



SMART GROWTH AND REGIONAL COLLABORATION

July 17, 2020

The Honorable Aaron Michlewitz
Chair, House Committee on Ways & Means
State House, Room 243
Boston, MA 02133

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

RE: 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*

Dear Chair Michlewitz and Chair Cronin:

The Metropolitan Area Planning Council (MAPC) supports the passage of comprehensive policing reform legislation. We endorsed the passage of such legislation (S.2820) by the Senate but would encourage the House to strengthen it by including provisions that will further improve police recruitment, training, disciplinary processes, and accountability.

S.2820 includes a number of vital reforms that we support, such as the creation of a Police Officer Standards and Accreditation Committee (POSAC), requiring police training to include “history of slavery, lynching, racist legal institutions and racism in the United States,” creating a Commission on the Status of African Americans, and adopting clear statutory limits on police use of force. MAPC believes these are all important actions that must be taken, especially the creation of POSAC to standardize, credential and train law enforcement officers in the Commonwealth.

Based on feedback we gathered through a series of discussions with mayors and town managers, we believe that the House can build on S.2820 to ensure cities and towns can shape their police forces and effectively discipline and remove officers that have a track record of misconduct and/or that lose certification by POSAC. Additionally, an independent prosecutor should automatically consider whether criminal charges should be pursued against officers that have been found to have used force illegally, resulting in serious injury or death. Lastly, we would ask that the House enable municipal governments to offer anti-racism training to all their employees, not just police officers; this is important to enable more equitable access to local services. These further reforms are described below.

Enabling Civil Service System Withdrawal

The current civil service recruitment system is a barrier to forming police forces committed to anti-violence and that reflect the diversity of Greater Boston. The use of a single exam to provide a list of potential police recruits is not sufficient to properly vet candidates. Communities that have left the system have found that a more robust and holistic recruitment process can be created outside of it. We therefore encourage the House to add a provision to its legislation that allows any community to take their police departments out of the civil service system by a simple majority vote of their Town Meeting or City Council. That provision should also ensure that leaving the civil service is not considered a working condition change that triggers renegotiation of collective bargaining agreements.

Streamlining the Arbitration Process within Collective Bargaining

The current arbitration and bargaining process makes it very hard for police departments to deal with poor officer performance, including the inappropriate use of force. Under the current system, officers who are repeatedly cited for violent or racist behavior can remain active for years while employment actions go through the protracted arbitration process. Cities and towns should have the ability to address violent or racist misconduct by police officers quickly and effectively. This could include changes to the finding of fact, arbitrator selection, and the opportunity for an arbitrator to substitute judgment. There are some forms of police misconduct that simply cannot be tolerated and should result in discipline and termination.

Making Certification Matter

The creation of a standards and accreditation committee for policing is a necessary step toward improving professional practices. Certification however will not be as meaningful as it should be if after it is revoked by POSAC, it does not lead either to disciplinary measures or termination of de-certified officers by local departments. S.2820 makes certification a condition of appointment for becoming a law enforcement officer. It also ensures that revocation is not subject to appeal by the Civil Service Commission. S.2820 is silent on whether discipline or dismissal will follow the loss of certification. Local departments potentially could ignore a revocation or would still have to go through the drawn-out arbitration process to remove a de-certified officer. The bill should address this issue by making it explicit that an officer that has lost certification can no longer actively serve in a law enforcement capacity, or at least, require that a city or town pursue disciplinary action against said officer.

Ensuring Independent Prosecution of Illegal Use of Force

The legislation should establish an independent authority to prosecute cases where use of force by a police officer is in violation of state law (MGL Chapter 147A) and that has resulted in serious bodily harm or death. While the legislation enables POSAC to investigate complaints of such misconduct and revoke certification where a complaint is sustained, it does not ensure that illegal use of force cases are considered for prosecution by an appropriate authority, such as the Attorney General or an independent prosecutor. S.2820 only requires POSAC to notify a District Attorney or the Attorney General of illegal use of force complaints. To improve the legislation, the bill should enable POSAC to refer illegal use of force cases to the AG or an independent prosecutor at any time after a complaint is made. Furthermore, the bill should require that any time POSAC revokes an officer's certification for illegal use of force, it will also refer the case for criminal prosecution to the Attorney General or an independent prosecutor. The AG or an independent prosecutor should then be required to consider the evidence uncovered by the POSAC proceeding and make public whether they are pursuing an indictment. The language in S.2820 allowing the AG to take civil action against police departments with regular patterns of racist abuse or misuse of force is a strong addition to current law, but it is not a substitute for a transparent process that ensures independent prosecution of illegal use of force when appropriate.



Supporting Anti-Racism Training in Municipal Government

MAPC was pleased to see proposals to create a Criminal Justice and Community Support Trust Fund for “community-based jail diversion programs and community policing and behavioral health training initiatives”, and the Justice Reinvestment Workforce Development Fund for community members to identify and fund programs that create employment opportunities for historically underserved and formerly incarcerated populations. We ask the House to explore ways to fund municipal programs for anti-racism training and education programs for municipal workforces, including but not limited to law enforcement. While S.2820 does include implicit bias training for police officers, other municipal officials would greatly benefit and need similar trainings and the funding to pay for it. Some communities have the financial flexibility to reallocate existing funding for training, but that is not true in many communities, and we must make sure that every community can afford these critical investments.

We recognize that these are challenging issues but believe these are important and necessary additions to any policing reform legislation. We respectfully ask the House to commit address these issues during upcoming deliberations.

Thank you for your consideration of our recommendations. If you or your staff have any questions, please do not hesitate to contact Lizzi Weyant, MAPC Director of Government Affairs at (617) 933-0703 or eweyant@mapc.org.

Sincerely,

Rebecca Davis
MAPC Deputy Director

FIVE PRIORITIES FOR STATE ACTION IN REGARD TO ISSUES OF POLICE VIOLENCE

The Metropolitan Area Planning Council (MAPC), in coordination with mayors and managers in our region, has developed the following five priorities for state action in regard to the issue of police violence in our communities:

1. **The civil service recruitment system is a barrier to forming police forces committed to anti-violence.** The use of a single exam to provide a list of potential police recruits is not sufficient to properly vet candidates. We must work together with the Governor and the Legislature to create a more robust and holistic system of recruitment for our departments. We will also pursue legislation that allows any community to leave the civil service system by a simple majority vote of their Town Meeting or City Council, and that ensures leaving the civil service system is not considered a working condition change that triggers renegotiation of collective bargaining agreements.
2. **The current arbitration and bargaining policies and processes that dictate the way our departments deal with poor officer performance, and especially the inappropriate use of force, make it very hard to address police misconduct.** Current arbitration and bargaining procedures mean that officers who are repeatedly cited for violent, biased, inappropriate, or racist behavior can remain in office. This needs to change. Since it will likely require legislation, we will pursue legislative strategies that give cities and towns the flexibility to quickly and effectively address misconduct by police officers. These could include changes to the finding of fact, arbitrator selection, and the opportunity for an arbitrator to substitute judgment.
3. **The state and federal government should provide cities and towns with funding for anti-racism training and education programs for members of the municipal workforces.** Within police departments, this means cities and towns must have the ability to provide ongoing training police officers on implicit bias, racial equity, and non-violent approaches to law enforcement. Some communities have the financial flexibility to reallocate existing funding for training, but that is not true in every community in the Commonwealth, and we must make sure that every community can afford these critical investments for law enforcement agencies, and for other municipal employees.
4. **We support the passage of legislation endorsed by the Massachusetts Black and Latino Legislative Caucus:**
 - a. **Peace Officer Standards and Training (POST):** Create a POST system to certify police officers and enable de-certification for misconduct or abuse.
 - b. **Civil Service Exam Review and Oversight:** Establish an Office of Diversity and Equal Opportunity that will create guidelines and review diversity plans for all state agencies; establish a Peace Officer Exam Advisory Board to review examinations for appointment and promotion of peace officers.

- c. **Commission on Structural Racism:** Create a commission to study how the systemic presence of institutional racism has created a culture of structural racial inequality, which has exacerbated disproportionate minority contact with the criminal justice system in Massachusetts. The Commission must include people from diverse races and represent all parts of the Commonwealth.
 - d. **Adopt clear statutory limits on police use of force,** including chokeholds and other tactics known to have deadly consequences. Require independent investigation of officer-related deaths, and require data collection and reporting on race, regarding all arrests and police use of force by every department.
5. **Create an independent authority to investigate and prosecute the use of force by officers in all cases that result in emergency medical care, hospitalization, or the death of a civilian.** This independent body would have the authority to determine whether the use of force was justified consistent with state law and would have the power to prosecute cases where such force was not deemed necessary.