

Senators break with colleagues over police reform bill

Brad Petrishen

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Four of the seven state senators who voted against this week's sweeping police reform bill hail from Worcester County, including two Democrats and a Republican who played a central role in the drama that played out on Beacon Hill this week.

"It seems to me anyone with half a brain should realize this is not the way we should be making laws," Ryan C. Fattman, the Sutton Republican who held up the legislation for three days, said in an interview this week.

Fattman is one of just four Republicans in the 40-member state Senate, which approved, by a 30-7 margin, a sweeping police reform bill just after 4 a.m. July 14.

Fattman was joined in his opposition by fellow Worcester County Republican Dean A. Tran of Fitchburg and two county Democrats, Michael O. Moore of Worcester and Anne M. Gobi of Spencer, meaning county legislators represented the majority of the resistance to the measure.

The opposed senators told the Telegram & Gazette they generally saw the process as too rushed. They received praise from the Central Massachusetts Chiefs of Police Association, one of many law-enforcement groups asking for a less hurried process.

The bill was voted on just eight days after being reported out of the Senate Ways and Means Committee, and without a public hearing. That rankled many in law enforcement and in the halls of the State House, especially since many of the sweeping changes – most notably a change to protection police have against civil lawsuits – could have broad implications on the profession.

"Should this bill remain with the current language you won't be able to give police jobs away," Auburn Police Chief Andrew J. Sluckis Jr. wrote in an email this week, echoing concerns of other chiefs that the impacts of reforms have not been fully vetted.

With the bill moving now to the House of Representatives, local legislators told the T&G they aren't sure whether a deal will get done before the legislative session ends July 31. Two local senators who support the bill say they hope it happens, while the others say they're wary of some of the provisions and of the discontent among police regarding the process.

What would change?

The lengthy bill would add a host of reforms aimed at increasing police accountability. At 73 pages and with 145 amendments, it features a lengthy title – 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.

Known more simply as the Reform, Shift + Build Act, the bill would create a Police Officer Standards and Accreditation Committee that would standardize the certification and training of officers and have the power to decertify them, ending their careers.

Gov. Charlie Baker has proposed a similar reform in a separate piece of legislation, and Massachusetts is one of only four states in the nation that does not have this kind of a system.

The most controversial portion of the bill is one that limits a defense police often use when being sued civilly called qualified immunity – a complicated legal doctrine that sometimes ends up shielding officers accused of wrongdoing from personal liability.

Critics of qualified immunity say it affords police too much protection, while supporters say softening the defense could lead to a host of spurious lawsuits and unintended consequences.

The bill would also ban chokeholds in all but life-threatening situations, require the use of “de-escalation” tactics “when feasible” and create a “duty to intervene” for officers who witness abuse of force.

It includes a number of reforms for state police, including creating a cadet program to promote diversity, allowing the governor to select a colonel from outside the force and giving the colonel more disciplinary authority.

It also imposes a moratorium on the use of facial surveillance technology by government entities while a commission studies the issue, and creates a task force to consider implementing policies and standards on the use of body and dashboard cameras.

Proponents of the bill say it aims to “shift the balance of law enforcement techniques away from force and punishment,” including by seeking to “demilitarize” police by requiring “transparency and civilian authorization for military equipment acquisitions.”

It also aims to “address the school-to-prison pipeline” by making school resource officers optional for superintendents and preventing districts from sharing students’ “personal information” with police except for investigation of a crime or to stop “imminent” harm.

There are also reforms aimed at extending juvenile record expungement, and the bill would establish a fund that would “shift funding from policing and corrections toward community investment.”

It would “ban” racial profiling, require racial data collection for all police stops – including requiring officers to give people they stopped receipts that include their race – and require police to be trained on the history of slavery, lynching and racism.

A permanent commission on African Americans that would advise the Legislature on topic impacting Black people would be created, while one of the many amendments to the bill would create a Latinx Commission.

Several amendments were passed by local senators, including one by Moore that requires the POSAC board to give police a year to investigate wrongdoing first, one by Worcester Democrat Harriette L. Chandler that would create a commission to scrutinize structural racism in the prison system and one by Acton Democrat James B. Eldridge that would bar a decertified police officer from becoming a correctional officer.

The exhaustive list of reforms comes after intensified calls for racial justice in the wake of the death of George Floyd, an unarmed Black man, at the hands of the Minneapolis police.

Opposition

While proponents of the bill, including Chandler and Eldridge, told the Telegram & Gazette they believed the need to act was too great to ignore, detractors say the short timeline – as well as the qualified immunity piece – were too much to overcome.

Fattman became the focal point of Beacon Hill when he, for three days, decided to hold up debate of the bill, arguing it was being jammed through without the proper process or forethought.

In an interview this week, Fattman admitted to being “nervous” to make the move, but said it was one he came to after much consideration and consultation, including with his wife, Worcester Register of Probate Stephanie K. Fattman.

“If you don’t do it, don’t come home,” Fattman recalled his wife saying to him after he rattled off the reasons to her why he felt he needed to take a stand.

Fattman said he took the “dramatic step” of delaying the bill because he believed those pushing it had not given their colleagues, or the public, enough time to consider it and provide input.

Although proponents argue the individual bills had all received public hearings in the past, Fattman noted the public was never granted a public hearing for the omnibus bill, and said measures of such public importance often don’t generate tons of public comment until their passage is imminent.

“I had to stop it,” Fattman said, adding that unnamed legislators “suggested to me multiple times” that he “couldn’t” stop it “because if people knew what was in it, they wouldn’t be happy.”

Fattman said he took that to mean some senators wanted to get the bill passed to avoid public scrutiny, something he said he couldn’t tolerate.

“It seemed more of a rush to make a political statement,” he said, a sentiment echoed by Tran.

“Many of the things in this bill may not even come into fruition,” Tran told the T&G the day before the bill was passed, when he gave a fiery speech on the floor questioning his colleagues’ motives.

“What do you know about racial injustice and inequality?” Tran, the highest-ranking Asian American state politician, asked his majority white colleagues, blasting the bill as an “ill-conceived and politically motivated” attempt to “attack and discredit” law enforcement.

Police, even as they agree many of the reforms have merit, including the idea of a certification board, have excoriated legislators on the process, blasting the failure to hold a public hearing as an abdication of the kind of transparency they seek to impose on others.

Multiple groups who represent law enforcement officers of color have said they were not consulted on the legislation, while some pastors of color also called on senators to push the brakes on the qualified immunity reform, concerned about police pulling back in neighborhoods.

Fattman said he believes his stalling of the bill was the right call, especially since it gave the minority officers time to speak out, and led to others giving the bill closer scrutiny.

Moore said the opposition from police officers and pastors of color, in addition to concerns he has about qualified immunity and due process with the POSAC system, were the main reasons he couldn't support the bill.

The former Massachusetts Environmental Police officer told the T&G he believes many of the reforms need more consideration and input from others before being enshrined in law.

Support

Chandler, who voted to pass the bill, acknowledged that she and many others would have liked the luxury of additional time on some of the thorniest issues, including qualified immunity.

But she said she has spent a lot of time talking to Black constituents in her diverse swath of Worcester, and came away convinced that the reforms should be implemented without delay.

"I've listened carefully to what they've told me about what the Black experience is like in Worcester," she said. "And they've asked me to fight for a change in law enforcement. They feel they have been unequally criminalized."

Chandler said she has always known Worcester police to be "dedicated public servants" who do a very good job ensuring public safety. But she said her constituents have told her story after story of police interactions that have left them mistrustful.

"To me, it's a fact Black and brown people are incarcerated at alarmingly disparate rates," she said, highlighting her amendment seeking scrutiny of the issue.

"I don't believe it's because they commit more crimes. It's because they're too often criminalized for the color of their skins," she said.

Eldridge, who represents Westboro, among other MetroWest towns, and is one of the most progressive Senate members, said he believes the legislation is important to reforming an unfair system, and called the process concerns overstated.

Eldridge said all the bills had a public hearing at some point, with many being reported out of committee favorably. And he said the protests nationwide, and in Massachusetts, following Floyd's death show that people want action now.

"I think, respectfully, that Senator Fattman and Senator Tran are more using process as a red herring, when they were just not going to support the bill," he said.

Eldridge said many of the bill's provisions, including his amendment requiring police to give people receipts for every interaction, came about by consulting people of color pushing for change.

"I think a really key piece I hear from Black constituents is a feeling they get pulled over too often by police," he said. He noted that recent data released by Boston police showed that 70% of people stopped by that department's "field interrogation and observation" program were Black, despite the fact that Black residents make up less than a quarter of the city's population.

Eldridge said the bill would result in more transparent oversight of police. Many people complain that allegations of police misconduct are not thoroughly investigated.

Police concerned

Police, increasingly under the microscope as allegations of racism and bias grow, believe the bill was passed far too hastily and will, if made law, have many negative ramifications on public safety.

Worcester Police Chief Steven M. Sargent wrote in a statement he is “very disappointed” no public hearing was held.

“The sweeping measures were rushed and I do not believe the proposed bill was thoroughly or properly examined since there was a lack of public input,” he wrote. “I think instead of creating change that we all seek, it will have unintended negative consequences.”

Mark K. Leahy, executive director of the Massachusetts Chiefs of Police Association and the former Northboro chief, told the T&G this week that many are incensed over proposals to weaken protection against lawsuits that have not been thoroughly vetted.

Brody, Haroon, Perkins & Kesten, a Boston law firm that has represented police being sued for decades, said the qualified immunity changes would result in a “flood” of lawsuits in state courts that could have financial impacts on municipalities.

It noted qualified immunity impacts not only police but also all in government service, changing the standard for firefighters, EMTs and many others.

Will Brownsberger, a Belmont state senator and Harvard Law graduate with experience as both a prosecutor and defense attorney, argues the impact will “have only modest impact on the volume of judgments or the cost of litigation.”

While many police officers have expressed fear the provision could open them to losing their homes or savings for doing their jobs, Brownsberger says that’s far from the case, noting that municipalities generally pay the costs of any judgments against police.

“If it has any impact, and victims of excessive force are able to recover more damages, those damages will not come from the pockets of police officers, but from the coffers of their employing agencies,” he wrote in a [lengthy blog post explaining the doctrine](#).

Critics of the doctrine, including the libertarian Cato Institute and the American Civil Liberties Union, say it has been used for a long time to shield officers who commit serious misconduct.

In an editorial, Massachusetts Lawyers Weekly [opined that change needs to be considered](#), saying that plaintiffs, even if clearly mistreated by police, are often only able to recover damages if the manner in which they were treated matches prior fact patterns in other cases.

“We’ve seen example after example where some bad police officers have used qualified immunity to escape accountability,” U.S. Rep. James P. McGovern, D-Worcester, told the T&G Wednesday. “When bad behavior is not held to account, it damages the reputation of everybody.”

McGovern is supporting a bill in Congress that would end qualified immunity. He declined to address the Massachusetts Senate bill specifically, saying he has not yet had a chance to read the lengthy legislation.

Moore said while he understands the desire for reform, it was clear to him many senators debating the bill still did not have a firm grasp of what the complicated doctrine does or what unintended consequences the proposed reform could have.

“It’s clear from watching the debate that even the senators don’t understand qualified immunity,” said Leahy, adding he is incensed that the bill was passed at 4 a.m. when most people were sleeping.

Leahy pointed out that the Legislature is not as transparent as it is seeking police to be.

“They own absolute immunity from (law)suit and completely exempt themselves from public records law,” he said. “But they can tell the rest of us how to live in the real world.”

Leahy said while he understands people are upset in the wake of Floyd’s death, he’s concerned that making police think twice about de-escalation techniques could make the public less safe.

“If this guy is crazy in the middle of Kelley Square in the afternoon, we have to wait for mental health counselors to get there,” he said, and hope that, in the meantime, nothing bad happens.

Leahy said police have been stunned by the public turn in sentiment following a killing officers throughout the country have condemned.

“Five weeks ago we were heroes fighting against COVID-19,” he said. “All the sudden, we can’t be trusted. We’re the enemy of people of color. It turned in one day.”

Leahy said police are willing to talk about all sorts of reform, but deserve such reforms to be discussed in an open, public process that isn’t motivated by desire to squeeze things in by a deadline.

He said rhetoric he heard on the Senate floor about police has been unfair to officers, the overwhelming majority of which are trying to do the right thing.

Without more careful consideration of the reforms in the House, he said, the legislation could “make a legion of cops that just don’t want to get out of their cruisers.”

Leahy agreed to a question from a reporter whether public discourse surrounding Black Lives Matter and the police is getting increasingly antagonistic.

“I really don’t know where we go from here. The country in general has trouble having a civil conversation,” he said.

Gobi also said the tenor of the debate concerned her, noting the narrative seems to be that if you aren’t for the bill, you are against people of color, and if you are, you are against police.

“It’s a dangerous and false narrative,” she said, adding that she would have liked to have seen bills taken up individually.

“If we’re going to make changes,” she said, “I think we need to be much more thoughtful.”

The House has been accepting comments about the bill through email this week. If a bill is to be sent to Baker, it would need to be done soon, as the session ends July 31.