

Dear Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Rebimbas, and distinguished members of the Judiciary Committee:

My name is Ben Haldeman. I am an immigration defense attorney and Immigrant Justice Corps Fellow at the New Haven Legal Assistance Association. Prior to my work at LAA, I went to the University of Connecticut School of Law and then clerked at the Connecticut Supreme Court.

I'm writing in support of LCO #3471 "An Act Concerning Police Accountability." Although the bill isn't nearly strong enough, it contains important provisions that bolster police accountability and set the stage for further improvements. I'd like to highlight some of those provisions, as well as some of the provisions that desperately need revision. I am writing for myself and based on my observations and experiences as an immigration attorney.

As an immigration defense attorney, I work with many clients who have been detained by Immigration and Customs Enforcement following interactions with state and local law enforcement officers. As a result, I'm particularly attentive to provisions that have the potential to reduce or mitigate adverse encounters between law enforcement and members of the immigrant community. Such provisions include sections 21 and 22, which impose a minimum standard of probable cause for vehicular and personal searches in most cases. Raising the level of suspicion required for such measures is particularly important given that police in Connecticut -- like the rest of the country -- continue to stop and search members of the Black and Latinx community at disproportionately high rates.

It is also important that these provisions require probable cause for a search even where police have been given consent, since most people confronted by law enforcement -- and especially people of color and those who do not speak English fluently -- do not feel like they can actually withhold consent in many circumstances. The jurisprudence surrounding that particular issue -- which suggests that denying consent is always a viable option -- is a legal fiction that does not accurately reflect the reality of most encounters between law enforcement and members of the public. This bill takes one small step towards aligning the law with reality.

That said, the last clause of section 21(b) needs to be amended. It allows officers to ask for additional documentation where an individual is unable to produce a driver's license. That particular provision, at least written as broadly as it currently is, allows officers to do what amounts to a check for lawful immigration status, which is otherwise impermissible in this state.

In my work with noncitizens detained by ICE and its local proxies, moreover, I have seen time and again the potential for unequal power structures to engender abuses both large and small, particularly in contexts -- like immigration enforcement, incarceration, and policing -- built on racist ideologies and practices. I firmly believe that actual accountability is critical to creating a more just society. That is, where law enforcement officers commit abuses or make mistakes that do harm to people of color, those abuses and mistakes must have painful repercussions for those same officers and the institutions that support them. As a result, I strongly support section 41, which places limitations on qualified immunity. That provision, more than anything else in this bill, has the potential to create real change in the way that police institutions function and the care with which they treat encounters with the public, and with people of color, in particular.

I also support the creation of duty to intervene, in section 30, when officers witness wrongful uses of force (though I would encourage the legislature to expand that duty to other types of unlawful and

unreasonable conduct, as well). At the same time, I'm concerned by the language requiring the witnessing officer to "objectively know" that the conduct is unreasonable, excessive or illegal. The legal framework surrounding "use of force" should always prioritize preventing harm to all parties involved, not just police officers, and triggering the duty to intervene only at the level of "objective knowledge" is little more than a meaningless gesture. A much lower standard -- perhaps where "a reasonable person would believe" that the conduct is unreasonable, excessive or illegal -- is necessary to provide meaningful protection to community members.

There is no question that the establishment of Civilian Review Boards under section 17 is also an important step in holding police accountable. Like every other institution, police departments cannot reasonably be expected to properly discipline themselves, especially operating within a system that prioritizes its own safety above that of community members. It has to be representatives of that same community that hold the police accountable and decide which actions are reasonable and which actions are not. Much should be done to strengthen the provisions surrounding Civilian Review Boards, therefore, including *requiring* that such Boards have subpoena power.

Section 29, regarding the "use of force," needs significant amendment. The use of force should always be a last resort, and that is simply not how it has been, or continues to be, treated by police in this state or around this country -- particularly in encounters with the Black and Latinx community. Whereas officers will often prioritize the preservation of life and physical integrity when responding to incidents involving white perpetrators, the same is rarely true in encounters with people of color. In such circumstances and as a result of societal, structural, and individual biases -- that is, the racism at the core of law enforcement practices -- police tend to prioritize their own protection and the protection of white people and white property over the safety of people of color.

As a result, any provision authorizing the use of lethal force must be drawn with extreme care. This provision is not. For example, under this bill, even a person who merely threatens to inflict serious physical injury on another person may be killed without due process. But such threats, however awful, are not necessarily accurate indicators of dangerousness. Condoning the killing of community members in such circumstances -- along with many other situations that might arise within the ambit of the bill -- is beyond unconscionable. In determining whether the use of lethal force is "justified" there must be a presumption that it was not, and all actions by law enforcement officers leading up to that encounter must be interrogated to ensure that *no other course of action* was possible in order to prevent imminent harm to another person. Whereas the proposed law currently asks, "Was this police killing justified?," it should ask, "Was there any possible way to avoid this killing?" If the answer is "yes," liability must lie with the officer and the department. Otherwise, the law is unlikely to result in the actual protection of the community.

There are many other provisions that could benefit from amendment, but in all honesty, Connecticut needs to take some meaningful step towards police accountability, and this bill provides a small push in that direction. For that reason, I'm asking the Legislature to pass this bill -- ideally, with some of the amendments suggested above -- and to open up a conversation about further, more extensive changes.

Thanks for your time and consideration.

Best,

Ben Haldeman

