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WRITTEN TESTIMONY OF ATTORNEY JON L. SCHOENHORN IN SUPPORT OF DRAFT LCO BILL #3471, AN ACT CONCERNING POLICE ACCOUNTABILITY
JULY 17, 2020

I thank the Judiciary Committee for holding this session to allow input on this very important issue during the current pandemic. My name is Jon Schoenhorn. I have been a criminal defense and civil rights lawyer in Hartford since 1982. I was a member of the General Assembly's Sentencing Task Force in 2008 and 2009. I am a past president of the Connecticut Criminal Defense Lawyers Association, and former member of its board of directors. I am a long-standing member of the National Police Accountability Project, and was a part-time hearing officer for the State Commission on Human Rights and Opportunities. I have both defended police officers in criminal cases, and sued them for civil rights violations in state and federal court. On June 28, 2020, the Hartford Court published an opinion piece that I authored entitled "*To reform police departments, some laws must change*." I am pleased to see that some of those suggestions are included in this bill. Because LCO #3471 is so massive, I wish to address only a few of its provisions. My remarks are not intended to be comprehensive nor a substitute for the extensive reforms and ideas proposed by others, which I also support.

Section 6: While current state law grants to our State Police certain "privileges and immunities" from liability otherwise reserved to the "organized militia" (meaning the National Guard and the military), the general use of force by the military against civilians is strictly limited by federal law. State law enforcement officers should not be given a free pass from constitutional liability by this enactment. Indeed recent events in Washington D.C., where Attorney General Barr ordered paramilitary forces to physically attack peaceful protestors, so that the President could stage a photo opportunity, highlights just how ill-advised blanket immunity can be.

Section 8. I fully support this provision. Transparency and the public right to know must outweigh any negotiated collective bargaining provision that allows the State Police or other law enforcement agencies to circumvent the Freedom of Information Act. As I stated in my Op-Ed piece, "Why wouldn't exonerated troopers want the public to know that? Why should the internal investigative process not be transparent?" The public should always know the reasons for investigative findings – whether favorable or unfavorable to an officer.

Section 13. Revamping the Police Officers Standards and Training Council is a wonderful idea. I recommend that its reconstituted membership include an attorney from the Connecticut Criminal Defense Lawyers Association and a representative of the Office of Chief Public Defender.

Section 18. I support the policy that police departments employ social workers, if feasible. I would go further and suggest that agencies actively recruit persons with social work employment or educational background to become "peace officers." A statement of such public policy by the General Assembly would help.

Section 19. I strongly support the mandates set forth in this section regarding dashboard cameras and body-worn recording equipment. I can identify numerous cases where the existence of a recording played a crucial role in the outcome of cases; both civil and criminal. One deficiency I note here, however, is that the provision fails to incorporate consequences if an officer violates the agency's own recording policies under this law, either by turning off a device or failing to record when required. I propose a separate provision or subsection to the effect that *"the failure of an officer to record any encounter with the public in violation of the agency's policies or this law, shall give rise to an adverse inference regarding the credibility of said officer's testimony in any resulting court or administrative proceedings.*" That, at least, will give teeth to these provisions.

Sections 21 and 22. I strongly support laws that prohibit "consent" searches of motor vehicles based solely on motor vehicle violations, in the absence of probable cause for a separate offense. I can point to several cases where it appears that race may have played a role in the stops. Often times citizens are intimidated by these stops, where "suspicion" is based on nothing more than nervousness of an occupant. Prolonged traffic encounters along busy highways also place both officers and motorists in physical danger from passing cars.

Such laws require consequences for their violation. I propose a subparagraph that makes clear that *any tangible evidence seized or visual observations made by a law enforcement official that violates these sections, shall be inadmissible against any occupant of said motor vehicle in a subsequent criminal or motor vehicle proceeding*.

Section 30. I strongly support this provision. While most departments have a policy requiring officers to intervene to prevent improper force by fellow officers, it is almost never enforced. It is a tenet of federal civil rights law, that the failure of one police officer to stop another officer from violating someone's civil rights is, itself, a violation. Nevertheless, I believe it is important to spell it out, as this provision does.

Section 33. For years it has been my goal to help create a statutory cause of action for violations of the Connecticut Constitution that includes attorney's fees and punitive damages, as well as compensatory damages. This provision is long overdue and I fully support it. We can no longer count on our federal courts to enforce individual rights under the federal Civil Rights Act, which almost always favor police action, even if unconstitutional. Restrictions such as "qualified immunity," and other steady erosion of protections by the U.S. Supreme Court, has gutted its use as an effective deterrent against police misconduct, except in extreme cases.

While I recognize that municipalities and the state should not pay for wilful and wanton misconduct caused by rogue officers, I think that the recent ruling by the Court of Appeals in *City of Hartford v. Edwards,* 946 F.3d 631 (2d Cir. 2020), goes too far in immunizing agencies from civil rights settlements and judgments, if even some of the misconduct resulted from deficient training or lax enforcement of its policies. Statutes such as Conn. Gen. Stat. §§ 5-141d, 7-101a, 7-465 and 10-235 (among others), rightly distinguish between violations of civil rights (which are always "intentional" acts) and certain conduct that goes beyond the violation itself and is deemed "malicious or wanton" (deserving of an extra award for punitive damages). Up until January 2020, it was generally understood that a government employer was responsible for paying compensatory damages, costs and attorney's fees in police misconduct cases, but the individual defendant was responsible for "punitive damages." Now due to the *Edwards* decision, if a judge or jury awards one dollar in punitive damages, the agency pays zero. A civil rights victim may get nothing, while seeking to foreclose on a house or attach a salary. This policy not only hampers justice for civil rights victims, but makes it unlikely that lawyers will undertake representation in the first place. To remedy this unfair outcome, I recommend that the legislature amend various indemnification laws to clarify that the employing agency must compensate victims of civil rights violations who sue and recover damages, *except for* that portion constituting "punitive damages." If we want meaningful compensation for the victims of police misconduct in Connecticut and accountability for lax training of our police, any civil rights law must hold the employer responsible, except in the most extreme circumstances.