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To: Connecticut General Assembly, Judiciary Committee

From: Alexander T. Taubes, Esq.

Re: Summary and Comment Regarding LCO #3471, *An Act Concerning Police Accountability*

This legislation has several promising provisions, including Secs. 8-9 (FOIA & collective bargaining), Sec. 16 (mental health assessments for officers), Sec. 19 (make body and dash cams mandatory), Secs. 21-22 (ban consent searches of cars or persons), Sec. 30 (police officer duty to intervene), Sec. 40 (demilitarization provision), Sec. 41 (new civil rights lawsuits against police officers without qualified immunity). None of these sections should be taken out of the bill. In fact, each of them could be strengthened, but keeping them in the bill is a bare minimum.

To strengthen the bill, I recommend five key areas of improvement based on my experience and knowledge as a civil rights attorney:

1. Ensure all provisions apply to correctional officers and apply retrospectively.
2. Make civilian review boards mandatory, and give them more disciplinary power (Sec. 17).
3. Remove loopholes and ban all chokeholds (Sec. 29), consent searches (Secs. 21-22), and military equipment (Sec. 40), and require officers to report all illegal police activity (Sec. 30).
4. Remove provision allowing police to create “crowd management” policy (Secs. 5-6), and remove study on private bondsmen taking people into custody like other states (Sec. 12).
5. Take appointment of “Inspector General” from State’s Attorney and give to Criminal Justice Commission or other body (Secs. 33-37).

Summary of LCO #3471 & Recommended Changes

Section	Summary	Recommended Changes
Sections 1-4	Support: State Police Officer certification; New drug testing & mental health assessments for State Police Officer certification; new procedures and reasons for revoking or suspending certification; Requiring State Police to re-certify	Require for all police, not just municipal police Require for DOC officers Require for State & Judicial Marshals
Section 5	Oppose: Requires creation of a uniform statewide policy for “managing crowds by police officers;” support training for policy	Establish all First Amendment policies by legislation – do NOT delegate to police
Section 6	Oppose: Requires State Police to adopt the “crowd management policy” and gives them immunity if they are “in compliance”	Abolish all state law immunities for “crowd control”
Section 7	Support: Requires police implicit bias training	Require for DOC officers
Section 8	Support: FOIA prevails over collective bargaining contracts	Do not allow this to be taken out!

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		<ul style="list-style-type: none"> - Ensure it keeps the “before, on or after the effective date” language!
Section 9	Support: No state collective bargaining agreement may prohibit disclosure of disciplinary action	Do not allow this to be taken out! Apply to municipal collective bargaining agreements!
Sections 10-11	Support: Municipalities required to report to state council on efforts to recruit “minority police officers;” reporting on recruitment	Could go much further. <ul style="list-style-type: none"> - Require departments to spend a certain % of budget on recruitment efforts targeted at impacted communities
Section 12	Amend: Expansion of task force to study police transparency and accountability	Remove from bill: (6) how bondsmen “take into custody the principal on a bond” in other states
Section 13	Unclear: Changing composition of Police Officer Standards and Training Council	This should be changed in consultation with impacted communities & organizations.
Section 14	Amend: Requires police officers “who [are] authorized to make arrests or who [are] otherwise required to have daily interactions with members of the public,” to show their badge numbers at all times, <u>except</u> under the terms of a policy that allows them not to comply under certain circumstances	Establish all badge-wearing policies by legislation – do NOT delegate to police
Section 15	Unclear: Technical changes	Adds state police to statutes.
Section 16	Support: Mental health assessments for police officers: <ul style="list-style-type: none"> - Not less than every 5 years - Can be required by administration to have more - “May” be required to have an assessment six months after hire 	Do not allow this to be taken out! Could go further – why only once every <u>5 years</u> ? <u>Mandate</u> mental health assessments upon hiring!
Section 17	Amend: Towns “allowed” to create civilian review boards with subpoena power and power to compel witness testimony	Affirm that towns already had the power to establish civilian review boards, and <u>mandate their creation in every town</u> ! Civilian review boards should have binding power to discipline officers as well!

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Section 18	<u>Amend:</u> Require each municipality to “complete an evaluation of the feasibility and potential impact of the use of social workers . . . for . . . remotely responding to calls for assistance, responding in person for such calls or accompanying a police officer on calls . . . “	Why devolve this to each municipality? Why not at least create a program to start doing this?
Section 19	<u>Support:</u> Make body camera and dashboard camera legislation mandatory for all police officers statewide	Do not allow this to be taken out! Add mandatory discipline for officers who fail to turn on cameras.
Section 20	<u>Unclear:</u> Technical changes to grant program regarding cameras	Watch out for more money being sent to police using this bill!
Section 21	<u>Support:</u> No consent searches of vehicles without probable cause Officers cannot ask motor vehicle operators for documents or identification other than motor vehicle ID & registration	Do not allow this to be taken out!
Section 22	<u>Support:</u> No consent searches of persons without probable cause	Do not allow this to be taken out! Needs to apply to searches of residences as well.
Section 23	<u>Support:</u> Requires review by prosecutor office of all criminal charges before docketed	Appoint an attorney from the Public Defender’s office to participate
Section 24	<u>Unclear:</u> False reporting for discriminatory reasons, with “specific intent,” is now falsely reporting in the first degree, a class C felony	More criminalization may or may not be seen as a good response to this problem.
Section 25	<u>Unclear:</u> When falsely reporting results in serious physical injury or death, now a Class B felony	More criminalization may or may not be seen as a good response to this problem.
Section 26	<u>Unclear:</u> Heightens penalties when false report is of the “alleged occurrence or impending occurrence of the serious physical injury or death of another person.”	More criminalization may or may not be seen as a good response to this problem.
Section 27	<u>Unclear:</u> Heightens penalties for second degree false reporting with specific discriminatory intent to Class E felony from Class A Misdemeanor	More criminalization may or may not be seen as a good response to this problem.
Section 28	<u>Unclear:</u> Heightens penalties for misuse of 911 system in discriminatory fashion	More criminalization may or may not be seen as a good response to this.
Section 29	<u>Unclear:</u> Amends use of force rules to require officers to have “exhausted all reasonable alternatives to the use of deadly physical force, . . . reasonably believe[d] that	This standard uses the words “reasonable” and adds so many factors to the equation that it is difficult to tell what impact it will have on litigation.

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	<p>the force employed creates no substantial risk of injury to a third party, and . . . reasonably believes such use of force to be necessary”</p> <p>Adds factors for considering whether use of force is “Reasonable:”</p> <p>(1) whether the person had or appeared to have a deadly weapon</p> <p>(2) whether the officer engaged in de-escalation measures</p> <p>(3) whether the officer’s actions led to an increased risk of the occurrence that led to the use of force</p> <p><u>Allows</u> chokeholds “only when he or she reasonably believes such use to be necessary to defend himself or herself from the use or imminent use of deadly physical force.”</p>	<p>Does not ban chokeholds in all situations. Could do that, but allows them to use chokeholds under certain circumstances. This is important because officers will always say their use of a chokehold was necessary after the fact.</p>
Section 30	<p><u>Support:</u> <u>Do not allow this to be taken out!</u></p> <p>Creates a duty for an officer who witnesses another officer he or she “objectively knows to be unreasonable, excessive or illegal” in the use of force to “intervene and attempt to stop such other police officer from using such force.”</p> <p>Says the officer who fails to intervene can be prosecuted and punished for the same acts as the officer.</p> <p>Also requires reporting of incidents by other officers and allows prosecution and punishment for failure to report.</p> <p>Creates a whistleblower protection for any officer who makes a report under this section.</p>	<p>Expand to include all illegal activity, not just excessive force:</p> <ul style="list-style-type: none"> - e.g. planting evidence, false statement in a police report, etc. <p>Make failure to report any illegal activity by a fellow officer punishable as an offense and require discipline.</p>
Sections 31-32	<p><u>Support:</u> Removes firearm & security officer privileges from decertified police officers</p>	
Section 33	<p><u>Amend:</u> Office of Inspector General created; appointed by State’s Attorney with oversight from Judiciary Committee</p>	<p>Should be appointed by Criminal Justice Commission, not State’s Attorney; should be independent from State’s Attorney.</p>
Sections 34-37	<p>Technical changes regarding Inspector General</p>	<p>See comment on Section 33.</p>

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Section 38-39	<u>Support:</u> Ban on municipal & state police quotas extended to citations to pedestrians.	
Section 40	<u>Support:</u> Ban on new acquisition of “controlled” equipment; requirement to sell “controlled” equipment; requires reporting to the General Assembly of the inventory and sale of “controlled” equipment; Allows State Police and the Governor’s office to approve the retention or acquisition of some “controlled” equipment.	<u>Make sure this doesn’t get removed from the bill!</u> Make sure the definition of “controlled equipment” doesn’t get watered down! Take out the provision allowing State Police and the Governor to give out exemptions from the requirements!
Section 41	<u>Support:</u> Creates a new cause of action in state court for individuals whose civil rights are denied by police officers. Repeals qualified immunity and discretionary act immunity for lawsuits brought under the section. Allows for recovery of attorney’s fees.	<u>Make sure this doesn’t get removed from the bill!</u> DOC Officers must be included in this bill. A law requiring towns, cities, or the state to indemnify and help to compensate the victims of violations of this law must also be added.