

POLICY MEMO

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Addressing differences in the House and Senate bills on police reform

In the last few weeks, both the Massachusetts House and Senate have passed bills to overhaul policing, twin efforts to redress bias, strengthen oversight, and generally ensure that police departments operate as partners in the pursuit of safety and justice across the Commonwealth.

The next step is for legislators to reconcile the bills and find a shared approach that will improve policing in the years ahead. However, the window for successful negotiation is narrow, as the current legislative session is coming to an end.

In this brief, the Center for State Policy Analysis offers a framework for understanding key differences between the two bills, highlighting the choices and trade-offs involved in achieving common ground. This includes:

- Finding the best data to measure success, identify systemic problems, and provide a firm grounding for future reforms
- Ensuring that any new oversight agencies have adequate and consistent funding sources
- Clarifying lines of authority between new agencies, as a way to support organizational change and avoid bureaucratic infighting
- Looking beyond police departments to repair damage in communities hurt by bias or neglect

GET THE RIGHT DATA

Across the country, the push for fairer and more effective policing is hampered by a lack of information and evidence around fundamental issues such as: what training truly works, how often are controversial tactics like choke holds used, and how are police interactions shaped by racial biases.

Gathering better information would enable more targeted, more effective reforms — today and in the future.

The Senate and House bills each include specific requirements about data collection and data sharing, particularly when it comes to complaints against officers and officer training.

On complaints, the House bill seems to go further, requiring departments to submit data on past complaints, which would greatly expand the range of useful information.

The Senate approach makes it easier to look across this data, potentially showing whether certain kinds of training programs are especially effective at improving officer performance and reducing complaints.

What's more, the Senate also introduces a novel system for tracking public interactions with the police. Drivers who are stopped and pedestrians who are searched would get receipts even when they don't get

citations, which could enable a much fuller understanding of how police operate and when their choices are racially biased.

The Senate version is also clearer about the ways such data can — and must — be shared with the public, not only through public records requests but often via agency websites.

Concrete options for reconciling House and Senate versions include:

- Maximize the ability to link data across domains, thus revealing relationships between training, complaints, and police performance
- Guarantee the public release of most data, to build trust and allow for research. Where necessary, public data can be anonymized, provided that officer-identified information is available for secure assessment by government agencies and partner organizations
- Collect additional data on the use of tactical teams, beyond discrete numbers for no-knock warrants or deadly force
- Consult the California law known as RIPA as a benchmark against which to develop standards for a system of universal receipts

PROVIDE ADEQUATE AND RELIABLE FUNDING

Both the House and Senate would create powerful new government entities to track complaints, oversee police departments, certify officers, and punish those who violate established principles.

Any such body is likely to face resistance from those who prefer the old system. One way to strengthen the new players, and bolster their oversight work, is to ensure they have secure funding.

The House bill establishes an independent "police training fund" for one of its new agencies, with dedicated revenue streams connected to marijuana regulation, vehicle rental fees, and more. (The House also allows its main Commission to collect fees and fines.) The Senate bill is less prescriptive, appearing to rely more on annual appropriations.

Each approach has its strengths. Dedicated funding provides independence, insulating agencies from the need to lobby during the state budget process. However, that budget process allows for a more tailored assessment of real-world necessities — unlike dedicated fees, which channel money without accounting for shifting demands.

Concrete options for reconciling House and Senate versions include:

- Set funding targets for the first 3-5 years, so that the agency can plan its operations
- Specify that dedicated streams are not designed to cover all essential costs, and that annual appropriations may be required

- Consider putting fees and fines in the general fund, to avoid the perverse incentives that arise when agencies become financially dependent on penalties

CLARIFY LINES OF BUREAUCRATIC AUTHORITY

While the House and Senate bills each create new oversight bodies to review police complaints and manage the certification (and decertification) process, there are substantial differences in the structure and subdivision of these organizations.

The Senate approach seems more restrained, empowering an existing training agency and establishing a new oversight body. By contrast, the House bill is more explicit about the full institutional setup, creating a set of divisions and committees with differing areas of focus.

To reconcile these approaches, it may help to consider principles of organizational change. For instance, creating a fresh agency — rather than handing new powers to an existing group — can break institutional logjams and allow for more root-and-branch forms of cultural change. Details matter, however. In one case, the House creates a new division to oversee training, but also appears to transfer employees from the current training agency to the new one, which maintains institutional knowledge but also inertia.

Separately, it's vital that all entities have clear grants of authority and lines of reporting to avoid in-fighting and turf wars. To this end, the House bill calls for steps to "ensure that there is no duplication of duties and responsibilities" between their new oversight agency and a proposed "police standards division" in the state Attorney General's office. That principle holds more broadly, and it might behoove lawmakers to set explicit boundaries.

Concrete options for reconciling House and Senate versions include:

- Draw an org chart for each serious proposal to ensure a shared understanding of the lines of authority
- Be alert to groups that seem to have strongly overlapping responsibilities
- Consider new agencies — rather than existing agencies — where it's important to change internal culture

LOOK BEYOND POLICE DEPARTMENTS

Overhauling policing is just part of the broader movement for comprehensive criminal justice reform. Incorporating justice reinvestment strategies into these bills gives the Legislature a unique opportunity to invest in historically disenfranchised communities, potentially setting off a virtuous cycle of social and economic benefits.

The Senate bill includes two justice reinvestment efforts. The first focuses on jail diversion and behavioral health by: a) strengthening community supports for individuals facing substance abuse or mental health issues and; b) helping such individuals get more durable aid than is traditionally found in prison.

The second fund is more broadly focused on economic and workforce development, offering grants to organizations that provide suitable employment opportunities, apprenticeships, or other job training-related programming for young people affected by violence and poverty. It's an approach that builds upon decades of research linking work and productivity to reduced crime.

Concrete options for reconciling House and Senate versions include:

- Consider a more expansive fund for justice reinvestment fed by savings from reduced spending on prisons, probation, and parole
- Look to existing models from other states to find an approach that works for both House and Senate. As examples:
 - Oregon helped fund local, community-chosen public safety priorities, including community-based victim service providers
 - Colorado used nonprofit grants and small-business loans to provide targeted support for crime prevention in at-risk communities
 - Voters in Oakland, Calif., approved — and have since re-approved — a new revenue stream to fund violence prevention and intervention programs

Consider these additional issues

Military equipment. While the Senate bill includes new restrictions on the purchase of military-grade equipment by police, the House bill does not. Absent such restrictions, an alternate approach might be to improve reporting requirements and data collection, allowing a fuller sense of why this equipment is needed and how it is used.

Duty to intervene. In both bills, officers who witness colleagues using excessive force are required to intervene and report. The effectiveness of this provision may depend on finding a standard for intervention that is consistent with real-world officer interactions. Currently, the bills refer to "using physical force...beyond that which is necessary or objectively reasonable based on the totality of the circumstances," but there are alternatives like "using force or other tactics that under the circumstances are clearly unsafe, unlawful, or outside policy."

Qualified immunity. Before settling on a new standard for holding officers personally liable, it's useful to think through some broader dynamics. The fact that departments and cities can purchase insurance to cover liability means that a loosening of qualified immunity wouldn't just affect individual officers. It would give departments new incentive to identify and address risky officers (or tactics), while also giving insurance companies new leverage to demand departmental or municipal changes before issuing policies.

Committee composition. In addition to new agencies, these bills also create a number of new committees, often with explicit guidelines for membership. In some cases, it might be helpful to add subject matter experts to these committees, including those with a specific understanding of training, organizational change, data collection, or police policies in other states.

Extent of decertification. Once an officer is decertified, the House bill specifies that the officer is also barred from working as a consultant or independent contractor for a police agency. It may be worth considering other employment limitations, especially in corrections and elsewhere in the criminal justice system.

How's my policing? While it's not contemplated in either bill, police could be required to give "contact cards" to all those with whom they interact, including a statement that the relevant agency is interested in feedback and a phone number or email address.

CONCLUSION

Not every difference between the House and Senate bills is discussed here. But by highlighting some of the broader divergences, we hope to give negotiators, legislators, and citizens a sense of the key issues that need to be resolved.

The days and weeks ahead will prove whether these issues can be addressed, and a police reform law enacted. One major precondition does seem to be in place: a shared understanding of the importance of acting now.