

**Massachusetts Law Enforcement Policy Group**  
295 Freeport Street  
Boston, MA 02122

July 16, 2020

Hon. Aaron M. Michelwitz  
Chair  
House Committee on Ways and Means  
State House, Room 243  
Boston, MA 02133

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

Re: *Testimony of the Massachusetts Law Enforcement Policy Group on S.2820*

Dear Chairs Michelwitz and Cronin:

On behalf of the over 16,000 sworn police officers who make up the Massachusetts Law Enforcement Policy Group (MLEPG), we write to express our areas of concern with 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*. The MLEPG was created several years ago to serve as a coalition of the Commonwealth's major police unions and organizations to speak on Law Enforcement legislation and policy.

The MLEPG has been actively engaging with the Massachusetts Black and Latino Legislative Caucus on issues relating to improving policing in the Commonwealth. Through our discussions, we have reached agreements regarding: the cessation of chokeholds; establishing a uniform duty to intervene and clear prohibition of excessive force; standardized training of procedures and protocols; and the promotion of diversity in policing. We welcome the inclusion of these areas of agreement in a House bill. However, we oppose certain portions of S.2820. We oppose the composition of the new Police Officer Standards and Accreditation Committee ("POSAC") in S.2820 as being unfair and improper. We also oppose the provisions of S.2820 that improperly deny our members due process with regards to certification proceedings. Finally, we oppose changes to the judicial doctrine of qualified immunity that are not thought out, will create unintended consequences, and were not discussed at any point in meetings with the Black and Latino Legislative Caucus.

***Due Process***

As written, the POSAC will institute revocation proceedings against officers before officers are able to appeal discipline issued by their employers. This is a fundamental violation of the officer's right to due process. All public employees who are in unions have the right to challenge discipline through either arbitration or Civil Service. Other professions, such as

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teachers, are overseen by boards. But teachers are able to arbitrate any discipline *before* proceedings are instituted against their licenses. This is only fair.

It is also common sense to allow the arbitration process to complete prior to institution of proceedings by POSAC. In this way, the POSAC proceeding will benefit from a complete record, and will not need to start from square one. This will not only aid the POSAC, it is fiscally responsible, and will avoid the need for the POSAC to have a large staff of investigators and hearing officers. The POSAC will need an annual budget of tens of millions of dollars to effectively function as written in S.2820. It would be irresponsible to not allow a record to be developed by the officer and his or her municipality, which will then aid the POSAC.

### ***Qualified Immunity***

The provisions of S.2820 (section 10) regarding qualified immunity would have unintended and far reaching consequences. Before reaching qualified immunity, §10(b) (found at line 559, page 27) dramatically alters the Massachusetts Civil Rights Act (“MCRA”), M.G.L. c. 12, §11I, by removing the requirement that a legal deprivation include threats, intimidation or coercion in order to be actionable. This is a huge change that will shift the majority of civil rights cases from the federal to the state courts. The state courts will be inundated with new cases. It is clear that the Senate did not factor into consideration the need to greatly expand the ability of state courts to hear cases that will be required if S.2820 becomes law.

Regarding qualified immunity, it is clear that S.2820 will not have a beneficial impact, but will have many unintended consequences. To be clear, qualified immunity does not protect knowingly illegal actions by police officers. Instead it only protects an officer who could not have known her actions violated the constitutional rights of another from being held liable for her actions. It is simply fundamental fairness – you should not be punished for something that no reasonable officer would have known was illegal.

Importantly, the changes to qualified immunity will not only impact police officers, but will impact all public employees. Many cases brought under the MCRA do not involve police officers, but involve suits against town officials, building inspectors, etc., for alleged violations of rights. This change will make suits against all public employees more prevalent.

The change to qualified immunity contained at §10(c) of S.2820 will not “close any loopholes” as claimed. Rather, it will create the need for the development of an entirely new body of law. Cases will be litigated that should have been dismissed. The cost of litigating these cases will fall to cities and towns, who will see legal defense budgets skyrocket. The only people who will benefit are the lawyers.

The change proposed to qualified immunity will lead to uncertainty, and will make all employees second guess their actions. Officers will be negatively impacted, as will efforts to recruit and retain good officers.

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For these reasons, and because it is clear that the Senate did not fully understand the far-ranging implications of §10, we urge the House to create an expert commission to study qualified immunity and make detailed, and reasoned recommendations.

***Composition of the POSAC***

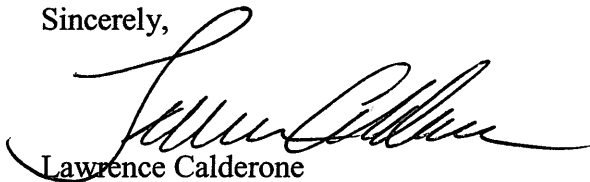
The POSAC created by S.2820 would be unlike any board overseeing any other profession. As proponents of the bill point out, many professions are overseen by boards. Those boards, however, are predominantly composed of members of the profession they oversee. Doctors oversee doctors, teachers oversee teachers, nurses oversee nurses, etc. Most boards do have community members, but a small minority thereof. The reason for this is obvious – those called upon to pass professional judgment on others should have professional experience. The committee established by S.2820 would have 15 members, and only 6 law enforcement officers. This is fundamentally unfair to the officers the board will oversee. We believe that any POSAC be comprised of a majority of law enforcement officers and experts in the field. For non-law enforcement officers, we would suggest a retired superior court justice, experts in the use of force and firearm analysis and discharges, and a criminal justice academic.

In addition, the law enforcement members of the committee are predominantly police chiefs. A proper board should draw on the experience and knowledge of rank and file police officers. The POSAC should also include patrol officers from police unions who can properly represent the rank and file officers on the street.

***Conclusion***

As stated, the MLEPG supports many elements of police reform under consideration. But S.2820 is too overbroad, and was passed too quickly and without due input and deliberation. We know the House will give these important issues careful consideration, and we look forward to further input and discussion. Thank you for your consideration of our concerns.

Sincerely,



Lawrence Calderone  
President, BPPA  
MLEPG



John Nelson  
Vice President, MCOP  
MLEPG