

House Committee on Ways and Means  
House Committee on the Judiciary  
24 Beacon Street  
Boston, MA 02133

Benjamin Dexter  
149 High Street  
Carver, MA 02330  
(508) 633-7464

July 17, 2020

Re: Testimony Against S.2820

Dear Legislators;

Massachusetts is a state where police already must be well-trained. Due to the great provisions of the Massachusetts Declaration of Rights drafted by John Adams and progressive political climate that already imbues policing, criminal procedure protections here in the Commonwealth demand far more careful work from our police officers than anywhere in the nation. There is an old saying amongst Massachusetts police officers that “If you can be a cop in Massachusetts, you can be a cop anywhere.” Unfortunately, this bill as written changes that maxim from a source of pride to an out-of-state recruiting slogan that covers moving expenses.

I have proudly served as police officer for 15 years. I never had any intentions to leave this profession for another fifteen, until recently. If S.2820 passes as written, I must seriously consider continuing doing what I love. This bill tips the balance to the point where there is too much to lose for too little return, both in terms of a livelihood and the personal satisfaction I receive from helping those in need.

First, I will admit that, despite all my best efforts, I once again have not read the entire amended bill. There has simply not been enough time to do so in the life of a police officer who works full time to provide for his family. As any good legislator knows, it is a large undertaking to take the various provisions of a bill and plug them into existing statutes in order to get a glimpse of the big picture. For that reason alone, I suspect many legislators have not done the same—on legislation that proposes to dramatically change long-held employment, training, and legal standards for the very arm of government necessary for the preservation of a free society. I do not hesitate to add such preservation not infrequently results in the loss of life of those performing it.

I also think it imperative to add that it is utter recklessness to think that any bill which up-ends the legal and training standards of an entire profession can be amended with warp speed in the course of a couple weeks and not have any major deleterious consequences. That is to say nothing of the fact this bill contains an emergency preamble, leaving police officers instantly forced to abide by new standards in which they have not been trained and conflicts with those in which they have. The 90 day delay on the enactment of new legislation provides citizens the opportunity to adjust and conform their conduct (and in this case, police policies and training) to new law. Effectively, police officers will be held to account under new standards they are unable to properly prepare for, undermining the very intent of a 90 day enactment delay. This bill should give us all pause, not an invitation to act at warp speed.

To this point, I have heard repeatedly that multiple police organizations were “consulted” on this legislation, though to what effect is rather suspect given their universal lack of support. The implication of this point seems to be that “you should already have been ready for this.” Regardless of whose input was sought, individual police officers are also citizens, constituents, and voters first. Our participation in

government should not be premised upon notifications by unions and organizations for a bill before it is actually filed and available for public scrutiny. Of course, to any reasonable onlooker, that was exactly the point. I find all this to be a dishonest procedural stunt to attempt to ram this bill through with less than three weeks left in the legislative session, particularly for a bill that contains multiple provisions concerning accountability for dishonesty in policing. I ask that you please lead by example of the same transparency, integrity of character, and accountability you rightfully demand from our profession.

The legislature could extend session so this bill can be properly considered, but in the absence of that, I am left to assume you having five months off to campaign for re-election is more important than ensuring this legislation does not endanger the lives of police officers. I find that absolutely shameful.

Much of the consternation to this bill concerns the effective removal of qualified immunity protections for police actions. Currently, qualified immunity protects government actors from liability in suits where the alleged conduct is not a violation of "clearly established law," in effect preventing liability in hindsight for official actions. Even as a police officer, I too have some issues with how broadly qualified immunity is sometimes applied in Federal courts, often against officers suing their own police departments. Nonetheless, the foundational principle that officers and other government officials should not be held liable on a case of first impression is sound. Bill S.2820 takes this presumption and turns it on its head, into a standard where immunity applies where no reasonable person could have believed their actions would violate someone's rights. This Legislature will find much of their criminal law priorities going unenforced as even the most minor constitutional concern will be cause for the police to ignore a new statute.

It is important take stock of the practical implications of this provision. First, it threatens to increase the number and amount of settlements by municipalities that are often attached to lawsuits as a party, instead of the costlier option of successfully defending such suits; in effect, functioning as like an unfunded local mandate. Second, along with creating a new state law cause-of-action, dismantling qualified immunity threatens to crowd state court dockets with good faith, inadvertent violations of criminal procedure rights that are properly vindicated under the exclusionary rule. Finally, eliminating qualified immunity threatens to deem officers liable who find themselves responding to situation that presents a legal gray area, where the law is unclear. If cops could read minds, our job would be easy. But when your very job is dealing with the unpredictability of human behavior every day, a margin of error that recognizes good faith exceptions must be built in. Otherwise, our profession will most assuredly become unworkable, if worth doing at all.

Perhaps the most chilling aspect of this bill for police officers is the change in the legal standard of what constitutes "imminent harm." This change, with the limitation on the use of force for "future harm," effectively eliminates the fleeing felon rule. While the fleeing felon rule is not immune to criticism, it is also the legal standard by which officers take immediate actions in circumstances like active shooter incidents. Instead of waiting for a shooter to attempt to kill even more people after such harm has already been aptly demonstrated, officers are empowered to end further bloodshed of innocent citizens upon identifying the perpetrator, should circumstances require it. This may have not the intention of this provision, any objection to my characterization becomes irrelevant without the presence of qualified immunity, as we are now forced to function under the most conservative interpretation of law.

Furthermore, this change to use of force standards would hamstring officers who have a legitimate right to fear their own use of force tools may be used against them in the event they become incapacitated by weapon that is not generally regarded to be lethal. These concerns are not speculative, and they threaten the safety of the public as much as they do police officers. Take, for instance, the suspect who threw a rock at the head of Weymouth Police Officer Michael Chesna just two years ago this week. Officer Chesna was incapacitated, disarmed, and murdered with his own firearm before the suspect turned the gun on 77 year-old Vera Adams, killing her for having the audacity to look outside through a window of her home. Given this new legal standard, that very result, in that very situation, would be a

certainty. I write that without a shred of hyperbole. We cannot place police officers in a position where prison and death are their only two options and expect them to continue serving our communities. No salary, pension, or benefits package is worth it.

Another concern I have is the removal of the requirement for mandatory assignment of school resource officers. A good school resource officer (SRO) can have immeasurable positive effect on the student body and school community they are often an integral part of. It should be noted this requirement was only passed by the legislature in 2010 as part of a large omnibus school bullying bill (Chapter 92 of the Acts of 2010). In addition, current law requires a memorandum of agreement between the school and police department specifying what matters fall within the scope of school discipline and what are to be handled as criminal justice matters—addressing the bulk of concerns raised by advocates for removing cops from schools. In addition to the risks of active shooter in our modern age, SROs humanize police officers for our kids who often forge lasting relationships with the officers in their school. Personally, I cannot count how many times I have been approached by people in their 20s and early 30s asking, “How’s Officer So-and-so doing? They were my SRO.”

There are a slew of other provisions in this bill my objections to which are both too numerous to cite and are perhaps aptly explained by correspondence from others. I would ask that you take stock of the fact few those on the proposed standards committee are required to have any law enforcement experience whatsoever. Panels of doctors judge other doctors, and panels of lawyers judge other lawyers. I am simply asking that a fraction of this same due process be afforded to law enforcement professionals.

In closing, it is worth a reminder that government’s primary job is to protect citizens from violating the rights of one another so that we can attain a peaceful and lawful foundation upon which to pursue happiness. There is no doubt that racism in our society has put that pursuit in jeopardy for millions of people of color for hundreds of years. Nevertheless, cops insure that foundation does not fail. Every day I see police officers do amazing things and make positive changes in the lives of all walks of life, without regard to immutable qualities of birth, as they sacrifice themselves for others. Policing is THE most honorable profession and no one will ever persuade me otherwise.

We deserve to be heard, we deserve your careful consideration, and we do not deserve to be hastily dismissed. I would ask that you vote against S.2820 as written and considered under present timetables. I also ask you speak up for cops who do the right and just thing, day in and day out. That really should not be a big ask, but it sure seems like it is.

Sincerely,

Benjamin Dexter  
Sergeant, Plymouth Police Department  
Curry College, B.A., M.A, Criminal Justice  
New England Law | Boston, J.D.