



State Police Association of Massachusetts

REPRESENTING SERGEANTS AND TROOPERS
OF THE MASSACHUSETTS STATE POLICE
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Dear Association members,

It strikes me as fundamentally cruel that absolute or qualified immunity exists in the law for every single government official in Massachusetts, but now the Senate wants to carve out an exception that will overly expose police officers, who have one of the most dangerous jobs that calls for split-second decisions under extreme conditions. For legislative acts -- which are slow and deliberative -- all legislators have absolute immunity, which, just like it sounds, is broader protection than qualified immunity.¹ This is the same broad, no questions asked immunity, that applies to prosecutors and judges. Basically, everyone else in government, from the T driver to the DCR groundskeeper, and everyone in between, is entitled to qualified immunity. "Implicit in the idea that officials have some immunity — absolute or qualified — for their acts, is a recognition that they may err. The concept of immunity assumes this, and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all."²

"Government officials are normally protected only by a qualified immunity, and those officials seeking an absolute exemption from personal liability must show that public policy requires an immunity of that scope."³ In other words, the baseline for all government officials is qualified immunity.

Qualified immunity is not a complete shield against liability. Egregious errors are afforded no protection under the qualified immunity doctrine. Further, qualified immunity is civil in nature and provides no protection in a criminal prosecution. The United States Supreme Court and the Supreme Judicial Court of Massachusetts through numerous cases have continued to uphold the value and necessity of qualified immunity. To remove or modify without deliberative thought and careful examination of consequence, both intended and unintended, is dangerous.

Qualified Immunity is well settled law and sound public policy dictates that the Legislature not disturb this standard – certainly not in this bill so abruptly and certainly not without a vigorous debate both in the Legislature and in the court of public opinion. Please join me in demanding nothing less than sound, well-reasoned and forward-thinking legislation.

Sincerely,

Corey J. Mackey
President, State Police Association of Massachusetts

¹ See *Bogan v. Scott-Harris*, 523 U.S. 44 (1998).

² *C.M. v. Department of Children and Families*, 97 Mass. App. Ct. 343, 348-349 (2020), quoting *Scheuer v. Rhodes*, 416 U.S. 232, 242 (1974), overruled on other grounds, *Davis v. Scherer*, 468 U.S. 183, 191 (1984).

³ *Dinsdale v. Commonwealth*, 424 Mass. 176, 180 (1997).