

Comparison Police Reform Bill Document, between House (H.4860) & Senate (S.2820)

REMOVED *(in Senate but not in House bill)*

- **Latinx Commission** *(Section 1 of S.2820)*
 - Similar structure to the Commission on the Status of African Americans also created in Sec. 1
- **Community Policing and Behavioral Health Advisory Council**
 - Created by **Section 16 of S.2820**
 - **Section 66 of S.2820** tasked them with studying and making recommendations on the creation of a crisis response and continuity of care system that delivers alternative emergency services & programs, with an emphasis on non-police based community programs and jail diversion models.
- **Military-grade controlled property** *(Sections 36, 38, 39, 40 of S.2820)*
 - Would have required approval from an overseeing agency, a public hearing before a municipal legislative body, and reporting costs before state and local law enforcement and sheriffs' departments could apply for the transfer of military-grade controlled property or related funds
- **Criminal Justice and Community Support Trust Fund & Justice Reinvestment Trust Fund** *(Section 37 of S.2820)*
 - **Criminal Justice and Community Support Trust Fund**
 - Would have created grants for evidence-based responses and ongoing community services for people suffering from mental illness or substance use disorders and who are frequent users of emergency departments; services are to be patient focused and include jail diversion and restoration centers
 - **Justice Reinvestment Workforce Development Fund**
 - Would have created grants to workforce development programs that target communities where policing and mass incarceration have been highest; fund formula based on the change of the incarcerated population in DOC and HOCs with a \$10 million annual cap, subject to appropriation
 - Also included a provision requiring DOC to publish an itemized breakdown of its prior fiscal year spending by category on its website
- **Municipal Law Enforcement minimum accreditation feasibility study** *(Section 68 of S.2820)*
 - To be conducted by EOPSS, to issue recommendations on ensuring that all municipal police departments achieve a minimum level of accreditation from the Massachusetts Police Accreditation Commission, Inc., which was established in 1996 and became a private non-profit in 2004.
- **Expungement**
 - **Sections 59 & 60 of S.2820** clarified that individuals petitioning for expungement are able to do so for more than one record.
 - **Section 61 of S.2820** rewrites a section on eligibility for expungement, clarifying that charges or cases are eligible (and it can be more than one) and reduces the threshold for eligibility, requiring that a petitioner not have any other guilty determinations or record as an adjudicated delinquent or juvenile offender in the previous 7 years for felonies or 3 years for misdemeanors other than those up for expungement, rather than no other appearances in criminal or juvenile court ever.
 - **Section 72 of S.2820** permitted anyone who had been denied a petition for expungement solely for having more than one record to reapply.
- **10-year strategic plan for the Municipal Police Training Committee** *(Section 75 of S.2820)*
 - To establish its goals and objectives, including prioritization of financial resources, the scope of training, and an analysis of whether they will be able to provide the mandated in-service training to all existing officers.

- **Section 52 of S.2820** would have banned racial and other profiling, required data collection for all stops, frisks, and searches with, analysis, reporting, and accountability if the data demonstrates profiling
- **Section 55 of S. 2820** would have created a new MGL chapter (147A) on the regulation of physical force by law enforcement officers

CHANGED *(Concept included in both, but language changed from Senate → House versions)*

- **Make -up & size of Commission on the Status of African Americans** *(Section 1 of S.2820 & H.4860)*
 - The Senate commission had included 2 members appointed by the Senate & House minority leaders.
 - The House version excludes those members entirely, reducing it from 11 to 9 members.
- **Disclosures allowed under the statutory definition of “public records”** *(Section 2 of S.2820 & H.4860)*
 - For personnel and medical files/information, the Senate bill allowed disclosure of public records contained in the POSAC database or related to a law enforcement misconduct investigation.
 - POSAC database would include information on each certified law enforcement officer’s dates of certification, training program completion records, separation from employment, convictions, and misconduct complaints, which would be publicly available.
 - House bill eliminates mention of database information being disclosable, but allows files and info related to a misconduct investigation to be disclosed.
- **Facial recognition & biometric surveillance** *(Section 65 of S.2820; Section 25 of H.4860)*
 - Senate bill imposed a moratorium through Dec. 31, 2021 while a commission studies facial and biometric surveillance technology, with the exception of RMV use for ID verification when issuing licenses and other limited, internal use of facial recognition. No other agency or entity is authorized to request or access information obtained from these surveillance systems.
 - House bill puts a limitation on the use of facial recognition technology and biometric surveillance by public agencies, except the RMV, *until a law is passed to expressly allow it*. Allows law enforcement to request a facial recognition search from RMV only if they have a warrant or reasonable belief of immediate threat of death or serious injury. Requires RMV to publicly track and report law enforcement search requests. This active seeking of surveillance information is not allowed in the Senate version.
 - **Special legislative commission on use of face recognition technology** *(Section 65 of S.2820; Section 84 of H.4860)*
 - The Senate commission is on the use by DOT & law enforcement, whereas the House commission is only by DOT
 - Makes changes to the membership of the commission
 - *Adds:* minority leaders of each chamber, the Chief Justice of the Supreme Judicial Court,, the State Police Colonel, the registrar of motor vehicles and the Executive Director of the Massachusetts Technology Collaborative
 - *Removes:* appointees of the Speaker & Senate President, 5 members appointed by the governor, the ED of the New England Innocence Project, the ED of Jane Doe, Inc., the ED of the Massachusetts Coalition against Sexual Assault and Domestic Violence, and a representative from the American Immigration Lawyer Association.
 - House bill strikes two clauses from the charge of the commission which would have required recommendations to ensure the use of the system in a manner that protects privacy and promotes accountability, and to ensure compliance with limitations on the use of facial recognition.

- **Use of force definitions** (*Sections 6 & 55 of S.2820; Section 29 of H.4860*)
 - Senate bill created a new chapter of general laws for use of force definitions, House bill included definitions with POSTC section (*see below*). Senate's new chapter was 147A "REGULATION OF PHYSICAL FORCE BY LAW ENFORCEMENT OFFICERS")
 - Specifically moved definitions for "**Choke hold**", "**deadly physical force**", "**De-escalation tactics and techniques**", "**Imminent harm**", "**Law enforcement officer**", "**Necessary**", "**Totality of the circumstances**",
 - Definition of "law enforcement officer" was changed to be more confusingly written and include county corrections officers (Section 6 of Senate bill has their definition). House bill creates a secondary definition of law enforcement agency and the definition of "law enforcement officer refers to that).

- **Oversight of the decertification process of police:** (*Section 6 of S.2820; Section 29 of H.4860*)
 - **Police Officers Standards and Accreditation Committee's** name changed to **Police Officers Standards and Training Commission** (House bill),
 - Senate commission is comprised of 14 members, whereas House bill is 7 members
 - Senate membership appointed by Governor, with members nominated by various organizations. House bill splits appointments between AG and the Governor, with one required to be the chair of the Massachusetts Law Enforcement Policy Group, Inc and one needing to be a nominee of the Massachusetts Coalition of Police. Senate bill had requirements for nominees from organizations like NAACP and ACLU, but the House bill does not.
 - Senate bill allows law enforcement on Committee, House bill states no member shall have previously or currently be employed by a law enforcement agency and/or as a law enforcement officer.
 - POSAC/POSTC members shall be compensated in Senate bill / shall not be compensated in House bill (except for work-related reimbursements)
 - House bill requires that no more than 5 members be of the same political party, Senate does not. House bill also restricts elected officials from serving on committee, Senate does not. House bill has terms of 5-10 years; Senate has terms of 3 years.
 - Created new definitions that don't exist in the Senate bill, including "**Untruthful**" or "**untruthfulness**", "**training director**", "**Officer-involved injury or death**", etc. Reorganizes where the powers of the POSAC/POSTC are listed (consolidates into one bullet pointed list)
 - Creates new **Division of Police Training and Certification** and **Committee on Police Training and Certification**
 - CPTC will develop the curriculum on mental wellness and suicide prevention (developed by EOPSS in the Senate bill). Course is required annually, rather than officers being "notified" about it every 3 years.
 - Creates new **Division of Police Standards**, to investigate officer misconduct and make disciplinary recommendations to the POSTC (Sec. 8a)
 - Complaints received by an agency are to be transmitted to the DPS. Internal investigation outcomes and content are to be reported to DPS. DPS will run their own investigations, and make recommendations to the POSTC.
 - DPS will maintain a database of complaints against officers. Requires active monitoring of database for patterns of unprofessional conduct, though does not explicitly require it to be made public.
 - Allows for administrative suspension of an officer's certification, if they fail to complete in-service training requirements
 - Puts **chokeholds**, use of prohibited force, use of excessive force resulting in death, failure to intervene, bias, pattern of unprofessional conduct, etc as reasons for revocation of certification (Section 10)
 - Sections banning/limiting use of chokeholds, use of force, and failing to intervene are enforced via regs, while in Senate bill individuals are given a right to sue (under Secs. 11H and 11I of Ch.12) against these violations

- Requires annual reporting by the Commission to the legislature, governor, and AG

- **Qualified Immunity** (*Section 9 of S.2820; Section 32 of H.4860*)
 - Changes Senate language regarding law enforcement officers potential civil liability to necessitating conduct that results in decertification by the MPSTC
 - Includes the “threats, intimidation or coercion” language from MA Civil Rights Act rather than the Senate's “reasonable cause”
 - Removes Senate language allowing for AG to subpoena for documents, testimony, etc.

- **NDA in Settlement Agreements** (*Section 48 of S.2820; Section 64 of H.4860*)
 - Prohibits a law enforcement agency from including a nondisclosure, non-disparagement or other similar clause in a settlement agreement between the law enforcement agency and a complainant unless the complainant requests said provision in writing
 - Strikes Senate provision that would have allowed the settlement to include, but not be limited to, a provision that prevents the agency from disclosing the identity of the complainant and all facts that could lead to the discovery of the complainant’s identity, if requested and approved by the complaint

- **Overtime Fraud** (*Section 56 of S.2820; Section 75 of H.4860*)
 - While both bills allow punishment by 3x amount received as a result, the House bill also allows up to 2 years of jail time
 - House bill also removes Senate language allowing civil charges to be brought for overtime fraud

- **Sexual assault** (*Section 57 of S.2820; Section 76 of H.4860*)
 - Both bills prohibit law enforcement officers from having sexual intercourse with a person in custody. The House bill removes Senate language specifying activities to be considered under the umbrella of sexual intercourse.

- **Commission on use of force by corrections officers & juvenile detention officers** (*Section 82*):
 - *Both bills require them to study:*
 - Modernizing protocols of state and county correction officers and juvenile detention officers
 - Limitations on use of force by (House removes state from this section) county correction officers and juvenile detention officers
 - Establishing an independent body to study certifying corrections officers
 - *Senate bill requires, which house bill removes:*
 - Limitations on use of force by state corrections officers
 - Two bullets on access to and making public use of force records by inmates House removes a requirement for records on use of force to be provided to the commission for study
 - *Changes in membership of commission*

- **Student Resource Officer Regulations, Procedures, Policies:** *(Section 66 of H.4860, Sections 49 -51 of S.2820)*
 - *House bill adds:*
 - Adds certain definitions to the [SRO MGL](#) and updates/expands the SRO definition to include certifications required under subsection b of Chapter 6E as well as specific duties including law enforcement, promoting school safety and security services to elementary and secondary public schools, and maintaining a positive school climate for students/families/staff (Section 66)
 - Establishes a 21-member **Model School Resource Officer Memorandum of Understanding Review Commission** which:
 - Establishes minimum requirements for schools and police departments
 - Superintendents/Police Chiefs must adopt minimum requirements , but can add provisions
 - Final edition of memorandum of understanding will be public, on file at DESE, and in the Superintendents' and Police Chiefs' offices
 - In the case of a regional school district, commonwealth charter school or county agriculture school, Chiefs of Police will assign SROs in consultation with the superintendent and after receiving public input (*section 66 of H. 4860*)
 - Individuals will be given preference to be an SRO if they have the requisite personality and character, a demonstrated ability to work successfully with a population that has a similar racial and ethnic background as those prevalent in the student body, and who have received specialized training, including cognitive development, de-escalation tactics, and alternatives to arrest and diversion strategies.
 - Requires Police Chiefs with Superintendents to create operating procedures for SROs, set minimum operating procedures
 - Allows a school department to provide a written application to DESE (has to be approved by DESE) to waive having an SRO in its schools
 - Allows state police officer to be assigned to a school if there are not sufficient resources in the local police department
 - Includes liability protections for public employers and specifies that they are not creating or imposing a specific duty of care.
 - Instructs DESE to provide public disaggregated data on school based arrests, citations, and court referrals (this report will be available for public review)
 - Allows current SROs to continue without certification until August 1, 2021.
 - *The House bill removes:*
 - **In Section 49 of S.2820**, the requirement that SRO's will not disclose/submit certain information to a law enforcement office/agency or reporting database designed to track gang affiliation or involvement
 - **In Section 50 of S.2820**, a requirement for an annual School Committee vote for SROs and the requirement that a superintendent report annually to DESE and present to the school committee the following:
 - the cost of assigning a SRO;
 - proposed budget for mental, social or emotional health support personnel

- number of school-based arrests, citations and court referrals made in the previous year disaggregated as required by DESE
- **In Section 51 of S.2820**, requirement that DESE collect data regarding the number of mental and social emotional health personnel and the number of SROs employed by each local education agency
- **Commissions on Structural Racism**
 - **Section 67 of S.2820** established a 31-member commission aimed toward dismantling “structural racism in a systemic way that eliminates the violence of arrest, disparities of incarceration, and barriers to positive community re-entry” and conducting a comprehensive and iterative review of disparate impacts, trauma, and racial inequities in the DOC as well as other segments of the CJ system including policing, parole, and re-entry. It also required them to recommend policies that prioritized restorative justice, health care, public health, and behavioral health alternatives to incarceration. It also required them to develop a roadmap toward establishing a permanent, publicly funded government entity with expertise to dismantle structural racism to make recommendations to the DOC, the governor and executive agencies, and the legislature. This section was struck in the House bill.
 - **H.4680** instead creates three separate commissions:
 - **Section 88:** A 15-member **Commission on Structural Racism in Correctional Facilities** to investigate disparate treatment of POCs incarcerated in state & county facilities in the Commonwealth and determine the role of structural racism in those disparities. More specifically it requires them to review policies and procedures and programming in place at such facilities to “*determine if there are disparities in the treatment of persons of color and if structural racism at these facilities is the cause of those disparities,*” and make recommendations to eliminate the disparities in treatment.
 - **Section 89:** An 11-member **Commission on Structural Racism in the Parole Process** to investigate disparate treatment of POCs in the parole process and determine the role of structural racism in those disparities. More specifically, it requires them to “*conduct a thorough review of 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 the cause of those disparities,*” and make recommendations to eliminate those disparities in treatment.
 - **Section 90:** An 11-member **Commission on Structural Racism in the Massachusetts Probation Service** to investigate disparate treatment of POCs in the Massachusetts Probation service and determine the role of structural racism in those disparities. More specifically, it requires them to “*conduct a thorough review of the probation process to determine if there are disparities in treatment of persons of color in the probation system and if structural racism is the cause of those disparities,*” and make recommendations to eliminate those disparities.
- **Establishment of cadet program → committee on the establishment of a cadet program**
 - **Section 24 of S.2820** allowed the State Police Colonel to establish a cadet program for individuals between 19-25, which was struck.
 - Instead, **Section 86 of H.4860** creates a 19-member commission to study the establishment of a statewide law enforcement officer cadet program
- **No knock warrants**
 - Removes Senate language that would have required EOPSS to report annual data on no knock warrants and outcomes

ADDED (in House but not in Senate bill)

- **Creation of Committee on Police Training and Certification (CPTC)** (Sections 3-24 of H.4860)

- **Municipal Police Training Committee (MPTC)** eliminated and replaced with **CPTC**.
- Former MPTC Exec. Dir. replaced by Training Director of the Massachusetts Police Standards and Training Commission on EOPSS Committee on Criminal Justice.
- **CPTC** initiatives that were originally **MPTC** responsibilities:
 - Basic training and guidelines for response to DV and sexual assault complaints.
 - Course of instruction stressing the use and application of technology to increase public safety.

 - Can develop training to be added to the basic training curriculum regarding bicycle safety enforcement and guidelines for bicyclist safety enforcement.
 - In-service training program expanded to all law enforcement officials (not just local officials)
 - Creation of School Resource Officers in-service training (House: Section 22; Senate Section 5) Language is the same in Hou and Sen versions.
- **Section 79 of H.4860** requires every MA law enforcement agency to submit disciplinary records and complaints against every officer to the police standards and training commission by December 31, 2020.
- **Section 80 of H.4860** outlines how members of the Massachusetts police standards and training commission are appointed, length of their terms, and term limits
- **Section 81 of H.4860** grandfathers in certification for officers who are currently working and have been trained appropriately. It then sets three tranches of officers (alpha by last name) to expire in one year (A-H), two years (I-P), and three years (Q-Z) respectively.
- Renames the “Municipal Police Training Fund” as “Police Training Fund”. (Section 31)
- **Section 35 of H. 4860** establishes the **Division of Police Standards and Professional Conduct Enforcement** within the Office of the Attorney General to enforce criminal offenses committed by law enforcement officers.
- **New language related to Massachusetts State Police**
 - **Section 47 of H.4860:** If a member of the State Police exceeds a 1 year break of service, the colonel will not allow the member to return if they fail to successfully pass a background investigation, drug testing, applicable physical fitness testing, psychological testing, and complete retraining by the CPTC
 - **Section 48 of H.4860:** Any member, retired for disability for more than 3 years will not return to active service if they fail to meet CPTC requirements
 - **Sections 51-52 of H.4860:** Technical changes to appointment of civil defense agency employees as special state police officers, requiring them to receive the same CPTC training and certification
 - **Sections 54-56 of H.4860:** Clarifies that appeals of disciplinary decisions of the new Massachusetts Police Standards and Training Commission are not subject to civil service laws.
- **Civil Service Commission** (*Section 85 of H.4860*)
 - Establishes a 25-member commission tasked with “examining the civil service law, personnel administration rules, hiring procedures, and bylaws for municipalities,” as well as evaluating the “feasibility of creating a statewide diversity office...to establish affirmative action plans and guidelines for municipalities”.
- Requires that full-time UMASS officers be certified under 6E (section 67)

“POST” Commission Structures:



HOUSE

