



POACT

Police Officers Association of Connecticut

TO: MEMBERS OF THE CONNECTICUT GENERAL ASSEMBLY &
GOVERNOR LAMONT

FROM: ATTORNEY BOB SHEA & ATTORNEY PATTI SHEA
For **POLICE OFFICERS ASSOCIATION OF CT – POACT**

DATE: JULY 17, 2020

COMMENTS REGARDING THE JULY 9, 2000 DRAFT LEGISLATION, LCO NO. 3471

Police Officers want to contribute to the solution to make Connecticut a better place to live and work for everyone. We would love to have the opportunity to participate in any further discussions to make appropriate amendments to the draft legislation.

Background:

Just one year ago in the Spring of 2019, police union representatives participated in the negotiation and passage of **Senate Bill 380, Public Act 19-90 -- AN ACT CONCERNING THE USE OF FORCE AND PURSUITS BY POLICE AND INCREASING POLICE ACCOUNTABILITY AND TRANSPARENCY.**

The OLR summary for the new 2019 law states:

each law enforcement unit (see BACKGROUND) must annually prepare and submit a use of force report for the preceding calendar year to the Office of Policy and Management (OPM). It also requires OPM to: 1. complete a preliminary status report whenever a peace officer uses physical force on another person and the person dies as a result and to submit the report to the legislature within five business days after the cause of death is available and 2. make the report it is required to provide at the end of its investigation publicly available on its website within 48 hours after the copies are provided to certain local and state officials. The act also (1) makes certain body-worn or dashboard camera recordings disclosable to the public within 96 hours after the incident, (2) **narrows the instances when deadly force is justified**, and (3) **generally prohibits a police officer engaged in a vehicle pursuit from discharging a firearm into or at a fleeing motor vehicle.** (emphasis added).

As noted, the new law contains several comprehensive changes for police work. Our primary concern with the initial 2019 proposal was the recognition of the United States Supreme Court's Graham v. Connor standard for when a peace officer is justified in using force:

US Supreme Court in Graham v. Connor, 490 U.S. 386, 396 (1989). “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”

The 2019 law ultimately did not contain a change to the Graham v. Connor standard; and we are respectfully requesting the Legislature to again maintain the standard this year, particularly with respect to the proposed changes to §53a-22 in **Section 29 of LCO No. 3471** (discussed further below).

Also in 2019, police representatives participated in the negotiation and passage of **Senate Bill 164, Public Act 19-17 -- AN ACT CONCERNING WORKERS' COMPENSATION BENEFITS FOR CERTAIN MENTAL OR EMOTIONAL IMPAIRMENTS, MENTAL HEALTH CARE FOR POLICE OFFICERS AND WELLNESS TRAINING FOR POLICE OFFICERS, PAROLE OFFICERS AND FIREFIGHTERS.**

The OLR summary states:

This act allows police officers, parole officers, and firefighters to receive certain workers' compensation benefits for post-traumatic stress disorder (PTSD) caused by their participation in certain “qualifying events.” Such events include seeing, while in the line of duty, a deceased minor, someone's death, or a traumatic physical injury that results in the loss of a vital body part.

Now, we are respectfully requesting the Legislature to consider how the provisions of the 2019 “PTSD” law square with the new proposals in **Section 16** regarding the periodic mental health assessments (discussed further below).

With this background in mind, police officers and other peace officers appreciate the opportunity to participate in the ongoing negotiation of the pending legislation.

Specific Comments regarding LCO No. 3471.

Police Officers care very much about all the changes being proposed in the 41 different sections of the draft legislation, but we are discussing herein our issues of primary concern.

As a general matter, we suggest that the effective dates contained in LCO No. 3471 -- particularly with respect to any new requirements for day-to-day police work in our communities -- must be pushed out so that all peace officers can receive the necessary training in order to comply with any new requirements. Everyone agrees that new training will be crucially important, and good training is time-consuming.

- **SECTION 29 LEGAL STANDARD FOR THE JUSTIFIED USE OF DEADLY FORCE.**

The use of deadly force by a law enforcement officer is a last resort. Its use is a burden that the officer must carry for the rest of that officer's life. But it is an unfortunate requirement of the job that the residents ask us to do.

Currently the question as to whether use of is justified is as articulated by the US Supreme Court in Graham v. Connor, 490 U.S. 386, 396 (1989). **“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”**

A few days ago, on July 13, 2020, **OLR issued a report 2020-R-0169** which confirms the Graham v. Connor standard. The **OLR Report** states:

Constitutional Requirements for Using Deadly Force

The U.S. Supreme Court has ruled that the Fourth Amendment to the U.S. Constitution prohibits the use of deadly force to effect an arrest or prevent the escape of a suspect unless the police officer reasonably believes that the suspect committed or attempted to commit crimes involving the infliction or threatened infliction of serious physical injury and a warning of the intent to use deadly physical force was given, whenever feasible (*Tennessee v. Garner*, 471 U.S. 1 (1985)).

The Court has said that the test of reasonableness under the Fourth Amendment is not capable of “precise definition” or “mechanical application” (*Bell v. Wolfish*, 441 U.S. 520, 559 (1979)). The Court goes on to state, “[t]he reasonableness of a particular use of force must be viewed from the perspective of a reasonable officer at the scene, rather than with 20/20 vision of hindsight” (*Graham v. Connor*, 490 U.S. 396, 397 (1989)). **Additionally, there must be “allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”** (emphasis added).

Section 29 would judge an officer's actions based on whether *his or her actions are objectively reasonable under the circumstances*. We oppose this change allowing a regular reasonable (civilian) person standard; rather than the Graham v. Connor reasonable officer on the scene standard.

Further, **Section 29** suggests several new statutory provisions, including that officers would be required to *exhaust all feasible alternatives* and that officers would be analyzed as to whether they *engaged in reasonable de-escalation measures prior to using deadly physical force*.

These are certainly important requirements, **and we respectfully believe that police officers should be fully trained specifically in these requirements before these requirements take effect.**

- **SECTION 3 -- POST DECERTIFICATION**

Section 3 proposes to amend §7-294d for **revocation** of a Police Officer's certification by POST by adding a provision that an officer can be decertified if it is "***found that an officer's conduct tends to undermine the public confidence in police work***" and provides only a couple of ways (including but not limited to) that an officer could be subject to such a broad and wide-sweeping finding and subsequent decertification.

We respectfully suggest that this term is too broad and must be narrowed. It is possible that a patrol officer who appropriately challenges or questions his or her Chief's orders could be deemed by POST to be ***undermining the public confidence in police work*** because the patrol officer was not obeying the chief and the "chain-of-command."

Section 3 takes effect **upon passage**, which means -- similar to the situation with **Section 29** -- law enforcement officers across the state will not have sufficient time to be trained in the new POST certification and decertification requirements. The effective date should be delayed.

We respectfully believe that the standards must be precise, and the POST investigation and hearing process (and the necessary UAPA appeal process) should be fair -- before a person's livelihood and license to work (certification) can be taken away.

- **SECTION 41 -- QUALIFIED IMMUNITY**

We believe that Section 41 should not be enacted in its current form.

Three weeks ago on June 24th, the Connecticut Supreme Court explained the important public policy reasoning for qualified immunity --

Borelli Estate of Giordano v. Renaldi, No. 20232, 2020 WL 3467487, at *4 (CT Supreme Court June 24, 2020)

The following principles of governmental immunity are pertinent to our resolution of the plaintiff's claims. "The [common-law] doctrines that determine the tort liability of municipal employees are well established. ... Generally, a municipal employee is liable for the misperformance of ministerial acts, but has a **qualified immunity** in the performance of governmental acts. ... Governmental acts are performed wholly for the direct benefit of the public and are supervisory or discretionary in nature. ... The hallmark of a discretionary act is that it requires the exercise of judgment. ... In contrast, [a ministerial act] refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion. ...

Municipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society. ...

Discretionary act immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury. ... (emphasis added).

- **SECTION 16 -- MENTAL HEALTH ASSESSMENTS**

Section 16 requires a police officer to have mandatory, periodic mental health assessments. Respectfully, the current language in **Section 16** does not explain the goals or the reasoning for such mental health assessments.

The 2019 law Public Act 19-17 (discussed above) had a specific goal of helping certain public safety officers identify and receive treatment for PTSD, based upon the officers' witnessing of horrific incidents and injuries to other people – which is an unfortunate reality for public safety officers.

Section 16 does not state what happens if an officer does have issues which need to be addressed. Does the officer make a workers' comp claim? Does the officer receive disability benefits? Does the officer receive appropriate medical or psychological treatment? Does the officer receive paid medical leave? What are the human resources ramifications of the periodic mental health assessments?

- **SECTION 17 – SUBPOENA POWER FOR CIVILIAN REVIEW BOARDS**

Connecticut Police officers are subject to several potential layers scrutiny from: police chiefs, internal affairs divisions, police commissions, the Chief State's Attorney (or the newly proposed inspector general in **Section 33** of the proposal); and/or the State Labor Board. We respectfully believe that is not appropriate for the Legislature to now grant the authority for civilians on a civilian review board to have this extraordinary subpoena power.

- **SECTION 12 -- TASK FORCE**

Section 12 asks the Task Force to examine the possibility of police officers purchasing their own liability insurance. We are not aware that this type of insurance is even available in the market at an affordable price.

Section 12 also asks the Task force to examine whether a police officer is a necessity at a municipal road construction site. Police officers are at construction jobs in order to protect road workers, pedestrians, and drivers. This decision should remain with the towns.

Thank you for your consideration of our ideas on this draft legislation.