials with a direct influence on department leadership and culture. **There can be no comprehensive reform of policing without a mechanism for accreditation of all departments.**

Police officers have an important role, and responsibility, to play in the police reform movement. As professionals committed to protecting the public, who take pride in our profession, we believe proven cases of serious misconduct should be prosecuted to the fullest extent of the law. We are not here to simply say 'no.' Rather, we join other advocates for police reform with our desire to ensure that reforms being sought truly enhance policing in Massachusetts.

To be clear: "chokeholds" have *not* been an accepted practice in the Commonwealth of Massachusetts for decades. Massachusetts police officers are not taught "chokeholds" in the police academy or at veteran officer training. We support a **ban** on this tactic except in the extreme circumstance of the officer's life or another person's life in imminent threat of death or serious bodily injury.

The use of excessive force by police officers is unacceptable and we strongly support the proposed ban. And we support the Legislature's proposal that an officer has a *duty to intervene* if they witness excessive force. All these reforms require statewide training for officers.

We also support creation of *an independent body to oversee police standards and best practices and administer a process for certification*. The board should include both law enforcement professionals and non-law enforcement professionals that have *knowledge of policing*.



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Unfortunately, Senate Bill 2820 is gravely inadequate in this area. In fact, the proposed 15-member committee that would oversee certification would likely be the first such professional certifying or licensing authority to not be made up of a majority of professionals with specific knowledge in the respective field: in this case law enforcement. It is our strong position that this must be rectified as the House considers the legislation.

MassCOP and its members are also deeply troubled by the Senate’s *elimination of due process* for police officers facing disciplinary action – a fundamental right of all public employees covered under a collective bargaining agreement.

Finally, we must address in the most clear and forceful terms that a persistent and misguided Senate initiative to remove qualified immunity protections from police and other public servants is *completely unacceptable*. It is no less than a hostile act against more than 16,000 officers across the Commonwealth and their families – with collateral impact on thousands of other public servants who will lose important protections from unreasonable, unpredictable and nuisance lawsuits over good-faith actions on the job.

Abolishing or modifying qualified immunity will have severely negative unintended consequences for *all* Massachusetts citizens, courts, and public officials – *not* just police officers. Qualified immunity is *not* an absolute immunity from civil suit.

The Massachusetts Civil Rights Act of 1979 (MCRA) allows civil actions against public officials who use force, intimidation or coercion to interfere with Constitutional or statutory rights. Current law – unchanged – still allows individuals to file suit against a police officer or other public official granted Qualified Immunity if they use force, intimidation or coercion to interfere with an individual’s rights.

Senate Bill 2820 would *dramatically lower the standards* under which a civil action could be brought against a public official with qualified immunity. Lawsuits against public officials would increase exponentially. This would send a chill through all areas of local government where thousands of public servants must deal directly with citizens. And the consequences would be damaging and disruptive to the Commonwealth:

- State courts would be flooded with civil actions – as plaintiffs who would otherwise pursue civil actions in federal court seek an advantage in state courts.
- Cities and towns across Massachusetts would be forced to absorb massive legal costs in defense of the municipality’s role in the action – and almost certainly indemnify public employees against damages.
- Municipalities will almost certainly incur burdensome legal costs – including plaintiff attorney fees – from litigation and settlement of meritless claims that would have been weeded out by QI.
- The massive new financial burdens would come at the worst time possible: as cities and towns are bracing for devastating budget impacts from the COVID-19 pandemic and related economic shutdowns



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- Federal courts have a large body of case law on which to base interpretations and analysis of new QI cases. Under the proposed Senate bill changes, the state courts will have to develop a whole new body of case law to interpret the new language. This will lead to uncertainty for municipalities, public employees and plaintiffs for years to come.

The Senate bill's language on qualified immunity is a **direct threat** to the thousands of hard-working and dedicated municipal officials, commission appointees and employees in all 351 cities and towns across Massachusetts.

This standard legal protection offered to nearly all government workers is, as the Supreme Court of the United States has said, 'no license to lawless conduct.'

Judges, prosecutors and members of Congress hold positions where they have far more time to make decisions, and don't face the prospect of death or injury if those decisions are not made quickly. Yet unlike police officers, they enjoy "absolute immunity." It is not too much to ask that officers – and other public servants - continue to be able to act in good faith in their jobs without fearing that each decision could lead to a lawsuit. As police officers, we know the dangers that come with this job and we accept that fear in order to carry out our duties. We should not live in fear of potentially damaging retribution for doing that job.

In closing, we would like to again thank yourselves, Madame Chairwoman and Mr. Chairman, as well as The Speaker and the entire House of Representatives for conducting this important public process in deliberating the legislation before you. We are of course available, at your convenience, to answer any questions or provide further information.

Sincerely,

Scott Hovsepian – President
John Nelson – First Vice President
Robert Murphy – Secretary Treasurer
Tim King – General Counsel

CC: House of Representatives