



# **COMPARISON OF POLICE REFORM LEGISLATION**

## ***What makes sense going forward***

Issued July 29, 2020 – May be copied and circulated without limitation to law enforcement colleagues, elected officials, or anyone else concerned about police reform.

**Introduction.** The House and Senate passed versions of police reform legislation, which appear in H 4886 and S 2820. A conference committee with members from both bodies is working on a final version to be signed into law by the Governor. To give some context, here is our scorecard:

<b>Police Reform at a Glance</b>	
<b>Top 10 Timely &amp; Positive Approaches</b>	<b>2 Harmful Approaches</b>
<ol style="list-style-type: none"> <li>1. <b>Certification of officers and decertification</b> of those engaging in misconduct. <i>Both bills.</i></li> <li>2. <b>Professional, full time commissioners</b> with sufficient understanding of law enforcement. <i>Senate only.</i></li> <li>3. <b>Body camera task force</b> to produce consistent policy, tactics, equipment, and record retention/disclosure. <i>Both bills.</i></li> <li>4. <b>Definition of rape and indecent A&amp;B</b> to prevent public officials (not just police) from taking advantage of those in their custody. <i>House bill has rape and indecent A&amp;B.</i></li> <li>5. <b>Prohibition against fraudulent wages.</b> <i>Both bills.</i></li> <li>6. <b>Prevention of non-disclosure settlements</b> in police misconduct cases. <i>Both bills.</i></li> <li>7. <b>Support for co-response to mental health episodes</b> by police and clinicians. <i>Both bills.</i></li> <li>8. <b>Retention of valuable SRO programs.</b> <i>Both bills.</i></li> <li>9. <b>Statewide reporting of law enforcement injuries and deaths.</b> <i>Both bills.</i></li> <li>10. <b>Annual police anonymous survey</b> of conditions and “morale” issues. <i>House bill.</i></li> </ol>	<ol style="list-style-type: none"> <li>1. <b>Restrictive use of force (UOF) definition</b> that does not accommodate even basic police functions (detentions, frisks, protective custody, breaking up fights, etc.); overly restricts the use of reasonable tools (e.g., OC and K-9s); and, as a result, invites more arrests and public backlash and litigation. <i>Both bills.</i></li> <li>2. <b>Reducing qualified immunity</b> in a manner that invites citizens to sue officers and deplete municipal resources for attorneys’ fees. <i>Senate bill. House studies issue.</i></li> </ol>

Here is our more detailed assessment and comparison:<sup>1</sup>

### **Certification**

- **House.** Creates the Police Standards and Training Commission (PSTC) with jurisdiction over all state, municipal, environmental, transit, campus, and sheriff agencies (including special and reserve officers). 7 members — 2 appointed by Governor; 2 by Attorney General; and 3 by the Governor and AG jointly.<sup>2</sup> Except for two appointments<sup>3</sup>, none of the other 5 commissioners can be police officers or have worked in any capacity for a law enforcement agency. The commissioners receive no compensation. They appoint an Executive Director. Sec. 29 (6E, § 2).<sup>4</sup>

PSTC may conduct audits and hearings; and revoke or suspend an officer's certification or fine an officer. No civil service rights for misconduct issues. Sec. 56.<sup>5</sup>

PSTC will have two divisions — Division of Standards (DST responsible for investigation and decertification) and Division of Police Training and Certification (DPT responsible for training, *see discussion below*).

The Executive Director of the PSTC and *all* employees of DST cannot be police officers or have worked in any capacity for a law enforcement agency. (6E, § 2(h)).

Heads of police agencies must send any complaint to DST within 2 business days. DST can adopt a screening process for minor complaints not involving UOF or allegations of bias. DST must make a preliminary investigation into any allegation of improper UOF, an officer-committed felony or misdemeanor, or failure to intervene to stop an unreasonable UOF. (6E, §§ 8, 15 and 15).

DST can immediately suspend certification of officer charged with a felony.

By December 31, 2020, every law enforcement agency must provide PSTC with a “comprehensive disciplinary record for each law enforcement officer.” Sec. 79.

Upon passage of this law, all present officers are certified — if last name begins with A-H, for 1 year; if I-P, for 2 years; if Q-Z, for 3 years. Sec. 81.<sup>6</sup>

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<sup>1</sup> This is meant to be a helpful overview of the critical issues, not a deep dive into all the technical aspects of the legislation. Non-police matters addressed by the legislation are not discussed.

<sup>2</sup> One of the 3 joint appointments shall be a chair of the Massachusetts Law Enforcement Policy Group, Inc. (MLEPG). This group was incorporated on July 14, 2020 and its President, Lawrence Calderone, is currently President of the Boston Police Patrolmen's Association. Another joint appointment must be from the Massachusetts Coalition of Police, Inc.

<sup>3</sup> Presumably the MLEPG and Mass Coalition representatives will be police officers or former officers.

<sup>4</sup> All House citations are to the applicable section in H 4886 and, within the parenthesis, the chapter and section of the General Laws affected. The same is true for Senate citations, which relate to the sections in S 2820.

<sup>5</sup> Meanwhile, the legislation also sets up a 27-member commission to study civil service law, personnel administration rules, hiring procedures for non-civil service departments and the State Police. Sec. 85.

<sup>6</sup> Senate adopts exact same schedule for certification renewal. Sec. 69.

PSTC standard to revoke an officer's certification is "clear and convincing evidence." (6E, § 10).

- **Senate.** Creates the Police Officer Standards and Accreditation Committee (POSAC). 14 members appointed by Governor based on nominated candidates from the Colonel, MBTA transit chief, Boston Commissioner, Mass Chiefs Assoc., Mass Minority Police Officers Assoc., ACLU, NAACP (2 people), Lawyers for Civil Rights, retired judge, 5 civilians, and Attorney General. All members must have experience with either law enforcement, criminal law, civil rights, or social science related to bias. Commissioners are compensated. They appoint an Executive Director. Sec. 6 (6, § 221).

POSAC may conduct investigations and hearings; and revoke, suspend, or modify an officer's certification. An investigation by POSAC does not prevent an officer's agency from investigating. (6, § 222). No civil service rights for misconduct issues. Sec. 6 (6, § 225(g)) and Sec. 41.

POSAC must decertify for an officer-committed felony; false arrest or evidence; hate crime; bribery; misdemeanor that makes officer ineligible for LTC; or unreasonable UOF or failure to intervene against an unreasonable UOF. (6, § 225)

POSAC may decertify for misdemeanor conviction or repeated, sustained misconduct.

POSAC standard to revoke a certification is "clear and convincing evidence." (6, § 225(f)).

POSAC maintains a searchable and confidential database of all complaints against officers, but the public has access to a database of names with sustained complaints. (6, § 223(d) and (e)).

- **Commentary.** The Senate's approach is superior.

Under the House version, being a commissioner is a voluntary, seemingly part-time position but, given the proposed duties, it is a full time job (e.g., they have to preside over decertification hearings, issue findings and decisions, not to mention all the oversight responsibilities).

The House version also creates a division in charge of investigating, presenting evidence, and evaluating officer misconduct for decertification that is prohibited from hiring any individual with a prior connection, as an officer or employee, to a law enforcement agency. This is akin to preventing doctors or lawyers or real estate agents from being involved, to some degree, in the certification and evaluation of fellow professionals. At least partial peer review is essential!

The Senate version wisely integrates existing internal affairs efforts by departments into the overall workload of the certification commission; it is more realistic about starting the process of developing a workable system.

**Training**

- **House.** Under the PSTC, there will be a Division of Police Training and Certification (DPT), which will have a Training Director appointed by members of a Committee on Police Training and Certification (Committee). This 12-member committee has 8 members appointed by the Governor (5 chiefs, 1 cop, and 2 sheriffs); Boston Police Commissioner; Colonel; Attorney General; and EOPSS representative.<sup>7</sup> The Committee decides minimum certification standards for officers (at least age 21 and high school diploma or equivalent). The Committee will also decide minimum certification standards for police agencies.<sup>8</sup> (6E, §§ 4 and 5).

The Committee must study the benefits and costs of consolidating the academies in Boylston, Plymouth, Reading, Western Mass, and the nine reserve academies into a single, full time training institution with full time instructional staff. Study must be completed by July 31, 2021. Sec. 96.

- **Senate.** Retains the Municipal Police Training Committee (MPTC) and State Police as the law enforcement training institutions in the Commonwealth. Sec. 6 (6, §§ 220 and 221 POSAC). Sec. 3 (6, § 116 MPTC). Secs. 21 and 26 (State Police).
- **Commentary.** Although we see potential benefits in one training infrastructure<sup>9</sup>, the Senate proposal is significantly more workable by keeping the MPTC and State Police as the two training entities in the Commonwealth. The shift to a decertification system will be monumental and occupy any commission's full attention and resources. The creation of another state entity for training — that also is regulated by an internal MPTC-style committee — will be a major undertaking and likely not provide any value-added to the actual product (the academies and inservice classes themselves) that reaches the cops on the ground. Another problem with the House approach is the inevitable divided loyalty a Training Director will have to the committee who appoints him or her versus the Executive Director and Commissioners, who will have ultimate administrative authority over the same Director.

Rather than change the infrastructure of training, let's focus all our attention on adequately funding and strengthening the curriculum and instructors who already support the MPTC and

State Police training networks. The MPTC and State Police have increasingly cooperated over the past decade, and there is great potential to develop this relationship to further improve the training product.<sup>10</sup>

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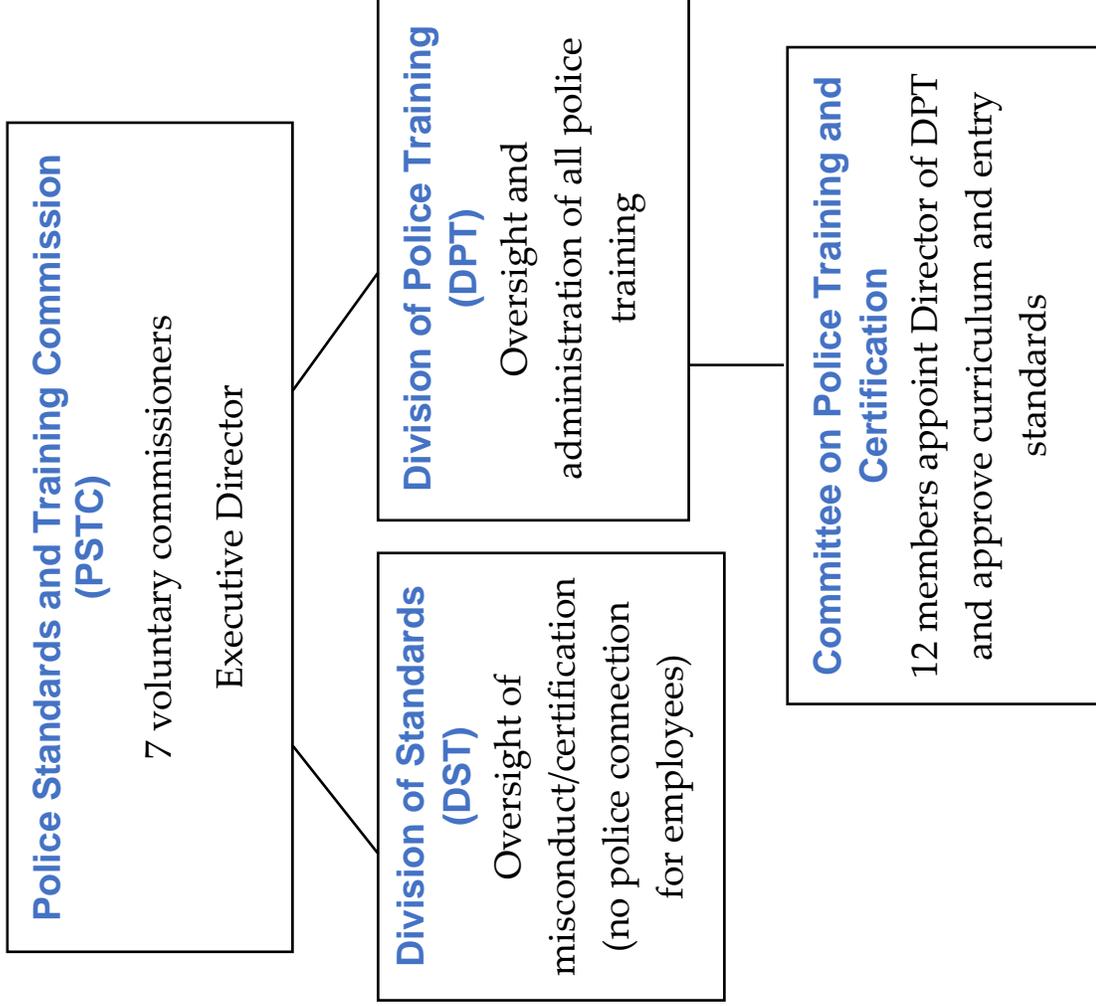
<sup>7</sup> There is also a big and separate advisory committee with the FBI, DAs, parole, judges, etc.

<sup>8</sup> Discussed in the section on accreditation, *infra*.

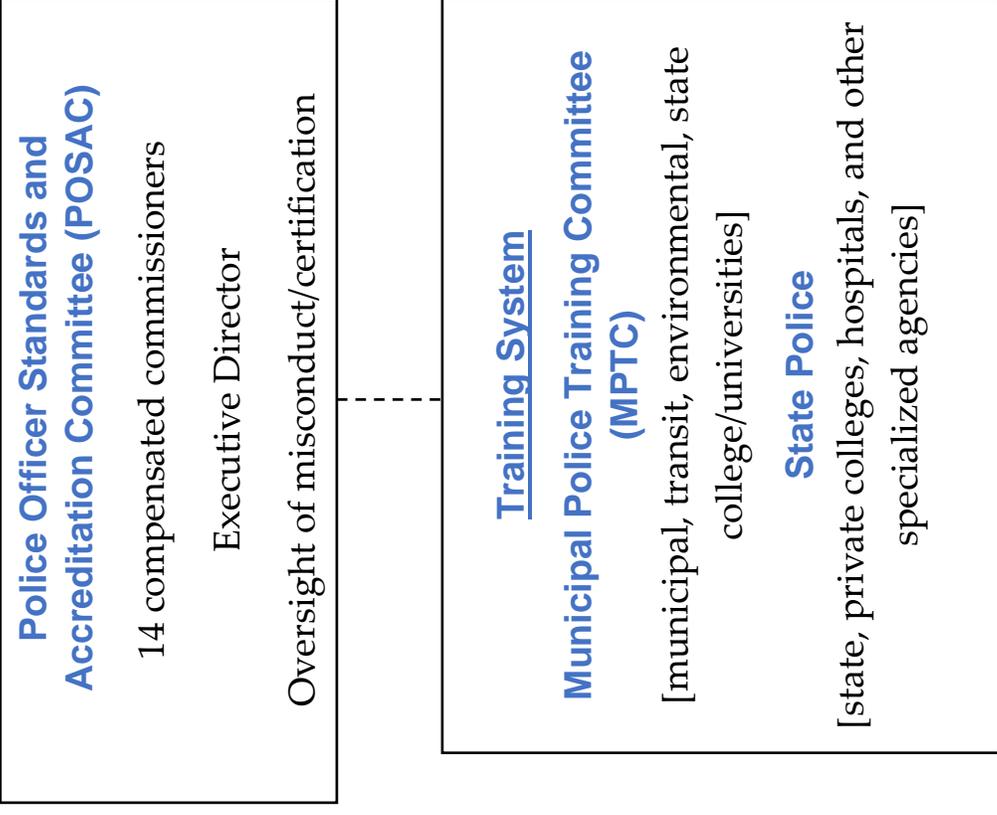
<sup>9</sup> Attorney Scheft proposed this idea in a report for the EOPSS Working Group on Law Enforcement Training in 2007. At the time, training improvement and funding were the sole issues; decertification was not proposed or evaluated.

<sup>10</sup> In the 2007 EOPSS report (see note 8 above), Attorney Scheft recommended that the State Police and MPTC engage again in joint training activities for municipal police officers. A year later the State Police held a municipal police academy at their New Braintree facility, and the partnership has continued since then.

## House Proposal



## Senate Proposal



**Use of force (UOF)**

- **House.** The legislative proposal restricts UOF to arrests, escapes, or situations involving a risk of death or serious injury — and only if de-escalation tactics were attempted or unfeasible. The same restrictions are placed on the use of OC or a police K-9.

Chokeholds are never permitted. Shooting at a vehicle is only permitted to prevent death or serious injury to a person. Sec. 29 (6E, § 14)

If tear gas or OC<sup>11</sup>, rubber pellets, or a police K-9 are used to control a crowd, the agency must file a report with the PSTC about what de-escalation tactics were undertaken beforehand.

Violating any aspect of this expansive UOF standard is a mandatory ground for decertification. (6E, § 10(a)(x)).

- **Senate.** Basically, same standard for UOF. Sec. 55 (147A, §§ 1-4). Sec. 77 (provisions on UOF take immediate effect).

The Senate also declares that any prohibited UOF is a *per se* civil rights violation by the officer. (147A, § 2).

Shooting at a vehicle only permitted to prevent death or serious injury, but “use of the vehicle itself shall not constitute imminent harm.”

Prior to a mass demonstration, police must attempt to communicate with event organizers and designate an officer in charge of “de-escalation planning.” If they use tear gas or other chemical weapon, rubber pellets, or K-9, then police must file a report with POSAC explaining all de-escalation efforts. (147A, § 2(f)).

- **Commentary.** This is, by far, the most ill-advised aspect of the House and Senate police reform effort. As we mentioned in a detailed critique issued on July 21 — <https://conta.cc/3eWWwch> — the narrow definition of reasonable UOF contemplated by this legislation is inconsistent with the law and practice developed over decades by the courts.

The definition of unreasonable UOF will actually have the unintended consequences of encouraging officers to make more arrests; encouraging citizens to sue for more marginal cases; watering down the profound action of decertification based on the statutory mandate to conduct hearings in all UOF matters which, in turn, will create a lack of credibility for the system among officers and the public.<sup>12</sup>

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<sup>11</sup> The proposed law specifically covers “tear gas or any other chemical weapon” — a definition which, by its terms, covers the OC spray typically carried by all officers on their duty belt. (6E, § 14(e)).

<sup>12</sup> Aside from the drawbacks of the overall definition of unreasonable UOF contained in the House and Senate proposals, it is also worth noting: While no police officer has been trained or advised to use a chokehold in

While we do endorse restricting shooting at vehicles and providing written justification for tear gas, pellets, and K-9s in crowd situations — although it is important to note that police have not deployed K-9s in a crowd in Massachusetts for decades — we find the House’s effort to restrict OC and K-9s to essentially life threatening encounters goes far beyond existing law, policy, and best practices. The unintended consequence could be *more* police and public injuries because officers will be overly restricted in using methods — OC and K-9 — that have a tendency to reduce the potential for injury in situations where suspects are assaultive, threatening or, in the case of K-9s, hidden in buildings or wooded areas.

The problem has never been the current and longstanding definition and application of reasonable force. The problem is that a small percentage of officers apply force unreasonably. We can understand the pressure on the legislature to act fast at this time. Unfortunately, an overly restrictive standard is unlikely to deter the small number of officers who abuse their authority. At the same time, for the vast majority of officers, impinging on their ability to judiciously use force will cause more harm than good.

The other legislative effort — decertification through a professional state agency and better training — is a strong step in the right direction that deals with the real threat posed by the small number of officers who engage in misconduct.

### **Qualified Immunity**

- **House.** Qualified immunity under state law still protects officers unless they are decertified for bias-related misconduct. Of course, officers are still liable for knowingly unconstitutional conduct or objectively unreasonable conduct. Sec. 32 (12, §§ 11H and 11J).

Also creates 15-member commission to study impact of qualified immunity on administration of justice. Report due March 31, 2021. Sec. 98.

- **Senate.** New statute, 12, § 11H½, empowering Attorney General to sue a police agency and/or officer for a constitutional violation or discrimination based on a reasonable suspicion. Sec. 9  
Citizens also have the right to sue on this basis, and qualified immunity does not apply unless “no reasonable defendant could have had reason to believe that such conduct would violate the law at the time the conduct occurred.” Police officers are still eligible for indemnification (i.e., payment of their legal fees and costs by their employer) under Chapter 258. Secs. 9-12.
- **Commentary.** The House takes the preferred approach by denying immunity to officers who qualify for decertification since, by definition, those are the officers who have knowingly engaged in misconduct. Furthermore, the House sets up a group to further study the issue.

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Massachusetts for at least five years, an officer should be able to use this tactic if his or her life is in danger. Yet, the UOF proposal bans this outright.

“The reality of qualified immunity is often misunderstood. Qualified immunity does not serve to protect illegal actions by police officers. Rather, it safeguards all public officials [including teachers, firefighters, EMTs, etc.] in situations where the law is unclear and does not give them adequate guidance.” Leonard Kesten, Esq., *Summary of Potential Impacts to Changes of Qualified Immunity in [S 2820]* (July 13, 2020).<sup>13</sup>

The problem with watering down qualified immunity, as the Senate’s legislation does, is it encourages prolonged and costly litigation over frivolous and marginal cases, or over incidents in which officers applied discretion in unclear circumstances.

### Body cameras

- **House.** EOPSS will convene a 25-member “law enforcement body camera task force” to address all issues — use, application, technology, storage, public access, retention (must be NLT 80 days, NMT 30 months for recordings not related to a court proceeding or ongoing criminal investigation). Interim report by January 31, 2021 with proposed legislation. Final report one year later. Task force must meet at least 12 times and hold 5 public hearings. Sec. 83.
- **Senate.** Same. Sec. 64.
- **Commentary.** Excellent idea. Body cameras have been proven to lessen citizen complaints against police officers and to decrease misbehavior during police/citizen interactions. There should be a statewide policy and uniform equipment, storage, and disclosure rules. Nothing will restore the credibility of law enforcement faster than a robust, broad-based, body camera program.

### Accreditation.

- **House.** The Committee on Police Training and Certification, subject to approval by the PSTC, shall establish minimum certification standards for all law enforcement agencies including UOF, officer code of conduct, juveniles, internal affairs and complaints, detainees, and evidence preservation. (6E, § 5)
- **Senate.** EOPSS will study feasibility and recommend a plan for all law enforcement agencies achieving a minimum level of accreditation from the Massachusetts Police Accreditation Commission (MPAC) or an equivalent entity. Report due to legislature by July 1, 2021.

**Commentary.** Certification in the House proposal is less involved than the accreditation process envisioned by the Senate. Either version will be a useful step for law enforcement.

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<sup>13</sup> Attorney Kesten is one of the foremost authorities on police liability in Massachusetts.

**Public records for internal affairs complaints**

- **House.** Law enforcement misconduct investigation information and results would no longer be exempt from public disclosure, although certain information about the manner of the investigation might still be protected. Sec. 2 (4, § 7 clause 26(c)).
- **Senate.** Essentially the same. Sec. 2
- **Commentary.** Currently, internal affairs records may be introduced in criminal cases if relevant to the defense and are subject to media disclosure, except for limited personnel information and investigative methods. See *Comm. v. Wanis*, 426 Mass. 639 (1998). *Worcester Telegram & Gazette v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1 (2003). However, this legislation makes media and public requests for misconduct information about police officers more routinely available which should create more transparency in policing.

**Public safety sexual misconduct**

- **House.** Creates the following new crimes:
  - **Rape.** Under 265, § 22(c), rape includes sexual intercourse by public safety personnel with any person in their custody or control. Consent is not a defense. Public safety personnel specifically include all police officers, prosecutors, EMTs, deputy sheriffs, correction officers, court officers, probation and parole officers, constables, and anyone *impersonating* these officials. Sec. 76.
  - **Indecent A&B.** Under 265, § 13H½, the exact same public safety personnel previously mentioned are prohibited from completing an indecent A&B on anyone in their custody or control. Consent is not a defense. If victim 14 and over, SP NMT 5 years; if elder, disabled, intellectually disabled, or child under 14, SP NMT 10 years.
- **Senate.** Same for rape, but no provision for indecent A&B. Sec. 57.
- **Commentary.** Excellent step to combat a national problem in public safety.

**Police theft**

- **House.** Punishes any officer who submits false information of hours worked for payment. Penalty: 3 times the amount of the fraudulent wages paid or HC NMT 2 yrs. Sec. 75 (231, § 85BB).
- **Senate.** Essentially the same but there is no criminal penalty. Statute of limitations to bring action is 4 years. Violation must only be proved by a preponderance of the evidence. Sec. 56 (231, § 85BB).

### *Non-disclosure agreements*

- **House.** Law enforcement agencies may not include a non-disclosure provision in the settlement of a complaint of police misconduct unless the complainant requests it in writing. Sec. 64 (41, § 98H).
- **Senate.** Same. Sec. 48.

### *Racial reporting*

- **House.** Nothing on this issue.
- **Senate.** Registry must collect racial data about traffic stops. In addition, officers must record information (including date, time, reason, perceived race, age, contraband, officer's name) anytime they stop a vehicle, or stop and frisk, or search a person. If no citation or warning issued, then must provide "a receipt to the person at the conclusion of the stop." Each police department must conduct a quarterly review of their officers' stop and search documentation. Sec. 52 (90, § 63).

EOPSS Secretary must hold at least three public hearings to present his or her annual analysis of the data. Sec. 80 (racial profiling data rules begin 1 year after the law is enacted).

- **Commentary.** These provisions were rejected during the prolonged debate on the "hands free" law, and now they are back. Unpacking the issues of traffic stop data collection is too complicated for this bulletin. However, here's a modest proposal: Why not have the race and ethnicity of motorists appear on their license and move to an e-citation system? The data could be automatically tabulated and end the practice of having officers speculate on the race of the people they stop. Having officers issue a receipt to all those they detain and/or frisk seems counterproductive to the goals of community policing. At present, officers must identify themselves to citizens upon request (see 41, § 98C) if citizens wish to follow up or even complain about their interaction. Finally, body cameras would make this whole effort largely academic and provide a real safeguard against police bias and other forms of misconduct.

### *Mental health response*

- **House.** Creates 11-member commission on emergency mental health hospitalizations under 123, § 12(a) that will study best practices, including police coordination with mental health providers. Sec. 84A.
- **Senate.** Expands the Community Policing and Behavioral Health Advisory Council, which is a policy resource for the Center for Police Training in Crisis Intervention — an institute managed by the Department of Mental Health (DMH) that was created to develop curriculum and provide

training for municipal police. Sec. 16. It will study and recommend more responsive crisis responses. Report due January 1, 2022. Sec. 66.

Provides funding for jail diversion and community policing and mental health training initiatives from a Criminal Justice and Community Support Trust Fund. Sec. 37 (29, § 2I(III)).

- **Commentary.** Pairing police with mental health clinicians (often referred to as “co-response”), and coupling that arrangement with enhanced police training in mental health issues, has been an important development. Any expansion and support of these types of programs is valuable.

### *Military equipment*

- **House.** Nothing on issue.
- **Senate.** If departments wish to acquire military grade equipment, the State Police, transit, and Environmental Police must get permission from the Secretary of EOPSS, or DOT, or Environmental Affairs and hold at least one public hearing. A municipal department must get their local government to hold a public hearing and then vote to approve the acquisition. The same holds true for a regional law enforcement council or other multi-jurisdictional agency. Secs. 36, 39, and 40 (29, §§ 6B and 6B½).
- **Commentary.** A gatekeeping arrangement for the acquisition of military equipment seems reasonable, although we question the need for a public hearing.

### *Facial recognition*

- **House.** No computer facial or other biometric recognition by any agency, including law enforcement. The registry may still use facial recognition for license applicants. Registry searches for law enforcement purposes are limited to situations where the police get a search warrant from a superior court judge for an investigation involving a violent felony or, without a warrant, in an emergency involving an immediate danger of death or serious injury. And, absent court order, all individuals have to be notified within 72 hours that they were subject to a facial recognition search. Sec. 25 (6, § 220).

Also establishes a commission to conduct a study of facial recognition by Mass DOT, including racial bias exhibited by this technology. Recommendations to the Governor and legislature by July 1, 2021. Sec. 84.

- **Senate.** Essentially the same. Sec. 65.

- **Commentary.** This is ill-advised. Facial recognition has been useful in significant theft and identity fraud investigations, not to mention drug trafficking cases. Police access to this information under a warrant requirement should not be limited to violent offenses. The warrant is the highest constitutional protection mandated for the acquisition of evidence of a crime. There is no reason to restrict the use of this technology to certain crimes. Any concerns about bias in the application of this technology is addressed by having a warrant requirement which also eliminates the need for notice to a suspect.

### **No-knock warrants**

- **House.** All police search warrants require that officers knock and announce to gain entry *unless* a judge finds probable cause that police announcement will endanger lives and there are no minor children or adults over 65 in the home. Sec. 78 (276, § 2D).
- **Senate.** Same, except EOPSS has to collect data about any warrant issued under this section. Sec. 58 (276, § 2D).
- **Commentary.** An unintended consequence of this latest restriction may be the drug dealer who keeps a child or elder on the premises knowing that he or she will not have to worry about a sudden police entry.

### **School Resource Officers (SRO)**

- **House.** New curriculum developed for SROs in child development, de-escalation, diversion, bullying, and interaction with school personnel. Sec. 22 and 29 (6E, § 3(b)).

A 21-member commission, chaired by the Secretaries of Education and EOPSS, will create a model memorandum of understanding (MOU) for SROs and school administrators. The MOU is due February 1, 2021.<sup>14</sup> SROs may not be appointed based on seniority and are not expected to enforce school discipline or replace psychological counselors. Sec. 66 (71, § 37P).

- **Senate.** SROs must be specially certified by POSAC prior to appointment. Sec. 6 (6, § 223). All current SROs must be certified by POSAC before August 1, 2021. SRO must be annually approved by a public vote of the school committee. Sec. 50 (71, § 37P(b)).<sup>15</sup>
- **Commentary.** Much of what is in this legislation is a repeat of the original version of 71, § 37P enacted two years prior, and there currently is a model MOU and standard operating procedures (SOPs) in effect for schools and SROs. That said, we applaud the House and Senate for retaining and strengthening this valuable program.

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<sup>14</sup> This deadline appears in Sec. 91. The substance of the MOU is in Sec. 66.

<sup>15</sup> MPTC must also issue guidance, by October 1, 2020, to all officers on developmentally appropriate de-escalation for minors. Sec. 73.

### *Gang/immigration database*

- **House.** School personnel may not provide or submit information to law enforcement about gang affiliation or immigration status unless relevant to a specific unlawful incident or activity the school must report; or a 51A report; or a health or safety emergency; or weapons possession. Sec. 65 (71, § 37L).
- **Senate.** Essentially the same. Sec. 49.
- **Commentary.** Controlling the validity of information that appears in a gang database is important, especially when it may have immigration consequences.

### *Reporting law enforcement injuries and deaths*

- **House.** The Department of Public Health (DPH) must ensure that injuries and deaths caused by police or corrections officers are properly reported, along with occupational fatalities involving police or corrections officers. Sec. 71 (111, §§ 1 and 6E).

Also directs Attorney General and District Attorneys to review laws and procedures relating to the investigation of police UOF resulting in deaths or serious injuries. The AG and DAs must consult the ACLU, Committee for Public Counsel Services, Massachusetts Chiefs of Police Assoc., and community groups before submitting a report to the legislature on December 31, 2020.

- **Senate.** Same DPH obligation. Secs. 53 and 54.
- **Commentary.** There should be a central repository for information concerning police UOF resulting in injuries and death. At the same time, there should also be information concerning all assaults on officers that result in injury or death. The current language of the law only records officer deaths, not injuries.

### *Police survey*

- **House.** PSTC must conduct an anonymous survey annually of all certified police officers concerning their demographics (race, gender, years of service), number of hours of work per week (including OT), and adequacy of equipment, salary, work conditions, etc. Survey results due to legislature and EOPSS by September 30 of each year. Sec. 95.
- **Senate.** Nothing on issue.
- **Commentary.** Good idea.

### *State Police*

- **House.** The Governor can appoint the State Police Colonel from inside or outside the Department. Sec. 38. No lateral transfers permitted to the State Police. Sec. 42.
- **Senate.** Allows Governor to appoint outside candidate for Colonel and prohibits lateral transfers. However, State Police stay in charge of their own training, retain their discipline system,<sup>16</sup> continue with their own very detailed promotional process, and create their own cadet program to increase diversity.<sup>17</sup> Secs. 18-33.

Also EOPSS is directed to have a civilian employee assign State Police details. Sec. 62.

### *Police cadets*

- **House.** Creates a 21-member commission to study the implementation of a statewide police cadet program, including its impact on diversity and veterans' preference; and proposed standards for admission, compensation and benefits. Sec. 86.
- **Senate.** Creates a cadet program only for the State Police. Sec. 24 (22C, § 10A).
- **Commentary.** Like so many things in policing, keeping the local character of a program may enhance its value in the long run. While state guidelines and funding support for police cadet programs would be helpful, the notion of having one program serve all communities and agencies will probably not succeed.

Hope this helps in your understanding of the issues. Stay well,

*John Sofis Scheft*

and

*Capt. Peter Hoerr (ret.)*<sup>18</sup>

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<sup>16</sup> Interestingly, disciplined troopers retain a right of appeal to the Civil Service Commission. Sec. 28.

<sup>17</sup> No more than 1/3 of a State Police recruit class can be composed of candidates who were cadets. Sec. 27.

<sup>18</sup> Formerly with the Belmont Police Department and an instructor and legal trainer with Law Enforcement Dimensions, LLC.