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A S S O C I A T I O N

REPORT OF THE MBA'S POLICE REFORM WORKING GROUP IN SUPPORT OF RESOLUTION ON SYSTEMIC POLICE REFORM

INTRODUCTION

The Massachusetts Bar Association's Police Reform Working Group ("PRWG") is a collaboration of its Criminal Justice Section Council and the Civil Rights and Social Justice Section Council, in cooperation with the Massachusetts Black Lawyers Association ("MBLA") and the Massachusetts Association of Hispanic Attorneys ("MAHA"). The PRWG is comprised of defense attorneys, prosecutors, civil rights attorneys and a law enforcement officer. Members and co-chairs include (in alphabetical order): Nate Beaudoin, Richard Cole (Co-Chair), John Diaz (MAHA), D'Andre Fernandez (MBLA), Lee Gartenberg, Anne "Beau" Kealy, Danielle Pires, Kevin Powers and Charu Verma (Co-Chair). Our shared goal and mission is to develop proposed legislative reforms to address systemic issues in policing that have been brought to the forefront with the killings of Sandra Bland, Michael Brown, Philando Castile, Eric Garner, George Floyd, Daniel Prude, Tamir Rice, Breonna Taylor and countless others, which have undermined public trust in law enforcement. After careful consideration, we identified three major areas for significant law enforcement reform to re-imagine a more just and equitable system of policing:

- Legal accountability
- Mandated mental health training and support
- Standardized statewide training; hiring and retention

Members of the PRWG researched and studied the selected topics to identify potential systemic solutions, including effective models in other states. This included presentations by and a dialogue via Zoom with a diverse range of experts to share their expertise and provide us additional supporting materials.

Many thanks to those experts: Professor Karen Blum, Suffolk University Law School; Michael Gaskins, Diversity Recruitment Officer, Boston Police Department; Tasha Ferguson, Director, Emergency Services Program, Boston Medical Center ("BEST TEAM"); Rahsaan Hall, Director of Racial Justice Program, ACLU of Massachusetts; Professor Jack McDevitt, Director, Institute on Race and Justice, Northeastern University; and Howard D. Trachtman, co-founder and President Emeritus, National Alliance on Mental Illness ("NAMI") Greater Boston.

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RESOLVED, That the Massachusetts Bar Association (“MBA”), which has long supported equal justice, due process, racial equality, and the rule of law as guaranteed by the United States Constitution and the Massachusetts Constitution and its Declaration of Rights, reaffirms its support for the protection of Constitutional and civil rights, racial justice and the rights of individuals to receive proper redress in the Courts. Accordingly, the MBA urges the Legislature to adopt the following principles set forth in this Resolution in enacting vital systemic police reform legislation aimed at promoting law enforcement accountability, supporting officer wellness and service-oriented policing, eradicating racial injustice, protecting the civil liberties of persons with mental illness, and providing full and fair consideration for those who suffer harm from unlawful policing practices. The MBA also urges the Legislature to appropriate the necessary funds and resources to achieve these essential police reforms.

1) Replacing Qualified Immunity for Law Enforcement Officers

Eliminate the judicially-created defense of qualified immunity for law enforcement officers and replace it with a different standard that only provides a defense when the defendant officer is able to establish that their actions or failure to act, under color of law, was objectively reasonable and taken in good faith.

RATIONALE

The defense of qualified immunity is not found in the federal civil rights statute, 42 U.S.C. 1983, or any other federal or Massachusetts state statute. It is a judicially created defense. The defense stems from a 1961 incident of systemic racism. See Pierson v. Ray, 386 U.S. 547 (1967). In Harlow v. Fitzgerald, 457 U.S. 800 (1982), the U.S. Supreme Court used the term “qualified immunity” for the first time. Since Harlow, the courts have taken an increasingly expansive view of qualified immunity. For example, the Supreme Court has decided that a judge, rather than a jury, should decide the issue of qualified immunity, thereby making it more difficult for plaintiffs to bring their cases before a jury. Anderson v. Creighton, 483 U.S. 635, 650 (1987).

The U.S. Supreme Court has mandated a two-step analysis to be used in civil rights cases, making it more difficult for victims of such violations to seek redress. The two-step process requires courts to decide, as a preliminary matter, whether: (1) the plaintiff articulated a violation of a constitutional right; and (2) if so, whether the right was clearly established at the time of the defendant’s alleged misconduct. The courts have also taken a very narrow

view of what it means for a constitutional violation to be “clearly established.” In a 2018 law review article, Professor Karen Blum of Suffolk University Law School found that the Supreme Court had confronted the issue of qualified immunity in over thirty cases, with the plaintiff prevailing in only two.¹ Professor Joanna Schwartz, who has written extensively on the subject, stated that, “the doctrine provides unnecessary protection to police officers who are indemnified for their wrongdoing in the overwhelming majority of cases.”²

The proposed statutory change would significantly improve plaintiffs’ likelihood of prevailing and obtaining monetary relief against officers for misconduct in a civil rights lawsuit under state law. Importantly, this proposed legislative change not only establishes a much fairer standard for courts and juries to evaluate civil rights violations by law enforcement officers, it would also shift the burden of proof to a defendant officer to establish that their actions or failure to act “was objectively reasonable and taken in good faith,” rather than requiring that the plaintiff establish that the alleged constitutional violation was “clearly established,” as presently defined by the courts.

2) Amending the Massachusetts Civil Rights Act

Amend the Massachusetts Civil Rights Act, M.G.L. Chapter 12, §§ 11H and 11I, by adding language that provides individuals the same ability to sue for violations of rights under color of law guaranteed by the United States or Massachusetts Constitutions or federal or state law, as provided in 42 U.S.C § 1983.

RATIONALE

M.G.L. Chapter 12, §§ 11H and 11I, also referred to as the Massachusetts Civil Rights Act (“MCRA”), is often considered the Massachusetts equivalent to 42 U.S.C. § 1983, the federal civil rights law. It is not. The Massachusetts Supreme Judicial Court contributed to this misunderstanding by stating that the MCRA was meant to be coextensive with 42 U.S.C. § 1983. See Redgrave v. Boston Symphony Orchestra, 399 Mass 93 (1987). Coextensive is commonly defined as extending over the same space or time, corresponding exactly in extent, or equal to. As discussed below, however, the MCRA does not provide the same rights as 42 U.S.C. § 1983, and the difference is substantial.

The primary genesis for enacting the MCRA in 1979 was the growing concern over acts of racially motivated violence that were occurring with increasing frequency in Massachusetts. See Batchelder v. Allied Stores, Inc, 393 Mass. 819, 822-823 (1985). The racial violence at

¹ Karen Blum, “Qualified Immunity: Time to Change the Message,” 93 Notre Dame L. Rev. 1887 (2018).

² Joanna Schwartz, “Police Indemnification,” 89 N.Y. L Rev. 885 (2014).

that time was connected to the desegregation of the Boston Public Schools and Black families moving into predominantly white neighborhoods in Boston.

One of the two civil components of the MCRA, M.G.L. Chapter 12, § 11H was directed primarily at enabling the Attorney General to obtain civil rights injunctions against civil rights perpetrators of bias-motivated violence, harassment or intimidation. The other civil component of the MCRA, M.G.L. Chapter 12, § 11I, was enacted to provide a civil remedy for individuals against public officials or private persons who interfere with that individual's rights secured by the United States or Massachusetts Constitutions or federal or state law.

In one respect the MCRA provides a broader right than 42 U.S.C. § 1983, which requires the alleged bad actor to have acted under color of law. In contrast, the MCRA does not require that the defendant acted under color of law.

However, importantly here, the MCRA requires that the Attorney General or an individual plaintiff overcome a significant additional hurdle when seeking a civil legal remedy under the MCRA against a law enforcement officer engaged in an unlawful police practice under color of law. Unlike 42 U.S.C. § 1983, both MCRA Sections, 11H and 11I, require that a violation involve "threats, intimidation or coercion." As a series of state court decisions have demonstrated, a direct violation of a person's constitutional or civil rights is not sufficient to prevail under the MCRA. See for e.g., Longval v. Commissioner of Corrections, 404 Mass. 325, 333 (1989); Layne v. Supt. Mass. Correctional Inst. Cedar Junction, 406 Mass. 156, 158 (1989). Therefore, if a law enforcement officer unlawfully shoots and murders a civilian, without "threats, intimidation or coercion," the victimized plaintiff would not have a civil legal remedy under the MCRA.

As proposed, the amended MCRA would eliminate this almost impossible roadblock for the Attorney General and those persons seeking redress under state law for violations of their civil rights under color of law. By doing so, it would more effectively protect victims' rights and prevent police misconduct. It would also make the MCRA more consistent with the rights protected under 42 U.S.C. § 1983 for claims against persons acting under color of law, while maintaining the right under the MCRA to bring claims against private persons.

3) Decertifying Massachusetts Law Enforcement Officers

(A) Establish an independent "Police Officer Standards and Accreditation Committee" with the power to revoke, temporarily or permanently, the certification of any law enforcement officer in the Commonwealth. The Committee should include appointed members who represent the broad range of Massachusetts stakeholders with expertise in law enforcement practices, including members from the civil rights advocacy community.

(B) Provide the Committee with the power to independently investigate and conduct revocation proceedings for any complaint of officer misconduct. The Committee should decertify an officer if found to have engaged in any form of significant misconduct. When decertified, the officer should be prohibited from serving as a law enforcement officer in the Commonwealth, unless or until their decertification is removed. A decertification decision should be appealable pursuant to M.G.L. Chapter 30A, and not to the Civil Service Commission, or any other agency or entity.

RATIONALE

This police reform accountability provision assumes that the Legislature will adopt a certification and licensing system for law enforcement officers employed in the Commonwealth. As reported in the media, Massachusetts is one of only six states that currently has no licensing requirement for law enforcement officers. This is extraordinary when considering officers' power and legal authority to detain, search, arrest and use force, including deadly force, when at the same time, Massachusetts has licensing requirements for so many other professions.

There is general agreement that the current disciplinary system for law enforcement in the Commonwealth has been ineffective in addressing and holding accountable officers engaged in misconduct. Appropriate discipline is often long-delayed or not imposed at all. The "decertification" provision provides the broad outline for establishing an effective process to hold accountable law enforcement officers who have engaged in "any form of significant misconduct." This provision urges the Legislature to authorize "an independent 'Police Officer Standards and Accreditation Committee' with the power to revoke, temporarily or permanently, the certification of any law enforcement officer in the Commonwealth." As the provision states, "when decertified, an officer would be prohibited from serving as a law enforcement officer in the Commonwealth, unless or until their decertification is removed." Also, to streamline and make a more uniform process, the "decertification decision should be appealable pursuant to M.G.L. Chapter 30A, and not to the Civil Service Commission, or any other agency or entity."

4) Banning Profiling

(A) Ban differential treatment of civilians by a law enforcement officer, department or agency based on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status or sexual orientation and gender identity, whether intentional or evidenced by statistically significant data showing disparate treatment.

(B) Provide that whenever data shows a statistically significant disparity in traffic stops or traffic searches or in pedestrian stops, frisks or searches by a law enforcement officer or a law enforcement department or agency, based on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, or sexual orientation and gender identity, such data shall constitute rebuttable evidence sufficient to sustain a finding of profiling, constituting a violation of the Massachusetts Civil Rights Act, M.G.L. Chapter 12, §§ 11H and 11I.

RATIONALE

The “Banning Profiling” provision builds on the data collection Resolution approved by the MBA’s House of Delegates, as part of its adoption of a package of five criminal justice reform Resolutions in May 2017. The 2017 Resolution was titled, *“SUPPORTING ENHANCED DATA COLLECTION BY LAW ENFORCEMENT.”*

In the 2017 Resolution, the MBA urged its adoption “to promote effective, non-discriminatory policing, eliminate racial and gender profiling by law enforcement in Massachusetts, and enhance public trust and confidence in law enforcement by addressing the public perception that police use illegal forms of profiling.” It urged that “law enforcement agencies and departments throughout the Commonwealth . . . collect and report demographic data (including but not limited to racial and gender data) in a uniform and standardized manner,” and that the “state legislature . . . enact legislation similar to Chapter 228 of the Laws of 2000, ‘An Act Providing for the Collection of Data Relative to Traffic Stops,’ but expanding its applicability to include not only all traffic stops (identifying stops which resulted in a warning, citation, or arrest, and searches incident to traffic stops), but also pedestrian stops and encounters whenever a member of the public is interrogated, frisked, or searched by a law enforcement officer, including by a college or university law enforcement officer.” The 2017 Resolution further stated that, “Whenever data suggests the potential that law enforcement agency or department may have engaged in racial or gender profiling, these agencies and departments should use the data analysis to identify and address the reasons for any racial or gender disparity in their traffic enforcement or pedestrian stops, and implement changes in policies, practices, supervision and training that would help ensure that racial or gender profiling is not occurring in their community and the Commonwealth.”

Here, the “Banning Profiling” provision advocates for a state law that specifically bans profiling in “traffic stops or traffic searches or in pedestrian stops, frisks or searches.” It also urges the Legislature to specifically authorize a civil rights cause of action under the MCRA in circumstances where a plaintiff is able to prove that such profiling was intentional, or by establishing it through “statistically significant data showing disparate treatment.” This state cause of action under the MCRA would provide a strong incentive for law

enforcement departments and agencies to carefully monitor its data to identify and address any such “differential treatment,” while at the same time providing a strong disincentive for individual officers or law enforcement departments and agencies from engaging in the banned forms of profiling.

5) Providing for *Respondeat Superior* Liability for Law Enforcement Departments and Agencies

Amend the Massachusetts Civil Rights Act to provide that any law enforcement department or agency in the Commonwealth shall be held civilly liable and responsible for the acts and practices of any of its officers performed under color of state law, under *Respondeat Superior*. Liability should attach where an officer of that department or agency has been found to have violated a person’s federal or state constitutional rights by a use of force that resulted in serious harm or death, or where an officer of that department or agency has been found to have failed to intervene where it was possible to prevent the use of unreasonable force by another officer or officers and where such force resulted in serious harm or death.

RATIONALE

The “*Respondeat Superior* Liability” provision would clearly establish through state law that law enforcement departments and agencies in the Commonwealth are legally responsible for the harm caused by their officers who have engaged in the most serious forms of police misconduct, in violation of a person’s federal or state constitutional rights. Such liability would attach where an officer’s misconduct, through their actions or failure to act, “results in serious harm or death.” Presently, officers found responsible for misconduct through court judgment or agreement do not, except for the most extraordinary circumstances, pay-out-of-their-own-pocket the amount of damages awarded to a plaintiff, or any portion of the damages. Rather, the state or municipality itself indemnifies an officer found to have engaged in misconduct, including the most serious forms of misconduct.

Establishing a clear legal standard under state law for “*Respondeat Superior* Liability” for the most serious cases of police misconduct provides a needed legal remedy for individuals suffering serious harm or death by such unlawful policing practices. It would also motivate law enforcement departments and agencies, and the state and municipalities under which they serve, to make additional efforts to enhance their prevention and accountability measures. This includes creating more effective early warning systems to identify and address officers-in-trouble, improving needed supervision systems and training, and implementing more effective policies, standards of behavior, corrective action practices and disciplinary consequences.

6) Prohibiting Use of Choke-Holds

Prohibit law enforcement officers in the Commonwealth from using any form of choke-hold, including but not limited to applying pressure on the throat or windpipe, any action that restricts blood or oxygen flow to the brain or prevents or hinders breathing, or any other action that involves the placement of an object or any part of a law enforcement officer's body on or around a person's neck that limits the person's breathing or blood flow.

RATIONALE

This provision asks the Legislature to explicitly prohibit the use of any form of choke-hold by law enforcement officers in the Commonwealth. Although a number of law enforcement departments and agencies either have policies that ban choke-holds or indicate that such restraint methods are not sanctioned, recent tragic events in policing make clear the imperative to explicitly prohibit and make illegal under state law all choke-hold-related practices.

7) Authorizing Pattern and Practice Investigations by the Attorney General

Authorize the Massachusetts Office of Attorney General to investigate and bring a civil action for injunctive or other appropriate equitable or declaratory relief against any Massachusetts law enforcement department or agency, where the Attorney General has reasonable cause to believe that the department or agency has engaged in a pattern or practice of violating federal or state constitutional rights under color of law.

RATIONALE

Under this provision, the Legislature would grant the Massachusetts Office of Attorney General ("AGO") with new, vitally important statutory authority and responsibility to hold law enforcement departments and agencies accountable to address and eradicate systemic forms of unlawful policing practices in the Commonwealth. The AGO would be granted statutory authority to investigate state and local law enforcement departments and agencies in Massachusetts believed to have engaged in a pattern or practice of unconstitutional or unlawful policing. If the investigation reveals such pattern or practice, the AGO would then have the explicit statutory authority to file a lawsuit in state or federal court to seek civil remedies, including an injunction to stop the identified unlawful practice(s) and specific performance to change such practice(s). This new AGO "pattern or practice" statutory authority would be similar to the authority statutorily provided to the U.S. Department of Justice.

A pattern or practice of institutionalized misconduct and systemic deficiencies must be fixed at an organizational level. A law enforcement department or agency cannot remedy the problem simply by holding individual officers accountable. When law enforcement departments and

agencies are held accountable by the AGO for a pattern or practice of misconduct, through a fair and impartial process, such actions will build community trust and confidence in our system of justice.

Granting the AGO this statutory authority is not only particularly important at this time, where the public has increasingly recognized racial injustice in policing practices, but also because presently the U.S. Department of Justice has almost completely abdicated its investigative and enforcement authority to address unlawful policing practices in the United States.

8) Authorizing Independent Investigations by the Attorney General

Authorize the Massachusetts Office of Attorney General to act as an independent prosecutor, or appoint an independent special prosecutor, to investigate, and to prosecute a law enforcement officer when determined by the Attorney General or independent prosecutor to have violated a person’s federal or state constitutional rights under color of law by a use of force that resulted in serious harm or death, or where an officer of that department or agency has been found to have failed to intervene where it was possible to prevent the use of unreasonable force by another officer or officers where such force resulted in serious harm or death.

RATIONALE

Local prosecutors rely on law enforcement departments and agencies to gather evidence and testimony they need to successfully prosecute criminals. This can make it difficult for local prosecutors to investigate and prosecute the same officers they work with and rely upon. These serious criminal civil rights cases should not depend on law enforcement departments and agencies to investigate themselves. Additionally, District Attorney offices often have an actual or perceived conflict in prosecuting the officers they work with, or an actual or perceived predisposition to protect officers they work with from criminal culpability.

Under this proposed state statutory provision, the Massachusetts Office of Attorney General (“AGO”) (or independent special prosecutor designee) would be authorized to investigate and, where appropriate, prosecute cases where a law enforcement officer causes serious harm or death to a civilian, and cases where a civilian alleges criminal misconduct against a law enforcement officer. Data from research and studies establishes that people of color disproportionately suffer as a result of police misconduct and violence with devastating consequences.³

³ <https://www.aclum.org/sites/default/files/wp-content/uploads/2015/06/reports-black-brown-and-targeted.pdf>

The AGO (or independent special prosecutor designee) involvement in investigating serious officer misconduct is not only imperative to alleviate the public's valid concerns of potential conflicts of interest, but also to help promote and build trust of community members in law enforcement in Massachusetts. Providing the AGO (or independent special prosecutor designee) the authority to independently investigate, and prosecute, where appropriate, for serious misconduct that results in devastating injuries or death, also serves the goal of increasing police accountability.

9) Mandating the Duty to Intervene

(A) Require that an officer who observes another officer using physical force, including deadly physical force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, to intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.

(B) Require that an officer who observes another officer using physical force, including deadly physical force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances to report the incident to their direct supervisor as soon as reasonably possible but not later than the end of that officer's shift.

(C) Provide that an officer who has a duty to intervene and fails to do so may be held liable jointly and severally, and may be held criminally responsible, along with any officer who used unreasonable force for any injuries or death caused by such officer's unreasonable use of force.

RATIONALE

Mandating law enforcement officers to intervene and report excessive use of force is necessary to build community trust in law enforcement, especially in disenfranchised and over-policed neighborhoods in the Commonwealth. One of the reasons for community distrust of law enforcement departments and agencies is the perception that officers are often not held accountable. Sworn law enforcement officers have an obligation to protect the public, and to prevent their fellow officers from violating the law. Therefore, law enforcement officers should have the individual responsibility to intervene and stop any other officer from committing an unlawful or improper act, including but not limited to acts of brutality, abuses of authority and any other criminal act or major violation of their respective departmental or agency policies and procedures. Therefore, the Legislature should statutorily mandate a duty to intervene and report when law enforcement officers witness incidents of other officers using physical force, including deadly physical force, beyond that which is necessary or objectively reasonable. This would place an affirmative duty on all officers to police themselves.

10) Improving Response to Mental Health Crises and Promoting Law Enforcement Wellness

(A) Require “Crisis Intervention Team” Training (“CIT”), using a minimum forty (40) hour module, and de-escalation training for 911 dispatchers, first responders and all new recruits to properly screen and assess calls. The initial training of 911 dispatchers should focus on skills that will equip and enable them to properly identify and divert mental health-related calls to a qualified mental health professional and/or CIT-trained officer.

(B) Institute as a best practice having a co-responder clinician available to all police officers, including CIT-trained officers, to respond to appropriate calls on all shifts. This would include utilizing mobile-crisis clinicians, and peer support for officers and persons in crisis, in order to provide responding teams with the ability to make immediate and effective diversion referrals focused on connecting people to care.

(C) Provide officer wellness and comprehensive trauma-informed training and resources to fully support officers and enable them to provide appropriate response and meaningful engagement with members of the community. Adequate resources and training should include, but not be limited to, discussion of personal and family mental health, development of effective two-way communication skills and strategies about job and personal stress, detailed discussion about support available through the confidential and trusted Employee Assistance Program (“EAP”), peer counseling, personal crisis intervention, and cultivation and maintenance of a healthy work environment.

(D) Educate police departments and agencies about existing funding and availability of training to ensure adequate training both qualitatively and quantitatively, with effective grant research and application procedures in place and in coordination with regional training.

RATIONALE

Police and other law enforcement officers are often placed in unique positions where they respond to calls involving persons in mental health crises. Many, however, lack the formal training to safely and effectively deal with these types of situations. Often, a person who is experiencing a mental health crisis may appear to be non-compliant and is therefore placed under arrest for charges such as disorderly conduct or resisting arrest, when in fact they are unable to process the instructions given by officers. CIT training that emphasizes effective communication, de-escalation, and education about mental health concerns, will equip responders with tools to alleviate anxiety and agitation associated with persons in crisis.

While CIT training is geared toward addressing the needs of those they encounter in the community, officers also gain insight into self-care. Because they often see themselves as

caregivers, they may be reluctant to admit or not realize that they themselves also need help. Officer wellness plays a critical role in police work. While an officer's wellness is normally measured by physical fitness, mental health is as essential as physical health. The daily stress endured by police officers can have serious implications on both their physical and psychological well-being and may impact their initial on-scene assessment and response. Additionally, long hours often cause sleep deprivation and cumulative stress which builds as a consequence of the inability to decompress from daily challenges, adding to existing personal and family pressures. The outcome of a traumatic encounter may weigh heavily on an officer's ability to see things clearly. Along with responding to the mental health concerns of those they encounter on scene, preservation of their own mental health for some is a persistent concern. The stressors of police work have serious consequences to officer safety and overall wellness.

Therefore, police officers should receive adequate training and supportive services, when needed. These services should include access to counseling through credible, independent, offsite employee assistance programs, access to psychological services and access to peer-support groups who can provide confidential services to officers. As we support the idea of CIT training for officers to encourage healthy interactions between officers and persons in crisis, we should support the importance of good health and wellness for police officers. Through training and these services, officers can learn to identify and process trauma in a healthy way.

At the time of response, police officers can readily access criminal history but have little or no information about the person's mental health situation. Lack of CIT training impedes comprehensive need assessments. Assessments are more difficult because the person in crisis may not be able to explain what they are experiencing. As a result, they may respond to an officer's inquiries in a manner perceived as dangerous by an officer who is not CIT trained. This has the potential to escalate the interaction and result in an inappropriate arrest or unnecessary restraint, rather than diversion to treatment. While well-intentioned, if inadequately trained, an officer's response may not be effective.

CIT training promotes necessary partnerships between law enforcement, mental health and advocacy communities. These relationships enable better responses by fostering coordination with community mental health professionals and co-responders who provide peer counseling, or diversion to facilities that address crisis and trauma issues. Along with providing a more effective response, utilization of these resources, which are often provided by grant-funded organizations, saves money.

A greater and continuous focus on mental health and policing is imperative to create community interactions which promote the safety and personal dignity of persons with mental illness as well as the officers involved. Mandated CIT and officer wellness training enhances officer health and safety, while equipping them with the skills and support

needed to respond appropriately. Necessary funding and resources should be made available for the purpose of integrating these services and critical training for police officers.

11) Enhancing Law Enforcement Training

(A) The Commonwealth should develop and adopt model, standardized statewide training modules for mandatory implementation by all police academies and all law enforcement departments and agencies for recruit and in-service training. This mandatory training should include regular and effective training on bias and cultural competency, use of force, de-escalation, and mental health and officer wellness, to help ensure empathetic, skilled and lawful interactions with people of different races, religions, backgrounds and cultures, including members of the LGBTQ community.

(B) Any additional, specialized in-service training, as set forth in Section (A), should be incentivized by rewarding trainees with preference and/or points for promotion.

(C) All law enforcement departments and agencies should use body-camera footage (when available) and enhanced data collection as a training tool to identify and implement best practices.

RATIONALE

Model, standardized statewide training on bias and cultural competency, use of force, de-escalation, and mental health and officer wellness, starting at the police academy and continuing while in-service, is essential to the safety and well-being of officers. It also helps build departments and agencies that better reflect the ideals of the community they serve and protect. Mandated, standardized statewide training also offers an avenue for police reform that is rooted in evidence-based learning, with particular attention paid to implicit bias and cultural competency training. Curriculum should include education on the history of slavery, lynching and systemic institutionalized racism, especially in the criminal legal system.

In-service trainings should be implemented regularly throughout an officer's career to create awareness of prejudices and biases. In addition, the use of body-worn camera footage (when available) and enhanced data collection can assist in identifying patterns of bias, best practices in policing and serve as a useful training and accountability tool. Studies have shown that re-orienting training towards a non-stress model which emphasizes academic achievement, de-escalation, cultural competence, physical training and a supportive instructor-trainee relationship is more conducive to training officers that embody the ideals of just-policing.⁴ Rewarding officers who demonstrate a commitment by participating in additional, specialized in-service training by receiving promotion preference points, will encourage officers to evolve

⁴ https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

and adapt to the needs of their community. The selection process for officers to participate in additional, specialized training should be fair, equitable, open and transparent, and promotes diversity. In advocating for enhanced additional training for law enforcement officers, the MBA will join leading justice reform organizations such as the NAACP, the American Civil Liberties Union, the Institute for Criminal Justice Reform, and in the recent past, by the U. S. Department of Justice.

12) Increasing Diversity in Hiring

(A) All Massachusetts law enforcement departments and agencies should commit the necessary resources to engage in thoughtful and targeted recruitment and hiring to ensure that they reflect the diversity and values of the communities they serve, address issues of structural and institutional racism and promote equitable and inclusive workplaces for all their officers.

(B) Every law enforcement department and agency should hire a Chief Diversity Officer or utilize their municipal or agency's Chief Diversity Officer to ensure a diverse and inclusive recruitment and promotion process and workplace, promote improved training and community engagement, and to safeguard the due process concerns of officers facing disciplinary actions.

RATIONALE

Investing resources to expand hiring and recruiting efforts to foster diversity and inclusion will lead to law enforcement departments and agencies that reflect the communities they serve. Focusing on targeted recruitment will help address the disparity that persists between the percentage of white officers and the percentage of white community members. In Massachusetts, every law enforcement department and agency has a higher percentage of white officers than the percentage of white community members. For example, the Boston Police Department is comprised of 65.5% white officers while the city is comprised of only 46.1% white residents.⁵ In Lowell, 80.8% of the police force is white, but only 51.8% of their residents are white.⁶ In Springfield, 63.6% of the officers in the police department are white, but only 35% of their residents are white.⁷ In conjunction with targeted recruiting and hiring, enhanced data collection to track recruitment efforts, applicant pools and new hires will identify areas that require a greater focus.

⁵ <https://www.governing.com/gov-data/safety-justice/police-department-officer-demographics-minority-representation.html>

⁶ <https://www.governing.com/gov-data/safety-justice/police-department-officer-demographics-minority-representation.html>

⁷ <https://www.governing.com/gov-data/safety-justice/police-department-officer-demographics-minority-representation.html>

By engaging in targeted recruiting, law enforcement departments and agencies will have the opportunity to hire officers that possess the character traits and social skills that enable effective policing and positive community relationships. Encouraging departments and agencies to establish longer residency requirements for applicants will allow for officers with deeper ties to the communities they serve and ensure that the departments and agencies themselves are an accurate reflection of those communities.

Re-envisioning recruiting efforts to attract “guardians” to law enforcement by focusing less attention on the “warrior” role of policing and more attention towards community caretaking will foster a more holistic, community-oriented police force. Special consideration should be given to candidates who have engaged in activities that support characteristics and skills the department or agency is looking for, such as community service and/or volunteer activities that demonstrate the ability to work with diverse communities in different settings. In addition, utilizing input from civilian employees/officers and community stakeholders in the recruitment and hiring process will help build relationships between the police and the communities they serve, and help ensure that each community’s specialized needs are met.

Utilizing a Chief Diversity Officer (“CDO”) is an essential component in achieving a diverse and inclusive law enforcement department or agency. A CDO works across the organizational structure to optimize diverse and inclusive hiring in departments or agencies to help to align diversity and inclusion goals with desired outcomes, and respond to changes or policies that affect the organizational structure. CDO’s develop and manage data-based diversity and inclusion strategies, identify new programs or initiatives that can bolster diversity within the organization and oversee employee complaints related to discrimination, harassment and disciplinary action. In particular, a CDO serves as a liaison between the department or agency and the unions representing the officers, and facilitates conversations between the entities with the potential to create inclusive, cultural and structural change in both organizations.

Additionally, authorizing the Governor to appoint a State Police Colonel from outside the ranks of the State Police would expand the pool of applicants the Governor can consider for the position and could help spur some of the needed culture changes described above. A State Police Colonel from outside its ranks could offer a fresh perspective on law enforcement practices and implement best practices learned from departments or agencies she or he has previously worked with.⁸ Studies have shown that outside hires in the corporate world are more successful than inside hires in reversing poor performance practices and implementing major transformations.⁹

⁸ <https://www.dispatch.com/news/20181224/for-first-time-next-columbus-police-chief-could-come-from-outside-division>

⁹ <https://sloanreview.mit.edu/article/when-is-an-outsider-ceo-a-good-choice/>

13) Creating Statewide State Police Cadet Training Program

(A) Create a statewide State Police cadet program that emphasizes the recruitment of women, persons of color and individuals who are proficient in non-English languages that are widely spoken in communities across Massachusetts.

(B) Encourage municipal police departments and other law enforcement agencies to implement similar cadet programs.

(C) Ensure that those who have successfully completed cadet programs are given hiring preferences above other groups that also receive preferences.

RATIONALE

Law enforcement cadet programs primarily recruit young adults and have longer residency requirements than officer hiring programs.¹⁰ Newly recruited police cadets may more accurately reflect the communities they serve. Law enforcement departments and agencies can utilize cadet programs to further improve organizational diversity and to break down language barriers within communities.¹¹ Ensuring that those who have successfully completed cadet programs receive hiring preferences above other groups will aid in creating more diverse and effective law enforcement departments and agencies, as well as improve community engagement and trust.

14) Expanding Civilian Rank Preferences and Giving More Weight to Non-Standardized Portions of Entrance and Promotional Exams

(A) Law enforcement departments and agencies throughout the Commonwealth should expand civilian rank preferences to include factors such as gender, race, foreign language proficiency and sexual orientation to help ensure diverse applicant pools.

(B) Law enforcement departments and agencies should give greater weight to non-standardized portions of officer entrance and superior officer examinations to better reflect how applicants and officers interact with members of the community, and to reduce the impact of standardized tests that are often designed with implicit racial, cultural and socioeconomic biases.

¹⁰ <https://www.boston.gov/departments/police/police-cadet-program>

¹¹ <https://turnto10.com/news/local/massachusetts-police-departments-look-to-cadet-programs-to-aid-in-recruitment>

RATIONALE

The written civil service entrance exam has been widely criticized as being biased and unfair towards applicants of color. In an effort to hire more diverse and inclusive law enforcement, written officer entrance examinations, as well as written superior officer examinations, should include elements beyond standardized testing, such as oral examinations and interactive role playing. Additionally, the weight given to the written entrance exam should be re-examined, and instead focus on a more balanced distribution between the exam and education, experience and lived, real-world skills.

In addition, formalizing the operating procedure of the interview process would guarantee that each applicant is being held to the same standard and measured through the same lens. The oral interview process should focus more on community-oriented skills and capabilities, including (but not limited to) cultural competence skills, as well as lived and real-world experiences. Re-examining screening questions such as past marijuana use and past interactions with police and considering them within the context of race, gender, geographic location and age during the hiring process would deepen the pool of applicants, and allow for the hiring of a more diverse and inclusive law enforcement department or agency.

Utilizing input from community stakeholders also aids in the creation of inclusive, diverse law enforcement departments and agencies. For example, a “Peace Officer Exam Review Advisory Board,” with representatives from racial justice organizations, community stakeholders and affinity law enforcement organizations, would review all current examinations for appointment and promotion of law enforcement officers within the Commonwealth. This Board would help foster a collaborative relationship between departments, agencies and the communities they serve. It would also ensure that departments and agencies hire and promote officers that have the trust of the community.