

Massachusetts House police reform bill takes different approach to qualified immunity than Senate policing bill

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The House plans to take up its own wide-ranging police reform bill this week, but one that takes a narrower approach to limiting qualified immunity than the Senate did in the bill it passed last week.

The House Ways and Means Committee passed its policing legislation overnight. Amendments on the bill are due 1 p.m. Tuesday.

The bill bans chokeholds, tear gas and “no-knock” warrants with certain exceptions, but it also has some key differences from the Senate version. One of the key differences is that the House will not limit when qualified immunity applies unless the officer involved has been decertified by the proposed police standards and training commission. The Senate version suggested a narrower interpretation of when qualified immunity applies to all public employees covered by the legal doctrine.

The qualified immunity provision stirred a heated debate over several days in the Senate as Republicans and a handful of Democrats questioned the impact it would have on law enforcement officials and other public employees who make mistakes on the job.

It was also a sticking point for Republican senators who argued the bill shouldn’t have been fast-tracked without input from law enforcement officials, much less without a public hearing.

House Ways and Means Committee Chair Aaron Michlewitz, a Boston Democrat, and Judiciary Chair Claire Cronin, an Easton Democrat, received hundreds of letters from first responders and countless emails from officers and civilians opposing the qualified immunity provisions. They also received emails and messages expressing support of the limits, as members of the public said they felt officers could be better held accountable for alleged misconduct.

“Qualified immunity does not serve to protect illegal and unethical actions of police officers. Rather, it ensures that a public official, who often must make a split-second decision, does not hesitate in a dangerous or lifesaving situation,” states a letter submitted to House leaders signed by 42 police and correction officer unions in Western Massachusetts.

The coalition supported an amendment raised by Sen. John Velis, a Westfield Democrat, during the Senate debate. The unsuccessful amendment would have created a commission to study qualified immunity, delaying the implementation of limits on the legal doctrine.

Rep. Brian Ashe, a Longmeadow Democrat, said he and other Western Massachusetts legislators met with local police and correction officers Monday, who raised concerns with both the House and Senate versions of the qualified immunity limits.

“It is a lesser version of what the Senate had, but it’s still in there,” Ashe said on the qualified immunity provision in the House bill. “Listening to some of the arguments on the other side ... it sounded like, you really don’t have to set up legislation. It’s already in the law. If you’re a police officer and you do something so egregious, like if you commit a felony, it has to go before a judge who decides if you lose your immunity.”

Ashe said he is still digesting the bill of more than 120 pages, for which amendments are due Tuesday.

“I kind of wish we could take more time. I know you get something happens, people want change right away, but if you’re going to do change like this, I’d rather do it right as opposed to just doing it,” he added.

The American Civil Liberties Union of Massachusetts, which supported the Senate’s provision on qualified immunity, said the House bill does not go far enough to limit the doctrine.

“Good police officers should have no objection to holding bad police officers accountable,” Carol Rose, executive director of the ACLU of Massachusetts, said in a statement. “Legislators should stand in solidarity with the people they are elected to serve and who are marching in the streets to demand systemic change.”

In a joint statement, Senate President Karen Spilka and the co-chairs of the racial justice advisory group, Senate President Pro Tempore William Brownsberger and Sen. Sonia Chang-Diaz, said they want to see a bolder bill land on Baker’s desk.

“Massachusetts has a historic opportunity to lead on this issue, and we must keep pushing to meet this moment,” they wrote. “We look forward to working towards a final, stronger version of this bill that combines the best of both to put more power in the hands of civilians, shift resources to the communities most impacted by overpolicing, and build a more equitable and just future.”

Some police officials, including MassCOP President Scott Hovsepian, have said the bill seeks to remove qualified immunity. Senators who drafted the bill say that characterization is incorrect.

Brownsberger, a Belmont Democrat, said during the all-night debate over the policing bill last week that the proposal would not change how the courts measure reasonableness when officers are making split-second decisions in rapidly changing situations. Rather, it would enable the courts to rule on civil rights lawsuits even if there isn't already a legal basis to label something a civil right.

Brownsberger referred to a 1991 case involving Joseph Furtado, a Taunton police officer who obtained a warrant to search a woman's vagina for drugs. The officers forced open the door of the apartment as the woman was in bed, told her they had a warrant to search her vagina and, when she refused, took her to a hospital where Dr. Philip Falkoff forcibly probed her.

The woman sued Furtado and Falkoff alleging her state constitutional rights against unreasonable search and seizures were violated. The Supreme Judicial Court affirmed a decision stating the officer had qualified immunity from liability because it was not clearly established at the time of the search that the officer's alleged conduct would violate the Constitutional rights as far as a reasonable officer would have known.

The SJC wrote in its decision, "even though we conclude that Furtado and Dr. Falkoff are entitled to qualified immunity which shields them from liability, we are nonetheless deeply troubled by the search which was conducted in this case."

Law enforcement officers said qualified immunity will land them in legally murky situations over their responses to high-pressure situations

"Qualified immunity doesn't protect officers who break the law or violate someone's civil rights. Qualified immunity protects officers who did not clearly violate statutory policy or Constitutional rights," wrote Adam Hakkarainen, a Massachusetts State Police trooper and one of thousands of law enforcement officials to send an email or signed onto letters to the House. "The erasure of this would open up the flood gates for frivolous lawsuits causing officers to acquire additional insurance and tying up the justice system causing the commonwealth millions of dollars to process such frivolous lawsuits."

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