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THE GENERAL COURT OF MASSACHUSETTS
STATEHOUSE, BOSTON, 02133-1053

FOR IMMEDIATE RELEASE

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An Act relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth

Bill Summary ❖ November 2020

“This compromise piece of legislation will create, for the first time, an independent agency for the statewide certification of law enforcement officers and establish uniform training and standards,” said **Representative Claire Cronin (D-Easton), House Chair of the Joint Committee on the Judiciary**. “This legislation is about justice and fairness. Fairness for those that interact with police, and fairness for police as well.”

“This is a great package,” said **Senator Will Brownsberger (D-Belmont), Senate Chair of the Joint Committee on the Judiciary**. “It’s going to make a real difference in the Commonwealth. I think its accountability and transparency provisions are strong enough to really improve policing.”

“This is a landmark decision that was demanded by the people and led by Black and Latino Legislators (MBLLC) of this state,” said **Massachusetts Black and Latino Caucus Chair Representative Carlos González (D-Springfield)**. “Our demands were agreed to by the Speaker of the House and Senate President. Today we begin to address police accountability and transparency. While we are making great stride to address racism in police departments and provide them the adequate training and support to address the daily and difficult challenges they have.”

“This final bill scores meaningful wins for accountability, civilian oversight from communities of color, and a vision of public safety that prioritizes de-escalation over force,” said **MBLLC Member Senator Sonia Chang-Díaz (D-Boston)**. “This the first time any state has combined this kind of real oversight authority with meaningful community membership at the table of power. I’m grateful to Senate President Spilka and Speaker DeLeo for their commitment to getting meaningful legislation done this session. And I’m grateful for the Senate President’s pledge to continue the focus on racial justice into next session--acknowledging this work extends well beyond law enforcement.”

An Act relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth represents the most comprehensive and intentional legislative response to incidents involving police practices in our communities. It creates an independent, civilian-led commission to standardize the certification, training and decertification of police officers, bans the use of chokeholds, limits the use of deadly force, creates a duty to intervene for police officers when witnessing another officer using force beyond what is necessary or reasonable under the circumstances, and takes steps to break the school-to-prison pipeline. It also creates a first-in-the-nation statewide moratorium on biometric surveillance systems, which include facial recognition technology.

A summary and outline of the bill's provisions is as follows.

Massachusetts Peace Officer Standards and Training Commission (MPOSTC)

This bill creates a Massachusetts Peace Officer Standards and Training Commission (MPOSTC)—an independent state entity, the majority of which is composed of civilians—to standardize the certification, training, and decertification of police officers. The commission will have independent power to investigate misconduct.

Commission Membership

- 3 appointed by Governor (1 shall be a police chief, 1 shall be a retired justice of the superior court, and 1 shall be a social worker appointed from a list of 5 nominations submitted by the National Association of Social Workers, Massachusetts Chapter)
- 3 appointed by AG (1 shall be a law enforcement officer below the rank of sergeant, 1 shall be a law enforcement officer appointed from a list of 5 nominations submitted by the Massachusetts Association of Minority Law Enforcement Officers, and 1 shall be an attorney appointed from a list of 5 nominations submitted by the Civil Rights and Social Justice Section Council of the Massachusetts Bar Association)
- 3 appointed jointly by Governor and AG (1 shall be appointed from a list of 5 nominations submitted by the Massachusetts Commission Against Discrimination)
- Commission shall appoint an executive director.

Commission Duties

- Serve as the civil enforcement agency to certify, restrict, revoke, or suspend certification for officers, agencies and academies; refer cases for criminal prosecution and report annually to the Legislature, Governor, and the Attorney General; maintain a publicly available database of decertified officers, officer certification suspensions, and officer retraining; cooperate with the national decertification index; promulgate rules and regulations for the administration and enforcement of use of force standards and officer intervention; conduct preliminary inquiries, revocation and suspension proceedings and hearings, and promulgate regulations for such proceedings and hearings pursuant to G.L. c. 30A.
- Within the Commission, there will be 2 divisions: **Division of Police Training and**

Certification, managed by the Committee on Police Training and Certification, which is charged with training and developing certification standards for law enforcement officers, agencies, and schools, and the **Division of Police Standards**, which is the investigatory division.

Division of Police Training and Certification

- Under the management and control of the new Committee on Police Training and Certification, the division shall establish uniform policies and standards, subject to the approval of the commission, for the training and certification of all law enforcement officers.

Division of Police Standards

- The division is made up of administrative staff. The division shall investigate officer misconduct, make disciplinary recommendations to the commission, and maintain a database of officer complaints.

Hearings and Appeals

- The MPOSTC shall notify an officer, the head of their collective bargaining unit, and the head of the agency employing the officer who is the subject of a preliminary inquiry within 30 days of commencement of the inquiry. The commission shall conduct revocation or suspension proceedings and hearings, and promulgate regulations for such proceedings and hearings, pursuant to chapter 30A.
- The MPOSTC shall not institute a revocation or suspension hearing until the officer's appointing agency has issued a final disposition, provided, however the delay shall not exceed 1 year. An officer may notify the commission that the officer wishes to suspend such hearing pending an appeal or arbitration of the appointing agency's decision, provided, however the delay shall not exceed 1 year. An officer may notify the commission that the officer wishes to suspend a hearing pending the resolution of criminal charges, provided, however the officer's certification shall be suspended during the pendency of the delay.
- The MPOSTC shall immediately notify an officer and the head of the agency employing the officer who is decertified, suspended or ordered to undergo retraining. The commission may only revoke or suspend an officer certification by clear and convincing evidence.
- Nothing prohibits an agency or the Civil Service Commission from conducting internal employment investigations separately from the commission, however decisions made by the MPOSTC shall only be appealable pursuant to chapter 30A.

Use of Force and Duty to Intervene

To bill establishes strong guardrails governing the use of force, prohibiting certain actions and requiring the use of de-escalation tactics. The Committee on Police Training and Certification shall promulgate regulations for use of force standards.

Physical Force

- An officer may only use physical force if de-escalation tactics have been attempted and failed, or

are not feasible based on the totality of the circumstances, and such force is necessary to:

- o Effect the lawful arrest or detention of a person;
 - o Prevent the escape from custody of a person; or
 - o Prevent imminent harm, and the amount of force used is proportionate to the threat of imminent harm.
- An officer may also use necessary, proportionate, and non-deadly physical force in accordance with the regulations promulgated by the committee on police training and certification.

Deadly Force

- An officer may only use deadly force if de-escalation tactics have been attempted and failed, or are not feasible based on the totality of the circumstances, such force is necessary to prevent imminent harm to a person, and the amount of force used is proportionate to the threat of imminent harm.

Ban on Chokeholds

- A law enforcement officer shall not use a chokehold.

Discharge a firearm into a fleeing motor vehicle

- A law enforcement officer shall not discharge any firearm into or at a fleeing motor vehicle unless, based on the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and the discharge is proportionate to the threat of imminent harm to a person.

Tear gas/Rubber pellets/Dogs

- A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or order the discharge of rubber pellets or release or order the release of a dog to control or influence a person's behavior unless:
 - o De-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and
 - o The measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or other chemical weapon, rubber pellets, or dog is proportionate to the threat of imminent harm.
- If an officer uses any of these techniques in a crowd, the law enforcement officer's appointing agency must file a report with the commission. The commission shall review the report, make any additional investigation, and if applicable, make a finding if the de-escalation efforts were adequate and if the use of the technique was justified.

Duty to Intervene

- Requires that an officer intervene if he or she sees another officer using physical force beyond that which is necessary or objectively reasonable based on the totality of the circumstances, unless intervening will result in imminent harm to the officer or another identifiable person.
- Requires an officer who observes unnecessary force to report it to an appropriate supervisor and prepare a detailed written statement. The officer's statement shall be included in the supervisor's report.
- Requires police departments to develop and implement a policy and procedure for officers to report abuse by another officer without fear of retaliation or actual retaliation.

Mass Demonstrations and Protests

- Requires a police department with advance knowledge of a planned mass demonstration or protest to attempt in good faith to communicate with the organizers of the event. The department shall make plans to avoid and de-escalate potential conflict and designate an officer in charge of these plans.

Review of the Civil Service System

Establishes a **special legislative commission to study and examine the civil service law**, personnel administration rules, hiring procedures and bylaws for municipalities not subject to the civil service law, and state police hiring practices. The commission shall:

- Study the employment, promotion, performance evaluation, and disciplinary procedures for civil service employees.
- Study the employment, promotion, performance evaluation, and disciplinary procedures of municipalities not subject to the provisions of the civil service law.
- Study employment, promotion, performance evaluation, and disciplinary procedures of MA state police.
- Evaluate the feasibility of having a statewide diversity office and diversity officers in each municipality.
- Make recommendations for changes to improve diversity, transparency, and representation of the community in recruitment, hiring, and training for civil service employees, municipalities not subject to the civil service law, and the Massachusetts state police.

Investigation of Structural Racism

Creates three special legislative commissions to study the presence of institutional racism in the criminal justice system.

Special Commission on Structural Racism in Correctional Facilities

- Review the policies and procedures in place at state and county correctional facilities, both as written and as implemented, to determine if there are disparities in the treatment of persons of color and if structural racism at these facilities is a cause of those disparities.

- Make recommendations to eliminate any disparities in the treatment of persons of color including policy or legislative changes.

Special Commission on Structural Racism in Parole Process

- Review the parole process to determine if there are disparities in the treatment of persons of color in the granting or denying of parole and if structural racism is a cause of those disparities.
- Make recommendations to eliminate any disparities in the treatment of persons of color found in the parole process including policy or legislative changes.

Special Commission on Structural Racism in Probation Services

- Review the probation process to determine if there are disparities in the treatment of persons of color in the probation system and if structural racism is a cause of those disparities.
- Make recommendations to eliminate any disparities in the treatment of persons of color found in probation services including policy or legislative changes.

Qualified Immunity

- Qualified immunity shall not extend to a law enforcement officer who, while acting under color of law, violates a person’s right to bias-free professional policing if that conduct results in the officer’s decertification by MPOSTC.
- Establishes a commission to investigate and study the impact to the administration of justice of the qualified immunity doctrine in the commonwealth.

Facial Recognition

This bill forbids a public agency or employee from acquiring, accessing, or using any software that captures biometric data, including facial recognition, except the Registry of Motor vehicles.

- Only allows law enforcement to request, in writing, that the RMV perform a facial recognition search:
 - o To execute a warrant duly authorized by a justice of the superior court based on probable cause that the search will to lead to evidence of the commission of a violent felony offense under the laws of the commonwealth; or
 - o without a warrant if the law enforcement agency reasonably believes that an emergency involving immediate danger of death or serious physical injury to any individual or group of people requires the performance of a facial recognition search without delay.
- The RMV will be required to document each use of facial recognition at the request of law enforcement, which shall be public record, and publish on its website the total number of searches

performed by law enforcement, the number of searches conducted by a warrant, the number of emergency searches and the number of searches requested by each law enforcement agency annually.

- Establishes a special legislative commission to study the use of facial recognition technology by the Massachusetts Department of Transportation.

Massachusetts State Police Reform

- Requires training by the state police to be approved by the MPOSTC and requires state police officers to be certified by the MPOSTC.
- Allows the colonel of the state police to be appointed from outside of the state police.
- Authorizes the colonel of the state police to establish a cadet program and gives the colonel the authority to discipline officers.

School Resource Officers (SROs) and Limits on Student Record Sharing by Schools

- Directs the committee on police training and certification to develop an in-service training program for school resource officers and gives the MPOSTC the power to issue a specialized certification for school resource officers.
- Requires a superintendent to make a request to the chief of police for the appointment of a school resource officer.
- Establishes a Model School Resource Officer Memorandum of Understanding (MOU) Review Commission to develop and review the model school resource officer memorandum of understanding. The model MOU shall be developed for schools and police departments as the minimum requirement for schools to formalize and clarify implementation of the partnership between the school and the school resource officer.
- The final MOU between the superintendent and chief of police shall be filed with DESE and made public.
- Requires the superintendent to report to the school committee and DESE.
- Requires DESE to collect data on the number of mental and social support personnel and the number of school resource officers in each local education agency and report said data to the public on its website.
- Prohibits school department personnel and school resource officers from disclosing certain student record information to law enforcement. This does not prohibit the sharing of information for the purposes of completing a report pursuant to section 51A of chapter 119, the sharing of information upon the specific, informed written consent of the eligible student, parent or guardian, to comply with a court order or lawfully issued subpoena, in connection with a health or safety emergency pursuant to the provisions of 603 C.M.R. 23.07(4)(e) or filing a weapon report with the local chief of police.

Ban on Racial Profiling

Prohibits a law enforcement agency from engaging in racial profiling. Authorizes the attorney general to bring a civil action to enforce this ban.

Data Collection

The Department of Public Health shall collect and report data on law enforcement-related injuries and deaths. Records relating to law enforcement misconduct investigations are subject to the public records law.

Expungement

Expands eligibility for record expungement from one criminal or juvenile record to two. The bill also allows multiple charges stemming from the same incident to be treated as once offense for the purposes of expungement. Existing restrictions on ineligible offenses, wait times to expunge and that the offenses must have been committed before the age of 21 remain in effect.

Crime of Submitting a False Timesheet

A law enforcement officer who knowingly submits a fraudulent timesheet shall be punished by a fine of 3 times the amount of the fraudulent wages paid or by imprisonment for not more than 2 years.

Prohibits Sexual Intercourse with a Person in Custody

A law enforcement officer who has sexual intercourse with a person in custody or control of the law enforcement officer shall be found in violation of the rape statute. A law enforcement officer who commits indecent assault and battery on a person in custody shall be found in violation of the indecent assault and battery statute.

No-Knock Warrants

Requires that a no-knock warrant be issued by a judge and only if:

- the affidavit supporting the request establishes probable cause that if the officer announces their presence their life or the lives of others will be endangered; and
- if the affidavit includes an attestation that the law enforcement officer filing the affidavit has no reason to believe that minor children or adults over the age of 65 are in the home.

An officer executing a search warrant shall knock and announce their presence unless they have a no-knock warrant or if there is a credible risk of imminent harm.

Special Commissions

Body Camera Taskforce

- The executive office of public safety and security, in collaboration with the executive office of technology services and security, shall establish the law enforcement body camera taskforce. The taskforce shall propose regulations establishing a uniform code for the procurement and use of body-worn cameras by law enforcement officers to provide consistency throughout the commonwealth. The taskforce shall propose minimum requirements for the storage and transfer of audio and video recordings collected by body-worn cameras.

Community Policing and Behavioral Health Advisory Council

- The community policing and behavioral health advisory council shall study and make recommendations for creating a crisis response and continuity of care system that delivers alternative emergency services and programs across the commonwealth that reflect specific regional, racial, ethnic and sexual orientation needs and differences. The center for responsive training in crisis intervention shall consider the council's recommendations for incorporation into regional training opportunities and training curricula.

Additional commissions established under the bill include:

- Permanent commission on the status of African Americans
- Permanent commission on the status of Latinos and Latinas
- Permanent commission on the status of people with disabilities
- Permanent commission on the status of Black men and boys
- Commission to study the feasibility of establishing a statewide law enforcement officer cadet program
- Commission on corrections officer training and certification
- Commission to investigate and study the benefits and costs of consolidating existing municipal police training committee training academies
- Commission on emergency hospitalizations