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## OLR Bill Analysis

### sSB 397

## **AN ACT CONCERNING DEMOCRACY AND GOVERNMENT ACCOUNTABILITY.**

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*Expands the circumstances under which there is an investigation of a peace officer's use of physical force that results in the person's death or the death of a person in a peace officer's custody, by also requiring an investigation under these circumstances when the officer is any federal law enforcement officer; requires that the investigators have unrestricted access to the scene and to collect evidence in this use of force investigation*

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*Limits the circumstances under which a federal officer, employee, or agent has immunity when prosecuted for an offense based on an action taken under color of law*

**§ 11 — POLICE OFFICER HIRING PROHIBITION**

*Extends to all peace officers the current prohibition on hiring police officers who (1) were dismissed for malfeasance or serious misconduct or (2) resigned or retired during an investigation for this conduct*

**BACKGROUND**

**SUMMARY**

This bill makes various changes to laws related to civil rights and law enforcement activity, as shown in the section-by-section analysis below. It also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage

**§§ 1 & 2 — ACTIONS FOR CIVIL RIGHTS VIOLATIONS**

*Creates an individual cause of action, including against a federal or state officer or employee, for alleged civil rights violations; expands the attorney general's authority to bring actions based on alleged civil rights violations*

***Individual Cause of Action***

**Scope of Action.** The bill creates a cause of action (in court or another proper proceeding) against an individual or entity, including a federal or state officer or employee, that deprives or causes a Connecticut citizen or someone within the state's jurisdiction to be deprived of a U.S. Constitutionally-protected right, privilege, or immunity. This can occur by taking actions under color of United States or Connecticut statute, regulation, ordinance, custom, or usage.

The bill states that it is the legislature's intent that courts, when considering this action, must be guided by other courts' interpretations of the law that allows individuals to sue state or local government officials for federal constitutional rights violations (42 U.S.C. § 1983).

**Defenses.** The bill (1) allows the defendant in a civil action to raise any applicable immunities, including sovereign immunity, given by state or federal law and (2) immunizes federal officers and employees to

the same extent the law does for equivalent state officers or employees (such as personal immunity from civil liability for damage caused when discharging duties or within the scope of employment unless an action was wanton, reckless, or malicious).

**Damages.** The bill allows the court to award damages, including nominal, actual, compensatory, or punitive damages, injunctive relief, or other equitable relief. It specifies that the purpose of the damage award is to protect peaceable exercise or enjoyment of rights given by the U.S. Constitution.

The bill requires the court to award the plaintiff reasonable attorney's fees and costs in amounts at its discretion.

***Attorney General Authority to Bring an Action***

***Practice, Pattern of Conduct, Policy.*** Existing law gives the state attorney general the authority to investigate, intervene in, and bring civil or administrative actions on behalf of the state when there is a practice or pattern of conduct that:

1. deprives persons of any rights, privileges, or immunities secured by the U.S. or Connecticut constitutions or laws or
2. interferes by threats, intimidation, or coercion, with another persons' exercise or enjoyment of any rights, privileges, or immunities secured by the U.S. or Connecticut constitutions or laws.

The bill broadens the attorney general's authority to take these actions on behalf of the state by also allowing him to do so when any one has established a policy that deprives or interferes with another person's civil rights in the ways described above.

***Actions Under Color of Law or Custom.*** The bill also expands the attorney general's authority to investigate, intervene in, or bring an action by allowing him to do so when someone acts under the appearance of authority from a United States or Connecticut statute, regulation, ordinance, custom, or usage ("color of law") in a way that:

1. deprives another person of any rights, privileges, or immunities secured by the U.S. or Connecticut constitutions or
2. interferes by physical obstruction, threats, intimidation, or coercion, with another person's exercise or enjoyment of any rights, privileges, or immunities secured by the U.S. or Connecticut constitutions.

**Court Process.** For the bill's new actions based on acts done under the appearance of authority, the attorney general may bring the action in the Superior Court for the judicial district where the violation or alleged violation occurred. The bill requires the court to have a hearing on the complaint within five days after its filing, and the attorney general to notify the interested parties of its time and location. The court may order declaratory relief (a statement of rights) or a temporary injunction once the complaint is filed. After the hearing, it may order, amend, or continue the relief or injunction.

### **§§ 3 & 4 — USE OF FORCE INVESTIGATIONS**

*Expands the circumstances under which there is an investigation of a peace officer's use of physical force that results in the person's death or the death of a person in a peace officer's custody, by also requiring an investigation under these circumstances when the officer is any federal law enforcement officer; requires that the investigators have unrestricted access to the scene and to collect evidence in this use of force investigation*

By law, the Division of Criminal Justice (DCJ) must investigate whenever a peace officer, while performing his or her duties, uses physical force on someone that causes that person's death or uses deadly force (a type of physical force) on another person. The inspector general is responsible for determining if the use of force was justifiable. Similarly, the law requires the inspector general to investigate any death that happened while the person was in the custody of peace officers or law enforcement agencies to determine if physical force was used on the person and if it was justifiable. The law requires the inspector general to prosecute cases involving unjustifiable use of force by peace officers.

### **Broadened Authority to Include Federal Officers**

The bill expands the above investigatory and prosecutorial authority by applying it to the actions of any federal law enforcement officer. It

does this by including a broader definition of “peace officer” within this investigatory statute than what currently applies (see *Background – Peace Officer*).

Under current law, this investigatory authority over federal officers is limited to marshals and deputy marshals and narcotics agents. The bill instead applies it to “federal law enforcement officers,” as defined under two federal laws. Specifically, they include any:

1. officer, agent, or employee who the law or a government agency authorizes to prevent, detect, investigate, or prosecute a federal crime (or supervise these actions) (18 U.S.C. § 115(c)(1)) or
2. employee, including an Amtrak or Federal Reserve law enforcement officer, authorized by law to make arrests or apprehensions and by the employing agency to carry firearms, who mainly (a) prevents, detects, investigates, prosecutes, or assists in the incarceration of someone who violates the law (or supervises these actions) or (b) protects government officials against personal safety threats (34 U.S.C. § 50301(5)).

Correspondingly, the bill applies this broader definition of “peace officer” to the existing law that sets the standards for determining if use of physical force is justifiable.

### **Access to Evidence**

As part of these use of force investigations, existing law requires the inspector general to ask the appropriate law enforcement agency for any help needed to investigate and determine use of force. The bill specifies that (1) the DCJ and the inspector general must have unrestricted access to the scene and to collect evidence as part of these investigations and (2) this right to access applies even if the only peace officers involved in the incident were federal government employees.

The bill allows DCJ or the inspector general to seek injunctive relief in Superior Court against anyone who restricts their access to the scene and to collect evidence.

Under the bill, the court may order declaratory relief (a statement of rights) or a temporary injunction once the DCJ's or inspector general's complaint is filed. The court must have a hearing on the complaint within five days after its filing, and the complainant (DCJ or the inspector general) must notify the interested parties of the hearing's time and location. The court may then order, amend, or continue any declaratory relief or temporary injunction.

### **Background — Peace Officer**

Current law designates the following people as peace officers for purposes of the state's Penal Code and associated statutes: state and local police, DCJ inspectors, state marshals exercising statutory powers, judicial marshals performing their duties, conservation or special conservation officers, constables who have criminal law enforcement duties, appointed special police officers, adult probation officers, Department of Correction officials authorized to make arrests in a correctional institution or facility, investigators in the State Treasurer's Office, certified Department of Motor Vehicles inspectors, U.S. marshals and deputy marshals, U.S. special agents authorized to enforce federal food and drug laws, and certified police officers of a law enforcement unit created and governed under a state-tribal memorandum (CGS § 53a-3(9)).

## **§ 5 — PROHIBITED FACIAL COVERINGS**

*Prohibits, subject to several exceptions, peace officers from wearing a facial covering or personal disguise when interacting with the public and performing law enforcement duties; makes a violation a class D misdemeanor*

### **Prohibited Wearing**

The bill prohibits, subject to several exceptions, peace officers engaged in law enforcement activities from wearing a facial covering or personal disguise when interacting with the public and performing their duties. Peace officers include federal law enforcement officers, as is the case for use of force investigations under the bill (see §§ 3 & 4 above).

A violation of the ban on the use of facial covering and personal disguise is a class D misdemeanor, punishable by a fine of up to \$250, up to 30 days in prison, or both. Additionally, an officer who

intentionally assaults, batters, falsely imprisons or arrests, abuses process, or maliciously prosecutes someone (under state or federal law), while knowingly and willfully violating the ban, is unable to use a privilege or immunity defense against a civil liability claim about the officer's actions.

Under the bill, a "facial covering" is an item that conceals or obscures an officer's facial identity, such as opaque masks, garments, helmets, or headgear. Specific examples include balaclavas, tactical masks, gators, and ski masks. "Personal disguise" is undefined.

### ***Exempted Coverings and Uses***

The bill allows peace officers to use a medical grade facial covering designed to protect their health and safety but specifies that this does not include protecting an officer's identity. It also allows them to use facial coverings designed to (1) prevent airborne disease transmission or (2) protect against smoke exposure during a fire. Other exempt facial coverings are those:

1. needed for a water rescue operation,
2. that protect against biological or chemical agent exposure during an incident where there may be an agent,
3. that protect against freezing temperatures during an activity that does not require communicating orally with the public or someone that will be placed in custody, or
4. needed for an active undercover operation or other assignment for which supervising personnel or a court order allow them to be worn.

The bill also allows officers working on a bomb squad, motorcycle unit, or specialized weapons and tactics team to use gear necessary to protect their face and head from physical harm.

## **§ 5 — BADGE AND NAME TAG IDENTIFICATION**

*Generally requires peace officers to be clearly identified by their badge and name tag when enforcing laws and makes a violation a class D misdemeanor*

The bill generally requires peace officers (as the bill defines for purposes of use of force investigations, see §§ 3 & 4 above) to be clearly identified by their badge and name tag. The badge and tag must be (1) on the officer's uniform whenever the officer is enforcing any state or federal law and (2) worn following existing badge and name tag requirements for police officers.

By law, police officers must already affix and prominently display their badge and name tag on their uniform's outermost garment, unless exempt under the Department of Emergency Services and Public Protection's (DESPP's) model policy on badges and name tags, such as for undercover assignments. The bill similarly exempts a peace officer from the badge and name tag requirement when (1) the officer is working an active undercover assignment or (2) a court order or DESPP's model policy excuses it.

A violation of the ban is a class D misdemeanor, which is punishable by a fine of up to \$250, up to 30 days in prison, or both.

## **§ 6 — ARMED MILITARY FORCES ENTERING CONNECTICUT**

*Generally prohibits armed military forces from other states, territories, or districts from coming to Connecticut for military duty*

The bill generally prohibits an armed military force from another state, territory, or district from entering Connecticut for military duty here. To enter the state, the bill requires the military force to have (1) express written permission from this state's governor or (2) been called into active service of the United States and to be acting under presidential authority.

## **§ 7 — TAKING INTO CUSTODY IN STATE OR MUNICIPAL FACILITIES OR PROTECTED AREAS**

*Prohibits peace officers taking someone into custody on the basis of a civil offense in a state or municipal facility or certain other locations such as schools, hospitals, and houses of worship ("protected areas") without a judicial warrant for the person*

The bill prohibits peace officers, from detaining, arresting, or taking



someone into custody based on a civil offense in certain locations unless the officer (1) is acting in his or her official capacity and (2) has a judicial warrant for the person. Officers subject to the prohibition are those covered by the bill's expanded definition of "peace officer" for use of force investigations, which includes broader applicability to federal law enforcement (see §§ 3 & 4 above).

Under the bill, someone aggrieved by a violation of the ban may bring a civil action in Superior Court, and an action seeking damages is triable by jury. The bill allows the court to award a plaintiff appropriate legal and equitable relief, such as a temporary or permanent injunction, punitive damages, and attorney's fees and costs.

***Prohibited Custody Locations***

***State or Municipal Facilities.*** State or municipal facilities are buildings owned, leased, occupied, controlled, or used for business by an executive department office or agency or municipal government and entities that provide direct services on their behalf. This includes the grounds and garages or parking lots that are used as part of the facilities' operation, regardless of whether they are contiguous (in contact with one another), but not state-owned property leased to a federal entity.

***Protected Areas.*** The bill's protection from being taken into custody in certain areas applies to the following buildings or locations, including their grounds and garages or parking lots that are used as part of their operation, regardless of whether they are contiguous:

1. schools, ranging from preschools to colleges or universities;
2. medical or mental health facilities, such as hospitals, doctors' offices, vaccination or testing sites, or community health centers;
3. places of worship or religious study, either in a structure dedicated to faith activities or a temporary facility or other location where the activities occur;
4. social services establishments, such as crisis centers, shelters, supervised visitation or family justice centers, victim services

- centers, food banks or pantries, or substance counseling and treatment facilities;
5. places for disaster or emergency response and relief, including supply distribution sites, to register for disaster-related assistance, or to be reunited with family;
  6. places where religious or civil ceremonies or observances occur, such as for funerals, graveside services, or weddings;
  7. places where children gather, such as playgrounds, recreation or child care centers, school bus stops, or group homes for children; and
  8. places with ongoing parades, demonstrations, or rallies.

## **§ 8 — POST COMPARATIVE CERTIFICATIONS**

*Codifies POST regulations on getting a comparative certification to work as a police officer in Connecticut*

The bill codifies Police Officer Standards and Training Council (POST) regulations on certifying candidates for police officer positions who served that role in another state or in a law enforcement unit in Connecticut that is not subject to POST's authority (a "comparative certification").

Like existing regulations, the bill generally requires candidates for this certification to (1) satisfactorily meet POST's entry level requirements and (2) complete a POST-approved basic training program.

The bill allows POST to waive the basic training program requirement or parts of it, but POST must specify which parts the candidate must complete. However, beyond the regulations, the bill prohibits POST from waiving any part of the program for a candidate whose prior certification did not require completing a substantially equivalent training or education program, including at least 480 training hours.

Under the bill and existing regulations, a waiver request must be

made in writing by the (1) chief of police of the law enforcement unit seeking to hire the officer or (2) hiring candidate's appointing authority if there is no chief of police or it involves hiring a chief.

POST must evaluate a waiver request by comparing to current standards the quality and extent of (1) previous police officer basic training and certification; (2) formal, professional, and in-service training and education in law enforcement and criminal justice; (3) length of service and field experience; and (4) length of absence from employment with a law enforcement unit.

The waivable parts of the training are those for which the candidate has (1) satisfactorily completed a substantially equivalent training or educational program, (2) sufficient field experience to have practical mastery of the required skills, or (3) a satisfactory combination of the two.

## **§ 9 — OFFICER INTERFERENCE WITH PHOTO OR VIDEO TAKING**

*Makes federal law enforcement agencies liable when their officers interfere with someone taking a photo, digital still, or video of them or another officer performing their duties; makes an immunity defense unavailable in a civil liability action for an intentional tort committed while interfering with the taking of the photo, digital still, or video*

Current law makes a peace officer's employer liable if the officer interferes with someone taking a photo or digital still or video image of the officer or another officer performing his or her duties, subject to several exceptions. But it exempts federal government special agents and specified tribes' law enforcement unit members.

The bill generally applies its expanded definition of peace officer for inspector general use of force investigations (see §§ 3 & 4 above) to this provision, making the liability apply to the employers of all federal law enforcement officers, but keeping the exemption for tribal law enforcement.

Existing law exempts an employer from liability under certain specified circumstances, including when the officer had reasonable grounds to believe that the interference was to lawfully enforce a state criminal law or municipal ordinance. The bill, conforming with its

liability expansion to federal agencies, broadens the exemption to include lawful enforcement of a federal criminal law.

Additionally, if a peace officer intentionally assaults, batters, falsely imprisons or arrests, abuses process, or maliciously prosecutes (either under state or federal law) someone while interfering with someone taking a photo, digital still, or video of him- or herself or another officer, the officer is unable to use a privilege or immunity defense against a civil tort liability claim about the actions.

### **§ 10 — PROSECUTORIAL IMMUNITY FOR FEDERAL ACTIONS**

*Limits the circumstances under which a federal officer, employee, or agent has immunity when prosecuted for an offense based on an action taken under color of law*

The bill limits circumstances under which a federal officer, employee, or agent has immunity when prosecuted for an offense based on an action taken under color of law (the appearance of authority from federal law). Specifically, the immunity applies when the action was authorized by federal law and was necessary and proper to execute official duties.

### **§ 11 — POLICE OFFICER HIRING PROHIBITION**

*Extends to all peace officers the current prohibition on hiring police officers who (1) were dismissed for malfeasance or serious misconduct or (2) resigned or retired during an investigation for this conduct*

The bill broadens the prohibition on a law enforcement unit (generally state or local police) from hiring a police officer who was previously employed by the unit or in another jurisdiction and (1) was dismissed for malfeasance or serious misconduct calling into question their fitness to serve as an officer or (2) resigned or retired during an investigation for this conduct.

It does this by replacing the term “police officer” with “peace officer” and in doing so applies the hiring prohibition to hiring peace officers. Under the bill, as is the case for the inspector general’s expanded investigative authority, peace officers include all federal law enforcement officers and other state employees like state or judicial marshals and certain correctional employees (see §§ 3 & 4 above). Currently, the prohibition covers hiring sworn members of organized

local police departments, appointed constables with criminal law enforcement duties, special policemen appointed for state property or utility or transportation companies or to investigate public assistance fraud, and any member of a law enforcement unit who performs police duties.

As under existing law, the hiring prohibition does not apply to an officer exonerated of all malfeasance or serious misconduct allegations.

For purposes of the law and the bill, (1) “malfeasance” has its common meaning (wrongdoing), and (2) “serious misconduct” is an officer’s improper or illegal actions connected with official duties that could cause a miscarriage of justice or discrimination, such as a felony conviction, evidence fabrication, repeated use of excessive force, bribe acceptance, or fraud.

## **BACKGROUND**

### ***Related Bills***

sSB 91, favorably reported by the Judiciary Committee, also (1) gives the inspector general the investigatory authority over physical force incidents involving federal law enforcement officers and (2) restricts taking people into custody based on a civil offense in state or municipal facilities and protected areas.

sSB 463, §§ 1 & 8, and sHB 5533, §§ 1 & 8, favorably reported by the Government Administration and Elections Committee, among other things, (1) generally prohibit state and federal officers and agents from searching, detaining, or arresting people within 250 feet of an election site and (2) expand the state attorney general’s authority to investigate and bring actions for certain violations of civil rights, under state or federal law or constitutions, to include when someone has a policy that violates them.

HB 5428, favorably reported by the Judiciary Committee, among other things, limits the inspector general’s investigations of in custody deaths to those that occur in a peace officer’s or law enforcement agency’s physical custody.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 30 Nay 11 (03/23/2026)