



July 17, 2020

OPPOSITION TO S.2820

“An Act to reform police standards and shift resources to build a more equitable, fair and just Commonwealth that values Black lives and communities of color”

Dear Chair Michlewitz and Chair Cronin,

120 years ago, in 1900, W.E.B. Du Bois led an all-Black team in producing and showcasing “A series of statistical charts illustrating the condition of the descendants of former African slaves now resident in the United States of America.” This team created stunning data visualizations drawn by hand “[showing why the African diaspora in America was being held back in a tangible, contextualized form.](#)”

As Du Bois said in 1898, “It is not one problem, but rather a plexus of social problems, some new, some old, some simple, some complex; and these problems have their one bond of unity in the act that they group themselves above those Africans whom two centuries of slave-trading brought into the land.” At the Charles Hamilton Houston Institute for Race & Justice at Harvard Law School, we refer to this as a “web of disadvantage.”

More than a century later, the problem of systemic racism is neither new nor mysterious. The failure to redress the harms of slavery is one of our national stains, a long-festering wound that has led in turn to new infections: Jim Crow segregation, thousands of lynchings in the twentieth century, mass criminalization and incarceration, the war on drugs, redlining and sustained economic oppression, police killings of Black people.

And so it is surprising that this summer this body took up with such performative urgency the plight of long-disempowered, criminalized, and neglected Black people and Black communities in the Commonwealth.

What, unfortunately, is not surprising is that the policies recommended in this body have been to enshrine in law provisions that will not change the material conditions of Black people, will not reduce police contact with Black people, and will not reduce the scope of the criminal legal system. Instead, this body has chiefly recommended hollow restrictions on the use of force, maintaining and legitimizing the power of law enforcement, and adopting policies that *already exist in our law* and have for generations.

The chokehold ban in S.2820 only bars neck restraints that are intended to or actually result in unconsciousness or death; if someone has permanent injuries or neck abrasions but does not black out, the use of force is likely not barred. Further, police chokeholds had been banned in New York City for more than a decade when Eric Garner was killed, and because of the vast power of the police union the officer who killed him was not fired until five years later.



The definition of law enforcement in this bill specifically, and bizarrely, excludes corrections officers; apparently the Senate is not concerned with the [well-documented brutality](#) in our prisons, which are 57% Black and Hispanic in a state that is 71.4% non-Hispanic white.

This bill requires mandatory recertification training of law enforcement, which will inevitably increase funding for police training, directly contrary to the clarion calls by organizers in the street to defund the police and fund communities of color. The [state auditor recently found](#) that at least 30 departments were not meeting their existing training obligations because of [inadequate funding](#) and training opportunities. Anyone who argues that S.2820 is not a blueprint for increased law enforcement spending is engaged in intentional deception. Further, mandatory implicit bias and [diversity training](#) have been proven to have a null or even *counterproductive* effect on changing behavior in [meta-analysis](#) and research studies. The legislature is mandating training *against the evidence base* that may lead to retaliation against Black people.

This bill temporarily pauses the use of facial recognition technology in the Commonwealth for 17 months *except by the Registrar of Motor Vehicles*. The Registry may continue to suspend people's licenses using a technology we know to be [racist and unreliable](#), which the chief of police in Detroit says [misidentifies people 96% of the time](#). Driving on a suspended license is the [single most common criminal charge](#) prosecuted in the Commonwealth; the Senate has set up Black people to be [mis-identified by technology](#) and then to be criminally prosecuted if they drive during a global pandemic.

This bill purports to establish a duty for law enforcement to intervene, which already exists in both [federal](#) and [Massachusetts law](#), and outlaws racial profiling, which was outlawed by the ratification of the Fourteenth Amendment to the United States Constitution in 1868.

Most perniciously, the Senate bill creates a series of new commissions and councils—staffed with many law enforcement officials—to “study” problems for which substantial data and knowledge already exist. These commissions are nothing but a delay tactic and a way to preserve power for an elite professional class, putting off for tomorrow what this body refuses to do today.

The United States does not need one more commission, or one more report. A strong moral message? That message is being delivered by protesters every day, on street after street after street across the nation. Stop killing us. One day, these reports will lie archived, forgotten, irrelevant. Meanwhile, they pile up, an indictment, the stacked evidence of inertia.¹

Mountains of evidence show us the abiding causes and mechanisms of unequal distributions of advantage and punishment, wealth and scarcity, wellness and toxicity. The blame lies with a

¹ Jill Lepore, *The History of The “Riot” Report*, NEW YORKER (June 15, 2020), <https://www.newyorker.com/magazine/2020/06/22/the-history-of-the-riot-report>.



confluence of structural, institutional, and individual decisions—racism infects each and every domain of our public policy and mediates our private relationships.

Decades upon decades of racism have barred Black families from opportunity, let alone recompense for centuries of trauma and oppression. The G.I. Bill was [denied to Black families](#); we wrote restrictive racial covenants into the deeds of parcels of land we stole from indigenous peoples and offered them [exclusively to white families](#) with affordable lending; our government [redlined Black people](#) into siloed and disinvested communities and then [built highways](#) through [those neighborhoods](#), filling them with fumes and [generating asthma](#) and other [significant health effects](#). Extending into the present, our elected officials, bureaucrats, private bankers, realtors, and landlords have [denied Black homeownership](#) and [denied Black renters](#) access to safe and affordable housing. We have [exposed Black children to lead](#) and other environmental hazards and created [food apartheid](#). In Black neighborhoods burdened by deep poverty of our creation, we have left vacant lots and abandoned buildings that allow [violence to thrive](#). We designed drug policy to be [specifically weaponized against Black people](#), and with police forces that grew out of [slave patrols](#), destroyed Black communities and separated families with ever-increasing criminalization, prosecution, incarceration, and punishment. We then set up an *additional* web of disadvantage for formerly incarcerated people, barring access to employment, to subsidized housing, to loans and capital.

These are not just a list of historical relics for which we are still experiencing modern effects. Many of these policies remain actively practiced or have simply shifted from de jure to de facto discrimination and segregation. We are the architects of ongoing projects to preserve wealth and opportunity for the white few at the expense of prosperity for all: single-family zoning; funding our public schools based on private property values; deploying police officers like an occupying army to poor communities of color and using the police to enforce gentrification and protect capital; siting environmental hazards in poor neighborhoods of color.

It is long past time to stop speaking of disparate impact or disparate effect. That language exonerates public officials for the foreseeable outcomes of intentional distribution of resources and punishment. None of our policies are “colorblind,” and to pretend otherwise is an act of white supremacy. Over the [last twenty years](#), this body has increased funding to prisons, sheriffs, and probation while slashing the budgets for workforce development, higher education, public health, mental health, and early education and childcare. It is no wonder that our system of punishment has ballooned and continues to target poor, Black, and Hispanic and/or Latinx people as the objects of state violence.

The majority-Black neighborhoods least exposed to harsh environments [still have levels of toxicity](#) greater than the most-exposed majority-white neighborhoods. Black families in Boston have [\\$8 in median net worth](#) to the \$247,500 of white families. [70% of people stopped and frisked](#) in the City of Boston are Black—a pattern that has persisted for decades and which the



[ACLU of Massachusetts first sued](#) the City of Boston for [in 1989](#). Racism is everywhere you look.

Addressing racism requires disrupting both power and prejudice. We do not need more commissions: “These commissions [don’t] stop the violence; they just [serve] as a kind of counterinsurgent function each time police violence led to protests.”² The Kerner Commission in 1968 identified [white racism](#) as the chief cause of the oppression of Black people and police violence against Black people. And yet here we are decades later, recommending more restrictions on the use of force, a bad apple theory of police to decertify a few officers—who may unilaterally pause the process of decertification for up to a year and whose decertification must be proven by clear and convincing evidence, and a maximum of \$10 million to go toward workforce development for formerly incarcerated people.

Despite messaging to the contrary, the Justice Reinvestment Fund in S.2820 is not written to require divestment from the budget of the Department of Correction or restitution from police fraud; it requires its own appropriation. Between 2011 and 2018, the budgets of the Department of Correction and the sheriffs cumulatively increased by \$254 million. That figure is just the *amount of increase*, and the purported cost-savings that will fuel “justice reinvestment” cannot happen if this legislature continues to increase these budgets, as it has for years, [even as fewer and fewer people are incarcerated](#). \$10 million toward formerly incarcerated people, mostly people of color, in a state budget of \$44.6 billion is an inadequate token, not a real first step toward equity.

On July 6, after a weekend of private deliberations with a select few advocacy groups and members of law enforcement, the Senate released its omnibus police reform bill. Seats at the table were not extended to people from the most policed and most incarcerated Black and brown communities in the Commonwealth, experts on the violence of policing. The Senate produced a 70-page omnibus bill and less than 36 hours later 145 amendments, and asked that the bill be voted on the next day.

Our model at the Houston Institute is a model of *community justice*: relying on the expertise of directly impacted people and amplifying their voices and goals into public policymaking. We were dismayed as the Senate process unfolded; nowhere in this swift process were directly impacted people consulted, and the information overload of the process and the timeline seemed designed to exclude poor and working people. Our partners at [Families for Justice as Healing](#) have [made their goals evident](#): reduce police contact with Black people and resource communities most impacted by policing. Ban pretextual street and vehicle stops, eliminate plainclothes policing, erase the gang database, remove police from schools, reduce the budgets of

² Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> (describing the 1894 Lexow Committee, the 1931 Wickersham Commission, and the 1968 Kerner Commission).



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law enforcement, and most importantly *substantially* invest in community-led participatory budgeting for and by Black and brown communities. The safest and healthiest communities are not those with the most police—they are those with the most resources.

The Charles Hamilton Houston Institute for Race & Justice at Harvard Law School **opposes S.2820**. We have no interest in sitting on a commission to study structural racism, an *additional* commission created by amendment 16, which we were not consulted about before being written into the bill.

If the legislature wishes to demonstrate its commitment to redressing generational harms committed against Black people by our public policy, it must extend the legislative session and put together a package of bills based on the expertise of directly impacted people, each of which will receive testimony by directly impacted people: raise taxes on wealthy and corporate interests; pass a budget rooted in equity that substantially shifts resources from policing and incarceration toward meeting needs and community well-being; decarcerate our jails and prisons and provide housing, employment, healthcare, and treatment to people leaving incarceration; and specifically allot substantial resources to Black people and Black communities.

Sincerely,

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