

July 17, 2020

Dear Chair Aaron Michlewitz and Chair Claire Cronin,
CC: *Senator Joanne Comerford and Representative Dan Carey*

Please accept the following testimony with regard to SB2820 - 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. I share in your commitment to improve police officers in Massachusetts in how we protect all community members in the Commonwealth with fairness, equity and dignity for all. I recognize that the entirety of the Criminal Justice system must do better for our communities of color, of which we have let down. And while most of the Senate Bill 2820 I can and do support, I would be remised if I did not bring to your attention some strong concerns to this Bill as proposed. I provide my comments as it relates to **Qualified Immunity, training in lynching for police officers only, local control over investigations of misconduct, racial accurate data collection and chokeholds.**

Section 10: Qualified Immunity I am very concerned by and strongly opposed to efforts to change the qualified immunity protections for police officers in Massachusetts. Qualified immunity is a foundational protection for the policing profession and any modification to this legal standard will have a devastating impact on the police's ability to fulfill its public safety mission. Calls to limit, reduce, or eliminate qualified immunity do not represent a constructive path forward. In fact, these efforts would most certainly have a far-reaching, deleterious effect on the policing profession's ability to serve and protect communities, including here in South Hadley. **Qualified immunity is only available when a reasonable official would not have known that their actions would violate a constitutional right that was clearly established at the time of the alleged incident.** This is a concept that police officers have understood for many years. It does not make any sense to have a law that is enacted that would presumably eliminate qualified immunity by its words while at the same time stating that it is also available as a defense. It is our strong recommendation that this provision be eliminated.

Section 4: Under (iv), the provision states that there shall be training in the area of the "history of slavery, lynching, racist institutions and racism in the United States." As I read this, we are assigning 400+ years of racism in the United States on the backs of police officers. This is an ignorant and unfair characteristic. As a reminder, we do not write the laws, legislators do. We merely enforce the laws someone else determined was in the best interest of the Commonwealth. This is shortsighted and unjust, and "racist institutions" as written imply that the police are "racist institutions." **Please correct this language, as the men and women of the South Hadley Police Department do not deserve attack.**

Section 6 : **This language is fraught with vague term which is certain to be appealed, which is not in the best interest of us all if we want true reform, let's do this right!** It appears from the language of the POSAC provision that the committee shall have the power to conduct what is referred to as "independent investigations and adjudications of complaints of officer misconduct" without any qualifying language as to how that would be implemented in terms of what type of alleged misconduct (law violations, use of force, injury, rude complaints, etc.) and when and under what circumstances will adjudications be subject to review resulting in an proposed oversight system that could go down the

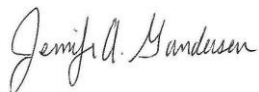
slippery slope of becoming arbitrary and capricious at some point and subject to a high level of scrutiny and criticism.

Section 52: I am an extremely strong proponent of having accurate data on the demographics of persons we, the South Hadley Police, interact with. I struggle to get accurate data on our motor vehicle stops, and this has the appearance that we are avoiding transparency. The race and ethnicity of motorists should be self-identified by the operator at the time of licensure! This is attainable and accurate, and I am dumbfounded as to why the RMV has not done this. There are several recommended changes to data collection and analysis as it pertains to motor stopped motor vehicles and pedestrians in this section. The Hands Free/Data Collection Law was signed into law only a few months ago before the onset of the pandemic. The new law contains a comprehensive system of data collection, benchmarking, review, analyses and potential consequences. While we continue to welcome data that is both accurate and reliable, the issue pertaining to the classification of an operator's race has still yet to be resolved. Before any data from calendar year 2020 has yet to be collected by the RMV and subsequently analyzed by a College/University selected by the Secretary of EOPSS, these provisions now look to complicate the matter even further before a determination has actually been made as to whether any problem of racial or gender profiling actually exists here in our state. We won't belabor the point but this language appears to be what did not make its way into the Hands Free Law which as you know was heavily debated for several months based strictly on the data collection component.

Section 55: In my 26 years of policing, chokeholds have never been authorized as a form of force. We do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. That said, we respect the discussion and concern pertaining to what is now a national issue based on the tragedy in Minneapolis. Under part (d) the language states that "[a] law enforcement officer shall not use a choke hold. [...]" What should also be included is a commonsensical, reasonable and rational provision that states "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is in the midst of struggling for their life and needs to avail themselves of any and all means that may exist to survive and to control the subject. This is a reasonable and fairly straightforward recommendation. South Hadley Police has a long standing policy, practice and training which bans chokeholds, except if faced with deadly force. **I am a 5'03 51 year old female police officer and parent of young children. If faced with deadly force, I need the government to support my efforts to save my life.**

Thank you in advance for your commitment and efforts to improve policing in the Commonwealth of Massachusetts.

Sincerely,



Jennifer Gundersen
Chief of Police