



The Commonwealth of Massachusetts
House of Representatives
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Representative Aaron Michlewitz
Chair, House Committee on Ways & Means
State House Room 243
Boston, MA 02133

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

RE: Testimony for 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:

Thank you for the opportunity to submit written testimony for 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,” otherwise known as The Reform, Shift + Build Act. I am grateful for your tireless work to ensure that Massachusetts begins dismantling systemic racism, and hope this is only the start of our anti-racist policy making, rather than the end.

First, I would like to express my strong support for S.2820. It is imperative that we respond with urgency and moral clarity to this unprecedented national movement for racial justice; my constituents will accept nothing less. In the wake of the murders of George Floyd, Breonna Taylor, and countless other Black and brown people across our country and in our communities, we must take decisive action to change how people of color are impacted by policing and the criminal justice system.

As your committees move swiftly to review and redraft S.2820 so that it may be voted on by the House, there are three areas that I would like to see strengthened. I respectfully request that you consider the following changes to the omnibus bill, which are detailed in this letter:

1. Eliminate the \$10 million cap and expand funding eligibility to nonprofit social enterprises in the Justice Reinvestment and Workforce Development Fund.
2. Expand and strengthen use of force and public records provisions and ensure that they apply to corrections officers within prisons and jails.
3. Preserve the Senate’s proposed reforms to qualified immunity for police officers and all other public employees.

1. Eliminate the \$10 million cap and expand funding eligibility to nonprofit social enterprises in the Justice Reinvestment and Workforce Development Fund. I was pleased to see the Justice Reinvestment and Workforce Development Fund in the base language of S.2820 as Section 37. The fund framework is based upon a standalone bill that I filed, H.1651, “An Act to reinvest justice and opportunity in communities affected by incarceration,” otherwise known as The Justice Reinvestment Act, and is currently in the House Ways & Means Committee after receiving a favorable report from Labor & Workforce Development. This bill would establish a trust fund to take the money we have saved from lowering incarceration rates by way of recent criminal justice reforms, and reinvesting in communities where policing and incarceration have been highest. The fund would provide grants for job recruitment, training, and placement for people facing high barriers to employment. Ultimately, it reimagines public safety by creating economic opportunity. I respectfully request that you consider two specific changes to the Justice Reinvestment and Workforce Development Fund when you review the bill and release it to the House.

The first change is removing the \$10 million cap on the fund in subsection (c)(3), line 952 of S.2820. The fund formula in my original bill doesn’t include this cap, and the reasoning being that our state prison and county jail populations continue to decrease. We see that in 2012, there were 11,723 prisoners in the Department of Correction (DOC), and in 2019 there were 8,784 prisoners. This amounts to a 25% decline in our prison population, while incredibly, the budget for the DOC increased by 20% over that same period. The DOC budget went from \$579 million to \$679 million for FY19. Rather than increasing funding for the DOC and Houses of Correction (HOCs), we could take the savings from lower incarceration rates and offer workforce development grants in predominantly poor communities of color around our state. The cap of \$10 million would have too little impact in making the broader change we envision for all of these communities. It is also insignificant compared to DOC’s budget, which is proposed to be \$674 million for FY21.

The second change is to expand program eligibility for funding, so that “participation in a nonprofit employment social enterprise” would qualify for funds in subsection (e), line 957 of S.2820. Nonprofit organizations like UTEC and ROCA provide impactful job training for youth and emerging adults as a diversion from gang activity. This language change would be necessary so that they could qualify for reinvestment funds and expand their successful youth jobs programming.

2. Expand and strengthen use of force and public records provisions and ensure that they apply to corrections officers within prisons and jails. In order to uphold the safety and dignity of people incarcerated in the Commonwealth, I urge you to expand the definition of “law enforcement officer” and “officer” to include state and county correction officers in the entirety of the bill. While I support the use of force provisions within S.2820 as they apply to civilian-facing police officers, we know that excessive uses of force are frequently committed upon incarcerated people by correctional staff, who are also public safety officers. The unintended consequence of not including correctional staff in the law enforcement officer definition could produce an ambiguity that reduces the standards for corrections officers. This definition change would ensure there is equity in the way that the bill is applied to people in the street and to those behind the wall, who are disproportionately Black and brown people, and must not be forgotten in our pursuit for racial justice. In addition to this expanded definition, I respectfully request that you consider two more changes related to use of force standards and access to public records.

The second change is to expand and strengthen the use of force standards for all public safety officers, which would immediately improve matters in correctional settings. Over the past decade I have visited numerous state prisons and county jails in our state. Myself and a number of colleagues visited the Souza-Baranowski Correctional Center (SBCC) this past January following an altercation between guards and prisoners that included a lock down and weeks of uses of force against prisoners. Conversations with currently incarcerated people and returning citizens reveal physical harm, fear, intimidation, coercion, and lasting trauma from corrections officers. It is clear that we must create uniform standards for use of force across the Commonwealth, in an effort to curtail egregious practices that lead to unnecessary and excessive force, to increase safety, accountability, and to reduce harm.

Rather than tasking these use of force protocols to the commission in section 63 of S.2820, there are three bills this session that provide a framework for excessive force. The bill I filed this session, H.2087, “An Act to create uniform standards in use of force, increase transparency, and reduce harm,” outlines exactly such provisions. It creates a floor for standards to ensure that we have a baseline of humane treatment for incarcerated persons that is evidence-based. A number of critical areas are addressed, including use of chemical agents (such as pepper spray and tear gas), use of restraint chairs, use of kinetic impact weapons (guns that fire rubber or otherwise modified bullets), and planned and emergency cell entry. The Senate version of the bill, S.1362, additionally addresses use of dogs to respond to routine incidents and every perceived need for a use of force.

I additionally encourage you to adopt the provisions within HD.5128, “An Act relative to saving black lives and transforming public safety,” filed by Representative Miranda. This bill includes correctional officers in the definition of law enforcement and so its protections would apply to incarcerated people. It also provides specific and concrete reforms that would meaningfully change existing law and increase accountability with respect to use of force matters.

The third change is to enact public records and data access provisions in correctional settings to ensure transparency and accountability. Prisons and jails are shielded from public view more than any other public or law enforcement agency. It is a function of racial inequity that incarcerated people do not have ready access to records of uses of force against them, whereas law enforcement has easy and total access to all records that they may wish to use against incarcerated people or to promote heightened security. We saw this in real time with what happened at SBCC. The DOC immediately released video of the correctional officers being assaulted by prisoners, but we have yet to see any of the videos of the 100 or so uses of force against prisoners, much of which was racialized, in the weeks that followed. This gives the public an unbalanced view of the system, and promotes prejudice and racial bias in people's viewpoints of how the prison system works and doesn't work. We need to ensure that use of force records, including video, are accessible to the public so that we can increase the potential for accountability of individual officers as well as agencies.

Although the commission in section 63 of S.2820 would make recommendations on public records relating to use of force incidents, most of this information is readily available from DOC and county Sheriffs, and could be made public immediately. The provisions in subsections (v) and (z) of my bill, H.2087, provide a strong framework of transparency and accountability. It would require data from use of force incidents to be published publicly on the agency’s website and guarantee the prisoner’s right to access these records as public records. Furthermore, in my negotiations with DOC on H.2087, their legal counsel offered very few objections to these

proposed policies. I urge you to consider adopting these measures of transparency along with the stronger use of force standards to ensure the safety of incarcerated people.

3. Preserve the Senate's proposed reforms to qualified immunity for police officers and public employees. I, like many of our colleagues, have paid close attention to the conversation on qualified immunity and how it impacts our criminal justice system. In current practice, the court looks to previous case law about constitutional rights violations. If there isn't case law already established covering the action a defendant is accused of, the defendant may use qualified immunity as a motion to dismiss the case before it even moves forward. In this way, the doctrine of qualified immunity prevents justice for survivors of police violence, who are almost never able to prove that their civil rights were violated in court. Survivors of police violence are disproportionately Black and brown people, and so we must reform qualified immunity if we are to dismantle systemic racism.

Therefore, I support the language in Section 10 of S.2820 and urge you to preserve these proposed reforms on qualified immunity in the House version of the bill. The reforms proposed in Section 10 of S.2820 would shift the standard from established case law to a "reasonable belief" that a defendant would have known their action was a violation of civil rights law.

In closing, I appreciate your consideration of my testimony in support of S.2820, The Reform, Shift + Build Act. My requests to improve upon the legislation are with the intent to further dismantle systemic racism in our Commonwealth. As we take this hopeful step forward for racial justice, I'm committed to supporting you and Speaker DeLeo however possible to ensure its passage into law before the end of session on July 31, 2020.

Please do not hesitate to contact me with any questions.

Sincerely,



Representative Mary S. Keefe