

H.4860, *An Act relative to justice, equity and accountability in law enforcement in the Commonwealth*

EXECUTIVE SUMMARY:

Policing reform bill that makes changes to training, establishes certification and decertification of law enforcement officers, changes rules regulating School Resource Officers (SROs) and establishes a model SRO Memorandum of Understanding (MoU) as a baseline minimum, and creates a number of commissions to assess and report on the role of race in certain state criminal justice institutions and a civil service commission. This bill replaces the Municipal Police Training Committee, which serves under the Governor, with an independent agency, the **Massachusetts Police Standards and Training Commission**. It also creates a right to bias-free professional policing.

*Differences in HWM version of **possible concern** include:*

- **Massachusetts Police Standards and Training Commission composition (Sec. 29)**
- **Qualified immunity provisions (Sec. 32)**
- **Commissions on Structural Racism (Sections 88-90)**

BACKGROUND:

- The Massachusetts Black and Latino Legislative Caucus (MBLLC) released their [ten-point plan](#) related to police brutality and systemic racism on June 3, 2020, which included 4 state-level proposed reforms:
 - Peace Officer Standards and Training (POST)
 - Civil Service Exam Review and Oversight
 - Commission on Structural Racism
 - Statutory limits on police use of force
- Governor Baker [filed his own legislation](#) related to POST on June 17, 2020
- **The Massachusetts Senate passed [S.2820](#) (S2800 as amended)**

SECTION BY SECTION SUMMARY:

Section 1: Establishes a **Commission on the Status of African Americans**. Consists of 3 persons appointed by the Governor, 3 persons appointed by the Senate President, and 3 persons appointed by the Speaker of the House from a list of at least 5 nominees from the Massachusetts Black and Latino Legislative Caucus (MBLLC). Members shall be considered special state employees. A member of the commission will serve a 3 year term. The board will be elected annually. Primary function: policy recommendations based on research and analysis to the general

court; inform the public and leaders of the historical and current implications of systemic racism on African Americans; serve as a liaison between the gov't and private interest groups in regards to matters unique to African Americans; identify and recommend qualified African Americans for appointive positions in all levels of government; assess programs and practices in all state agencies as they affect African Americans; generally undertake activities designed for the commonwealth to realize the full potential, skills, talents, and cultural heritage of African Americans. The commission shall report its results no later than June 2nd every year.

Section 2: Modifies an exception to what counts as a public record, by adding that an exception for personnel and medical files or other information relating to a specifically named individual does not apply to records related to a law enforcement misconduct investigation.

Section 3: Removes the **Municipal Police Training Committee** as a commission or board serving under the Governor.

Section 4: Replaces the entire section on the Municipal Police Training Committee with new language about the "**Committee on Police Training and Certification**" and "law enforcement officer" (pointing to definitions in other parts of the law/proposed law).

Section 5: Replaces language about the **Municipal Police Training Committee** setting up a course to teach handling of domestic violence and sexual violence complaints and guidelines for responding to these kinds of violence with very similar responsibilities for the Committee on Police Training and Certification. Some language has been removed about requiring training on adolescent development, trauma, and family dynamics, as well as language requiring the inclusion of certain experts as training presenters.

Section 6: Along with Section 4, replaces the definition of "**law enforcement officer**".

Sections 7-8: Replaces references to **Municipal Police Training Committee** with **Committee on Police Training and Certification**.

Section 9: Expands hate crimes training for police academies to also include police schools and programs.

Section 10: Replaces section about the Municipal Police Training Committee setting up a course on public safety technology with very similar language for the Committee on Police Training and Certification to set this up.

Section 11: Technical change (removes deadline of January 1, 1997).

Section 12: Replaces references to Municipal Police Training Committee with Committee on Police Training and Certification.

Section 13: Technical change; In Section 116C of Chapter 6, law enforcement basic training must include 20 hours of instruction in 5 categories related to public safety and law enforcement technology - line 40 incorrectly mentions 6 categories

Section 14: Reiterates the creation of the “committee on police training and certification” and replacement of the “municipal police training committee” in the context of providing training in regards to the protection, care and custody of minors upon arrest of parents or guardians

Section 15: Clarifies and replaces the term “student officers’ course of study” with “recruit basic training curriculum,” in the context of providing training in regards to the protection, care, and custody of minors upon arrest of parents or guardians

Section 16: Allows for the newly-created committee on police training and certification to develop training to be incorporated into recruit basic training curriculum regarding bicycle safety enforcement

Section 17: Reiterates the creation of the “committee on police training and certification” and replacement of the “municipal police training committee,” in the context of developing a bicycle safety curriculum in consultation with the Massachusetts Bicycle Board and other experts, and the committee’s in-service training curriculum

Section 18: Replaces “bias-free policing” definition included in Section 116G with the bias-free policing definition to be found in Section 1 of Chapter 6E of the new bill - “*policing* decisions made by *and conduct of* law enforcement officers that shall not consider a person’s race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level (change in italics)

Section 19: Reiterates the creation of the “committee on police training and certification” and replacement of the “municipal police training committee,” in the context of the development of an in-service training program for law enforcement officials

Section 20: Removes the term “local,” in the context of the development of an in-service training program for law enforcement officials, effectively expanding the training to all law enforcement officials

Section 21: Technical change

Section 22: Creation of a new section “**Section 116H,**” requires the new committee on police training and certification to develop an in-service training program designed to train **school resource officers** (commonly known as SROs). The training program must include:

- 1) a description of the legal standards differences between juvenile police interaction and arrest procedures and those of adults
- 2) information on child and adolescent cognitive development
- 3) engagement and de-escalation that are specifically effective with youth
- 4) strategies for resolving conflict and diverting juveniles from arrest

The in-service training program for SROs will be developed in consultation with experts on child and adolescent development and child trauma, and with educators and lawyers with experience in juvenile and education law.

Section 23: Repeals sections 117 and 118 of Chapter 6 - Section 117 outlines the original committee on police training and certification’s meeting times and compensation parameters of its members; Section 118 outlines the original committee on police training and certification’s ability to approve municipal police training schools

Section 24: Places the newly established position of “training director of the Massachusetts police standards and training commission” on the Executive Office of Public Safety and Security’s Committee on Criminal Justice, replacing the “executive director of the municipal police training committee.”

Section 25: Prohibits use of **biometric surveillance or facial recognition systems** without express legal authorization. Allows the RMV to continue using facial recognition search technology for its own administrative policies and at law enforcement request, but only if the latter has a valid warrant or reasonable belief of an immediate emergency. Requires RMV to publicly track and report law enforcement search requests.

Section 26-28: Replaces or removes references to Municipal Police Training Committee with Committee on Police Training and Certification.

Section 29: Creates the **Massachusetts Police Standards and Training Commission** as an independent agency.

- Commission makeup:
 - 2 members appointed by Attorney General
 - 2 members appointed by Governor.
 - 3 members appointed jointly: The chair of the MA Law Enforcement Policy Group, 1 from a list of 3 persons submitted by MA Coalition of Police, and 1 TBD.
 - Governor appoints chair from among 7 members.
 - Commission shall reflect gender and racial makeup of the Commonwealth as “periodically determined” by the Secretary of State.
 - Commission shall have diverse urban, rural, suburban representation.
 - Commissioners may not be former law enforcement officers and no more than 5 commissioners may represent the same political party.
 - Commissioners serve up to 2 unpaid 5-year terms and Governor has removal authority with cause.
 - Creates professional position of executive director.
- The Massachusetts Police Standards and Training Commission:
 - Requires the commission to serve as the civil enforcement agency to certify, restrict, revoke, or suspend certification for law enforcement officers, agencies and academies.
 - Requires all officers to be certified before being employed in the Commonwealth.
 - Creates special certification for School Resource Officers and requires that all SROs be specially certified.
 - Allows the commission to refer cases for criminal prosecution to the Attorney General. Requires annual reporting to AG, Legislature, and Governor.
 - Requires the commission to maintain a publicly available database of decertified officers, officer certification suspensions, and officer retraining. Decertified officers may not serve in state in any law enforcement capacity.
 - Cooperate with the national decertification index promulgate rules and regulations for the administration and enforcement of use of force standards and officer intervention.
 - Creates a Division of Police Training and Certification and a Division of Police Standards within the commission.
- Division of Police Training and Certification:

- Requires the division to establish uniform policies and standards for the training and certification of all law enforcement officers including a basic recruit training curriculum and an in-service training curriculum for law enforcement officers.
- Allows for creation of specialized training for particular types of officers with commission approval.
- Requires the division to be headed by a training director, appointed by the Committee on Police Training and Certification.
- The Division of Police Standards
 - Requires the division to investigate officer misconduct and make disciplinary recommendations to the full commission.
 - Requires all law enforcement agencies to report any complaint received to division. Prohibits retaliatory action for employees that cooperate with a division investigation.
 - Prohibits employees of the division of standards from having previously served as a law enforcement officer.
 - **Establishes limits on the use of force with the exception of the following three circumstances:** said use of force would 1) effect the lawful arrest of a person 2) prevent the escape from custody of a person, 3) prevent imminent harm and the amount of force used is proportional to the threat of imminent harm.
 - Requires de-escalation tactics before use of force.
 - Limits chokeholds
 - Prohibits deadly use of force, firing into a fleeing vehicle, and use of less than lethal weapons (tear gas, rubber pellets, canines) unless de-escalation tactics have failed and measures are deemed “necessary to prevent imminent harm.” Specifically for non-lethal weapons, imminent harm must be “proportionate” to foreseeable harm caused by non-lethal weapons.
 - Creates a duty to intervene for officers witnessing a misuse of force.

Section 30-31: Replaces Municipal Police Training Committee funding source with new fund (*same revenue sources*) to support the work of the Committee on Police Training and Certification.

Section 32: Adds to Section 11H, which allows for an AG civil action, subsection (b) that creates a statewide **right to bias-free professional policing**. Conduct resulting in the decertification of a law enforcement officer constitutes a (prima facie) violation of said right and opens that officer to civil liability. As written, the last clause of this subsection is unclear about what it does: nothing in subsection (b) shall be construed to grant immunity for civil liability to an officer who interferes or attempts to interfere with rights by threat, intimidation, or coercion where their action was knowingly unlawful or not objectively reasonable (no reasonable police officer in the same situation would have acted as the defendant did). Section 11I allows for civil actions by aggrieved persons whose rights have been interfered with as described in Section 11H. It is unclear how subsection (b) should coordinate with Section 11I.

The Judiciary Committee’s summary states that this legislation only makes changes to the application of qualified immunity to decertified law enforcement officers.

n.b. This is the House’s policy proposal relative to the **qualified immunity doctrine**.

Section 33-34: Technical changes relative to Section 32.

Section 35: Creates a **Division of Police Standards and Professional Conduct Enforcement** within the Attorney General's Office. Directs the division to enforce criminal offenses committed by police officers, including investigating and prosecuting criminal offenses, investigating circumstances where officer actions lead to death or bodily injury, receiving referrals from other agencies for prosecution, and assisting the Massachusetts Police Standards and Training Commission.

Section 36: Changes reference to Municipal Police Training Committee to Massachusetts Police Standards and Training Commission.

Section 37: Technical change removing a gendered reference to the colonel of the State Police.

Section 38: Expands qualifications for colonel appointments

Sections 39 - 41: Technical changes to make language gender neutral

Section 42: Allows colonel to be appointed from outside the state police

Sections 43-44: Further technical changes to create gender neutral language

Sections 45 - 46: Requires training by the Colonel and the state police to be subject to the approval of Committee on Police Training and Certification.

Section 47 - 50: Technical changes related to changes in training requirements and adding approval of Committee on Police Training and Certification.

Section 51: Subjects special state police officers affiliated with MEMA to the same training & certification as the MA police standards and training.

Section 52: Subjects special state police officers affiliated with the Bureau of Special Investigations to the same training & certification as the MA police standards and training. The Bureau of Special Investigations investigates potential fraud in state public benefit programs.

Section 53: Technical change shifting funding allocated through the Public Safety Training Fund from the Municipal Police Training Committee to the Committee on Police Training and Certification.

Section 54-56: Clarifies that the appeal of disciplinary actions of the new MA Police Standards and Training Commission are not subject to civil service laws.

Section 57: Technical change clarifying that all law enforcement officers (as previously defined in this bill) must be trained in the detection, intervention, and prevention of suicide.

Section 58: Technical change requiring that suicide detection, intervention, and prevention training must be approved and coordinated by the Committee on Police Training and Certification. This training must be included in the curriculum of all police training schools.

Section 59: Technical change clarifying that the MGL sections regulating suicide detection, intervention, and prevention training applies to all law enforcement officers (as previously defined in this bill) and not just “police” as previously defined. The Judiciary Committee defined this as a “technical change”.

Section 60: Prohibits anyone on the National Decertification Index or similar MA database from being hired by a municipality or district as a police officer (currently ch. 41 sec. 96A only prohibits convicted felons).

Section 61: Requires all law enforcement officers to complete the training approved by the Committee on Police Training and Certification as previously defined in this bill. Officers are paid their regular wages to complete these training sessions.

Section 62-63: Technical change requiring that officers affiliated with a rape reporting and prosecution unit complete a training approved by the Committee on Police Training and Certification as previously defined in this bill.

Section 64: Prohibits a law enforcement agency from including a **nondisclosure agreement** or other similar clause in a settlement agreement between the law enforcement agency and a complainant unless the complainant requests it.

Section 65: Bans school departments from disclosing to law enforcement, or submitting into a database designed to track gang affiliation, any information from its records.

Section 66: Establishes the **Model School Resource Officer Memorandum of Understanding Review Commission** to develop and review a model School Resource Officer (SRO) Memorandum of Understanding (MoU).

(a) Includes definitions for “chief of police”, “commission”, “model memorandum of understanding” and “school resource officer.”

(b) Establishes a commission to develop and review the model memorandum of understanding and make recommendations for changes. DESE Commissioner and the Secretary of the Executive Office of Public Safety and Security are its co-Chairs.

Provides a summary of who shall be appointed to the commission and who shall appoint those individuals. Provides a summary of what the memorandum shall describe and explicitly states the school resources officers **shall not** serve as school disciplinarians, work in place of school psychologists, or use police powers to address traditional school discipline issues.

The DESE Commissioner shall work with the Executive Office of Public Safety and Security to provide the commission with any relevant (in their determination) data or information.

The commission shall meet every 5 years to develop and review the model MoU, which must be made publicly available by DESE, distributed to school districts, and filed with the House and Senate Clerks.

Members of the commission shall not receive compensation for their work, but can be reimbursed expenses. Prior to issuing recommendations the commission shall provide an opportunity to seek public input across regions of the Commonwealth.

- (c) The model memorandum of understanding, statements of operating procedures, and advisories on how to establish said documents shall be made available to all communities.
- (d) The Chief of Police, with the input of the Superintendent, will assign at least one SRO to serve the city, town, charter, or regional school district. They must give preference to certain individuals, including ones who have a similar racial and ethnic background to the make-up of the school. The SRO's performance will be reviewed annually by the Superintendent and Chief of Police. The model memorandum of understanding (as a baseline minimum) must be adopted and further provisions may be added by the Chief of Police together with the Superintendent. Lists things that at a minimum must be included in an operating procedure for the SRO, which is established by the Chief of Police in consultation with the Superintendent.
- (e) Each school will file its final memorandum of understanding annually with DESE.
- (f) The DESE Commissioner may waive the requirements of this section if it is deemed that a school would not benefit for a school resource officer.
- (g) If there are not sufficient resources to assign a school resource officer (as determined by the Chief of Police in consultation with the Superintendent), the Chief of Police shall consult with the Department of State Police to ensure a school resource officer is assigned, subject to appropriation.
- (h) No public employer shall be liable for injury, loss of property, personal injury, or death that arises out of the implementation of this section provided the employee was acting in the scope of their employment. The Dep't of Education shall collect and publish disaggregated data regarding school-based arrest, citations, and court referrals and make their report available to the public.

Section 67: Every full-time officer working for any of the UMass campuses shall be certified pursuant to chapter 6E.

Section 68: The Committee on Police Training and Certification shall provide training on alcohol education and education concerning the aforesaid sections to all law enforcement personnel throughout the commonwealth.

Section 69: Technical change shifting funding allocated through the Public Safety Training Fund from the Municipal Police Training Committee to the Committee on Police Training and Certification.

Section 70: Each Police Chief appointed to the Commonwealth's state universities and community colleges shall certify to the registrar before Jan 1st of each year, the following:

- Said officers have been certified
- Said officers have completed annual in-service training
- The university or college police department submits uniform crime reports to the FBI
- Memorandum of understanding has been established outlining policies and procedures
- The university or college police department has policies and procedures in place for use of force, pursuit, arrest, search and seizure, racial profiling and motor vehicle law enforcement

Section 71: Defines "Law enforcement-related injuries and deaths".

Section 72: DPH shall collect and report data on law-enforcement injuries and deaths. It shall implement rules to collect this data, including getting reports from physicians and other licensed health care professionals.

Section 73: Replaces "municipal police training committee" with "committee on police training and certification."

Section 74: Replaces “municipal police training committee” with “Massachusetts police standards and training commission.”

Section 75: Addresses fraudulent claims for hours worked submitted by law enforcement officers.

- (a) Any officer who submits a false or fraudulent claim of hours worked for payment and receives said payment shall be punished by a fine of 3 times the amount of fraudulent wages paid or by imprisonment for not more than 2 years.
- (b) The party who brings this action will be required to prove all essential elements of the cause of action.

Section 76: 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 subsection (b) which includes imprisonment in a state prison. This section also provides examples of what a “law enforcement officer” is in this case.

Section 77: Replaces “municipal police training committee” with “committee on police training and certification.”

Section 78: Bans no-knock warrants, except when a judge issues a warrant after being provided with an affidavit establishing probable cause that if the officer announces their presence it would endanger their or someone else’s life. An officer may ignore the ban on no-knock warrants to prevent a credible risk of imminent harm. Any evidence gathered in violation of this section will be inadmissible.

Section 79: Law enforcement agencies have until the end of 2020 to submit a comprehensive disciplinary record for each officer to the Massachusetts Police Standards and Training Commission, including all complaints, final disposition of complaint, and any discipline imposed. By June 1, 2021, the Massachusetts Police Standards and Training Commission will provide a list of all currently-employed officers in MA, and agencies will be required to send similar records for all officers previously employed, who are now employed elsewhere.

Section 80: Initial appointments to the Massachusetts Police Standards and Training Commission: the Governor shall appoint 2 commissioners for a 1-year term; Attorney General shall appoint 2 commissioners for a 2-year term; and the Governor and AG shall jointly appoint 1 commissioner for a 3-year term, 1 commissioner for a 4-year term, and 1 commissioner for a 5-year term. Their successors shall be appointed for 5-year terms. Anyone appointed for less than a 5-year term may be reappointed twice for 5-year terms.

Section 81: Certification of law enforcement officers. An officer who has completed training/academy on or before this law goes into effect shall be certified as of the effective date of this law. Officers who have completed reserve training shall be certified, but before expiration of certification must complete additional training. Any training waivers granted shall expire 6 month after this law goes into effect. Any person who has not completed academy/training shall not exercise police powers after the expiration of the training waiver. Prior to expiration, an officer with a waiver may seek a waiver or extension to complete training according to an approved work plan by the police training and certification committee. Certification of law enforcement officers under this section will expire according to last name: A-H - 1 year after effective date, I-P - 2 years after effective date, Q-Z - 3 years after effective date.

Section 82: Commission on Corrections Officers - This commission shall review and recommend on 1) improving training protocols for state, county, and juvenile detention corrections officers, 2) establishing clear limitations on use of physical force, 3) creating an independent body with the power to certify officers and

investigate and adjudicate complaints of misconduct. The commission shall consist of a variety of stakeholders, including a former judge, 2 corrections officers, a formerly incarcerated woman, a member of the LGBTQ community, youth services members appointed by MBLLC, and various non-profit and advocacy groups. The commission will file its report by July 31, 2021.

Section 83: Establishes Body Camera Task Force. 17 members. Shall propose regulations for a uniform code for body cameras across MA, including requirements for use, officer access, storage and transfer of data, procurement contracts, punishment for non-use or tampering, etc.. Task force must conduct at least five public hearings, and meet no less than 12 times.. Members will include various government, police, judicial, constitutional law, and non-profit appointees. Deadline of January 31, 2022 to adopt recommended regulations, with a Jan. 31, 2021 interim report.

Section 84: Legislative Commission on use of Facial Recognition Tech by MassDOT. 13 members, chaired by joint chairs of the judiciary. Commission shall make recommendations on facial recognition system used by RMV, and recommendations for independent bias testing, provide standards for accuracy, management and access to info and data, what federal agencies have access and terms, evaluation on warrant use of facial recognition, privacy requirements, and due process where facial recognition is used as evidence. Deadline of July 1, 2021.

Section 85: Commission to study and examine civil service law, personnel admin rules, hiring procedures and municipalities not subject to the civil service law and state police hiring practices. 25 members, legislative, police, government, and non-profit. Speaker and Senate President shall appoint co-chairs. Commission shall study employment, promotion, performance evaluation, and disciplinary procedures for civil service, municipalities that don't use civil service, and state police including 1) hiring and recruitment process, 2) use of civil service eligible lists, statutory merit preference status, and hiring from eligible lists, 3) current exams and use of exams for hiring and promotion, 4) collective bargaining agreements by unions, 4) disciplinary procedures for employees, 5) identifying barriers that exist in hiring, recruiting, or promoting employees. Commission shall study feasibility of creating a statewide diversity office to establish affirmative action plans and guidelines for municipalities, oversee implementation of these plans, guidelines, and to monitor non-compliance. Commission shall consider the feasibility of cost of hiring a diversity officer for every municipality with police/fire. Commission shall make recommendations for changes to the civil service law to increase diversity, transparency, and community representation in recruitment/hiring/training, including changes to exams, merit preference status, eligible lists. Shall make recommendations for municipalities not under civil service, and state police. Commission shall meet monthly, and report its findings by the end of the year.

Section 86: Legislative Commission for the Establishment of a Statewide Cadet Program. 19 members, legislative, executive, law enforcement, and non-profit. Commission shall consider the establishment of a statewide cadet program through which law enforcement agencies can hire. Commission will consider impact on diversity, standards of admission, standards for exam and program, compensation and benefits, and specialized training. Deadline of July 21, 2021.

Section 87: School Resource Officers may continue to serve without additional certification, provided they receive certification by August 1, 2021.

Section 88: Legislative Commission on Structural Racism in Correctional Facilities. 15 members. Legislative, law enforcement, corrections, and non-profit. Shall investigate structural racism in written or unwritten

policies/action to determine disparity in treatment of persons of color, and access to education programs. Shall make recommendations to change. Reporting deadline of March 31, 2021.

Section 89: Legislative Commission on Structural Racism in Parole Process. 11 members, legislative, non-profits. Shall investigate structural racism in written or unwritten policies/action to determine disparity in treatment of persons of color, including conditions and revocation. Shall make recommendations to change. Reporting deadline of March 31, 2021.

Section 90: Legislative Commission on Structural Racism in the Probation Service. 11 members, legislative, non-profits. Shall investigate structural racism in written or unwritten policies/action to determine disparity in treatment of persons of color, including conditions of release and approval/denial for release. Shall make recommendations to change. Reporting deadline of March 31, 2021.

Section 91: Model School Resource Officer Memorandum of Understanding Commission. Convene no later than October 1, 2020, and issue recommendations by Feb 1, 2021 for 2021 school year.