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Letter to the Editor: Rep. Gordon, On His Police Reform Vote

Last night (Friday) the House of Representatives joined the Senate in passing historic and sweeping reform to police oversight, training, certification and certain practices. While the approach of our bill differed from the Senate in many ways, they share the same goals. The branches will likely establish committees that will conference in an attempt to resolve the differences in our approach.

I voted in favor of this bill because I heard the voices of our Black and Latino friends and neighbors, the Native and Asian members of our community, who described their fear each time they are confronted by police. Maybe the officer does not intend to put them in fear. Maybe the approach is reasonable, but the fear is real and it is understandable. These residents, young and old, explain how they are approached by police while driving more often than the rest of us. They explain how in many towns and cities they receive looks of suspicion for simply being there. Like my parents told me and I told my son, they tell their children to respect the police. But they also tell their children to fear the police. And they give their children “the talk” about keeping their hands in plain view, and not asking questions.

I also heard the concern of many local police officers. They are justly concerned that a profession that received accolades after the Marathon Bombing just seven years ago, was now the focus of oversight. I get that. But this bill is not meant to punish them or to make their job more difficult. In fact, I know first-hand that the police departments of Bedford, Burlington and Wilmington already exceed the standards called for in this bill. They can serve as a model for what a good, respectful, sensitive department should be. I have traveled the country with Bedford Chief Bongiorno learning about best practices. But we live in a Commonwealth of 351 municipalities. We do not live in Minneapolis, Baltimore or Atlanta, but we have cities that are no different. We do not have to wait for videos to come out of our cities and towns before we act.

This vote was not an easy vote, but it was the right vote. We debated amendments for three days, each of them lasting more than 10 hours. Some people are disappointed we did not go far enough. I voted to limit the use of tear gas, rather than outright ban it, because I believed the restrictions were an appropriate compromise, and if the amendment passed we would not have the votes to pass the overall bill. Some people were disappointed we went too far. The “stronger” this bill got for some legislators, the more “extreme” it got for others. The final vote was 93-66, the closest vote in my eight years in the legislature and I am told it was the closest vote on a major bill for the past 16 years. As we debated, I thought the vote would be even closer.

The bill includes the priorities of the Black and Latino Caucus, which includes the creation of a special Commission on Peace Officer Standards and Training (POST). That Commission will create a system to certify police officers who receive and continue proper training, and decertify them for certain violations. It creates an office of Diversity and Equal Opportunity to diversify our departments and it includes principles of a bill that I co-sponsored that limits excessive force, eliminates choke holds, and includes reporting requirements when lethal force is used.

The bill codifies, and clarifies, the legal principle of qualified immunity. This became a flash point leading to the debate. Many people on both sides of the issue approached me about this. With my legal training, I looked into it closely and realized it is largely misunderstood. Some believed that qualified immunity must be abolished because it routinely prevents victims of police misconduct from obtaining money damages in a civil lawsuit – it does not. Others believed it must be preserved because it protects police officers and other government officials from being sued just for doing their job – it does not do that either. Some people believed we should do nothing and take more time to study the issue, because it is complicated. I voted against an amendment to “kick the can” because we, as lawyers, routinely digest and analyze legal concepts and then write opinions based on what we learned. One week is surely enough time to do that, assuming unfamiliarity from the start. While we will continue to study this issue, there is no reason not to add clarity to a misunderstood concept.

If the language of this House bill is adopted, limited and qualified immunity will be clear. It will protect an officer who is acting reasonably in doing his or her job, but it will not protect a police officer who is decertified from a suit filed by the victim that caused the decertification, or an officer who, through threats, intimidation or coercion, violates a person’s constitutional or statutory rights.

Here is a little more detail of what the bill does:

- Creates a seven-member independent Police Standards and Training Commission (MPSTC) appointed by the governor and the attorney general. This Commission will oversee police certification, discipline and training standards and will have the authority to conduct preliminary inquiries, revocation and suspension proceedings and hearings. This Commission will include law enforcement representation, but will be primarily civilian led. It will maintain a database of decertified personnel.

- Creates a Division of Training and Certification within the Commission, which will establish uniform policies for the training and certification for law enforcement. The membership will include representation from the Mass. Chiefs of Police Association, Massachusetts Police Association, Massachusetts Police Training Officers Association, two Sheriffs, the Secretary of Public Safety and State Police.
- Limits the use of Facial Recognition technology and sets legal standards for its use.
- Strictly limits any use of chemical sprays, including tear gas, to cases where all other de-escalation tactics have been unsuccessful and such measures are necessary to prevent imminent harm. Also requires documentation and report to appointing authority in such cases. Please note that an amendment (which was defeated) would have banned all chemical sprays in all circumstances, including pepper spray. I did not vote for that amendment because I believed we could not hold the votes together necessary to pass the bill.
- Set standards for officer to intervene if they witness another officer using excessive force.
- The bill puts new limits on use of “No-Knock” warrants. They must be issued by a judge upon supporting affidavit that such action is necessary to prevent endangering life of officer or others and reasonable belief that there is no child in the home.
- States that a law enforcement officer shall not use a chokehold, defined as a lateral vascular neck restraint to limit breathing or blood flow with the result of bodily injury, unconsciousness or death. Gives the new police training and certification committee authority to promulgate rules for the administration and enforcement of this.
- Creates several legislative commissions to further study issues of inequality and racism in Correctional Facilities, Parole Process and Probation Services.
- Sets up review of existing civil service system. Commission will study and examine the civil service law, personnel administration rules, hiring procedures and bylaws for municipalities not subject to the civil service law, and the state police hiring practices.
- The bill tasks the training division with development of an in-service program for school resource officers and issue a specialized certification. It also calls for establishment of a model school resource officer memorandum of understanding.
- Includes developing a curriculum for basic and in-service training for officers on dealing with individuals with autism and other intellectual or developmental disabilities.

The bill is the result of a thoughtful compromise. The Black and Latino Caucus met its priorities and its chair, Rep. Carlos Gonzalez (D-Springfield) asked us to be with the Caucus on the right side of history. We were. He explained the Caucus did not get

everything, but it got what it needed. The police will be the subject of greater regulation and oversight, but it will not interfere with good policing. It will help keep all of us – no matter the color of our skin – safe and secure. I am glad we sent the right message to our community.