

MMA Annual Meeting

The MMA Annual Meeting is being held virtually this year. The Labor Law Update is Friday, January 22 at 11:15 a.m. and includes updates from Melissa Murray, D. Moschos and Katherine Hesse.



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Massachusetts' Police Reform Bill

On Tuesday, December 1, 2020, the Massachusetts Legislature voted to approve a major police reform bill. The bill, *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*, is the product of four months of conference committee negotiations. The House and Senate each passed different versions of the bill over the summer, but extended the legislative session into November to continue negotiations after they failed to agree on certain provisions of the bill. The core of the reform bill is the creation of the Massachusetts Peace Officer Standards and Training Commission, an independent state entity which would oversee the training, certification and decertification of police officers, and investigations into police misconduct.

The bill has been sent to Governor Baker, who introduced his own police reform legislation earlier this year. It is unclear at this point whether Governor Baker intends to sign the bill into law, veto it or send it back to the Legislature with amendments. Provisions of the bill continue to attract opposition and criticism from police unions across the Commonwealth. Advocates of reform are disappointed by the limited changes made to Qualified Immunity. And Attorney General Maura Healy has raised concerns over the bill's approach to no-knock warrants and is reviewing the limits put on the use of facial recognition software.

Key provisions of the proposed reform bill are summarized below. A more detailed summary and a full version of the proposed legislation is available on our website.

Creates a new Commission to Train and Certify Massachusetts Police Officers

The bill creates a nine member commission—the Peace Officer Standards and Training Commission—to establish the minimum certification, training, and decertification protocols for law enforcement agencies and officers. Commission members would be appointed by the Governor and Attorney General, and consist of a majority of civilians, including an attorney, a social worker, and a retired judge.

The bill establishes two divisions within the Commission, the Division of Police Training and Certification and the Division of Police Standards. The Division of Training and Certification would be responsible for developing training standards and standardizing the certification process for law enforcement agencies and officers, while the Division of Police Standards will primarily investigate and adjudicate complaints of officer misconduct. Officers who have already completed training at a law enforcement academy and have been appointed as of the effective date of the bill, will be deemed certified. A hearing and appeals process is spelled out in the bill for officers facing decertification or discipline by the commission.

Makes Slight Changes to Qualified Immunity

One of the more contentious areas of debate around police reform, the proposed bill stops short of limiting qualified immunity for certified officers but a police officer

Police Reform Bill (continued)

decertified by the Commission loses his or her immunity. The bill would also create a special legislative commission to study the impacts of the qualified immunity doctrine on the administration of justice, including the legal and policy rationales for the doctrine.

Use of Force, Duty to Intervene and Mass Demonstrations

The proposed bill creates stronger use of force policies, prohibits certain actions, and requires the use of de-escalation tactics. An officer may use deadly force only if de-escalation tactics have been unsuccessful or are not feasible based on the totality of the circumstances. Use of chokehold restraints is expressly prohibited, and the bill restricts officers from firing at or into fleeing motor vehicles unless necessary to prevent imminent harm, and creates rules around the use of tear gas, dogs, and rubber bullets. The bill would create an explicit duty to intervene and report a fellow officer if an officer witnesses a colleague using excessive force.

No Knock Warrants

The bill requires that no-knock warrants be issued by a judge and only upon a showing of probable cause that the officers' lives or the lives of others would be endangered if officers were required to knock and announce before executing a warrant, and an attestation that there is no reason to believe that minor children or adults over 65 are in the home.

Civil Service System Review

Establishes a special legislative committee to study the civil service laws and make recommendations to improve diversity, transparency, and representation of the community in the recruitment, hiring, and training of civil service employees, municipalities not subject to civil service law, and the Massachusetts State Police. The commission would also study the feasibility of creating a statewide diversity office and diversity officers for each municipality with a police or fire department.

Body Worn Camera Task Force

Directs the Executive Office of Public Safety and Security to establish a 25-person body camera task force to study and propose regulations to establish a uniform code for procurement and use of body cameras for law enforcement agencies in the State. The proposed bill calls for at least 5 public hearings on the issue and regulations on or before July 31, 2022. The regulations must include: training on the use of the cameras, standards for the types of encounters and situations when a body camera will be activated and when recording may be discontinued, as well as requirements for retention and storage of camera footage.

Facial Recognition

The bill forbids an agency or employee—other than the RMV—from acquiring, accessing, or using any software that captures biometric data, including facial recognition. Law enforcement may request that the RMV perform a facial recognition search in limited circumstances. Searches performed by the RMV at the request of law enforcement shall be a public record and published on the RMV's website.

The bill also proposes changes to the selection and training of School Resource Officers, including a limit on student record information shared with a SRO, a ban on racial profiling, prohibits sexual intercourse with a person in custody and makes it a crime to knowingly submitting a false timesheet.

For more information please visit our website. And as always, if you have any specific questions regarding the application of the pending legislation, please do not hesitate to contact one of our attorneys.