



MASSBAR

A S S O C I A T I O N

RESOLUTION ON SYSTEMIC POLICE REFORM

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.

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.

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.

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.

5) **Providing for *Respondent 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 *Respondent 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.