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In Unity There Is Strength

July 6, 2020

Senator Michael Rodrigues
Chair, Senate Committee on Ways and Means
24 Beacon St., Room 212
Boston, MA 02133

Re: Response to Senate's Act on Police Reform

Dear Chairman Rodrigues:

This morning we, along with members of the Massachusetts Chiefs of Police Association Executive Board and representation from the Massachusetts Major City Police Chiefs Association had the opportunity to give a thorough reading and comprehensive review of "*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*" filed by the Senate earlier today. This is certainly an incredibly thorough piece of legislation as it pertains to proposed law enforcement reform here in the Commonwealth and we applaud the diligent efforts of both you and your team in putting this together in such short order.

As we mentioned to the Senate President during the course of our conference call early last week, we, as dedicated and committed police chiefs, would very much like to be part of this important conversation as it pertains to any contemplated police reform, fully realizing the time constraints that the legislature currently faces as part of the legislative process and the formal 2019-2020 session begins to wind down.

With that in mind, and in the interest of expediency, we would like to make a list of brief bulleted comments in the eight (8) paragraphs that follow in the hopes of providing some potential insight from our law enforcement/policing perspective that is laid out in this comprehensive 71-page legislative proposal. To the extent that we don't have an issue or concern with a specific provision, or we view it as beyond the scope of local law enforcement, we will not mention it in this communication.

The list that follows corresponds to the bullets that are outlined on the memo to the Senate Committee on Ways and Means and the Section Numbers in the Act:

- **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*." While we certainly welcome any and all training that enhances the professionalism and understanding of our officers, we are somewhat perplexed as to why law enforcement will now be statutorily mandated to have such a class to the exclusion of any other government entity? One would believe that based on this particular mandate that the issue of what is inferred to as "racist institutions" is strictly limited to law enforcement agencies which, aside from being incredibly inaccurate, is also insulting to police officers here in the Commonwealth.

- **Section 6**: In terms of the establishment of a POST (Peace Officer Standards and Training) Program, the various police chief's organizations here in our state wholeheartedly support the general concept. That said, the acronym of POSAC (Police Officer Standards and Accreditation Committee) is causing significant confusion both in this bill and in the Governor's Bill. POST has nothing to do with *Accreditation* per se but has everything to do with *Certification* – and by implication "De-certification". In this state, there currently exists a *Massachusetts Police Accreditation Commission* (MPAC) for over 20 years which is made up of members of Law Enforcement (Chiefs, Ranking Officers), Municipal Government, and Colleges/Universities (Chiefs) in which currently 93 police agencies are accredited based on the attainment of national standards modeled from the *Commission on Accreditation for Law Enforcement Agencies* (CALEA). Utilizing the word "Accreditation" in the title is misleading and should be eliminated. To the best of our knowledge 46 other states use the acronym POST which seems to work without any problems or a need to create a new description of the important program.

- **Section 6** (continued): 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 10**: This provision specifies that "qualified immunity shall not apply to claims for monetary damages [civil action] **EXCEPT** upon a finding that, at the time of the conduct complained of occurred, no reasonable defendant [e.g., police officer] could have had reason to believe that such conduct would violate the law [whether statutorily or by judicial precedent]". This is definitely a problem for the Police Chiefs and we suspect the MMA and the Police Unions as well. While this provision does not effectively eliminate qualified immunity (which many in the legislature have confused with absolute immunity for some reason), it causes confusion by defining the exception as to when, and only when, qualified immunity is applicable as a viable defense in a civil action. 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 39**: The provision to inform both the appointing authority and the local legislative body of the acquisition of any equipment and/or property that serves to enhance public safety makes perfect sense. That said, to have a public hearing available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is very dangerous.

- **Section 50**: There seems to be a slight nuance to the amended language to Section 37P of Chapter 71 replacing "*in consultation with*" to "*at the request of*." Many police departments have had school resource officer programs in this state for 25 years or longer. The only reason why officers are assigned to the schools are because they have been "requested" to be there by the school superintendents - period. The reality is that many school districts even reimburse the police budgets for the salaries of these officers who serve as mentors for these young middle and high school students. If the Senate is being told that police chiefs are arbitrarily assigning officers to schools without first receiving a specific request from the school superintendents, they are being misled. The 2018 Criminal Justice Reform Act has very specific language that outlines the qualifications of an SRO, the joint performance evaluations that are to be conducted each year, the training that they shall have and the language specific MOUs that must exist between the Schools and the Police Department. We are very confused as to why this provision needs to be included.

- **Section 52**: 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**: To be clear, 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.

- **[Recommended New Section] Amends GL Chapter 32 Section 91(g)**: In order to expand the hiring pool of trained, educated, qualified and experienced candidates with statewide institutional knowledge for the Executive Directors' positions for both the *Municipal Police Training Committee* as well as the newly created *POSAC* (or POST), the statute governing the payment of pensioners for performing certain services after retirement, shall be amended to allow members of Group 4 within the state retirement system to perform in these two (2) capacities, not to exceed a three (3) year appointment unless specifically authorized by the Governor.

We appreciate the opportunity to weigh in with our concerns and recommendations and hope that you would give due consideration to what we have outlined above. Should you have any follow up questions and/or concerns please don't hesitate to contact either of us in the days or hours that lay ahead. We respect that time is of the essence regarding this important legislation and stand ready to assist if and when called upon.

Thanks again for your hard work in drafting this comprehensive legislation and in continuing to add credibility and transparency to our valued partnership in serving our respective communities.

Respectfully Submitted,

Chief Brian A. Kyes
President, Major City Chiefs

Chief Jeffrey Farnsworth
President, Mass. Chiefs of Police