

**Testimony in SUPPORT of
Draft LCO No. 3471: An Act Concerning Police Accountability**

July 16, 2020

Via E-mail

Judiciary Committee
Connecticut General Assembly
Legislative Office Building, Room 2500
Hartford, CT 06106
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Re: Listening Session regarding Draft LCO #3471 An Act Concerning Police Accountability

To Whom It May Concern:

As a preliminary matter, I would like to thank the writers of this draft legislation, who have come together, on short notice—amidst growing social unrest, national tension in the area of race-relations, and a global pandemic—to address the serious need for our laws to promote healthy policing, as an aspiration, and to protect traditionally vulnerable communities of color from abuses, when police officers—who are sworn to protect and serve—fall short of their professional standards.

As a lifelong resident of Connecticut, I first address those who feel that we don't have a "race problem" in our country, state and/or local communities. I had the privilege to grow up in Stamford, a City whose diverse population personally introduced me to what it means to be Black in America. From my schooling, to extracurricular involvement, to social activities—even as a young child, I was keenly aware that I would have to work extremely hard to not become another statistic. It took willpower, early on in grade school, to alert my parents to the fact that their native-born daughter, despite her fluency in English, was being funneled into ESL classes because her parents were immigrants. It took finesse, in middle school, to toe the line between pre-teen attitudinal and behavior adjustments, and a brush with in-school suspensions and Saturday school, in order to prevent myself from being placed on track with the social "deviants," who needed specialized education, and would inevitably journey down the dark path of the school-to-prison pipeline. In high school, it took busyness and conservative parents to prevent me from getting mixed up in social activities that increased the likelihood of my interaction with law enforcement; and finally, in my college years and beyond, it has taken resilience to move in spaces where representation is so lacking, and where no amount of schooling and professional training can insulate you from daily reminders of your identity as Black in America. It's a harrowing and exhausting reality, exacerbated by the trauma that most people of color experience on a recurring basis, in bearing witness to the substandard treatment and, most recently, public display of frequent carnage of members within our communities. Racism IS real and it's ever present in society today—and especially, in policing. So, it is with this background, and my professional training, that I view this draft legislation, and offer a few of the following questions and critiques, for your consideration:

I strongly support §§ 1-4 , 7, & 15 of the draft legislation, concerning officer certifications and implicit bias trainings. I would only note that the legislation does not clearly speak to the lateral transfers of officers that take place in between re-certification periods. I'm concerned that officers, who after two years on the job, are able to move to different jurisdictions following instances of misconduct, without much scrutiny. With respect of § 3 of the working draft, concerning revocation or suspension of certification, I believe there should be extensive and recurring background screenings for members of police forces and corresponding revocations, based on officers who have affiliations or membership with hate organizations, such as the KKK. The news of Aurora, CO officers mocking the death of Elijah McClain and Wilmington, NC officers spewing racial vulgarities and eagerly awaiting a "race war," was appalling, but unsurprising. Too many police departments across the nation, have harbored members on the force who belong to domestic terrorist organizations and/or affiliate with hate groups, which is inherently "conduct

that undermines public confidence in law enforcement.” Along with the measures to punish these “bad apples,” the POST certification and background check processes should be more robust, and go beyond drugs screenings, in order to detect problematic individuals and *prevent* the likelihood of violence stemming from their implicit bias.

Finally, I am enthusiastic about § 41 of the bill, which establishes a civil cause of action for deprivations under Article First of the Connecticut Constitution; however, I am concerned about two (2) issues. First, the effective date of this section is October 1, 2020, and it’s “applicable to any cause of action arising from an incident committed on or after” that date. Shouldn’t unsuccessful litigants, who previously tried to vindicate their rights in federal courts, but failed due to qualified immunity, have an opportunity to avail themselves of this new state law, which rejects qualified immunity as a defense? While blanket retroactive application of this section might be ill-advised, perhaps the legislation can offer some guidance on whether lawsuits in federal courts that were discarded, or are currently pending, that fall within the applicable 3-year limitation and accrual period, will be barred on jurisdictional grounds, in state court, under doctrines such as issue or claim preclusion or the prior pending action doctrine.

Lastly, as drafted § 41 has limited applicability. While Article First of the Connecticut Constitution outlines the declaration of rights, the majority of lawsuits will likely fall under §7 (concerning the rights of people to “be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation; or excessive force claims”). Unfortunately, the new state cause of action created by § 41 of the draft legislation does not contemplate the negligence claims which often accompany a large number of actions brought against officers, for deprivations of civil rights, which trigger municipal liability under §§ 52-557n and 7-465 of the Connecticut General Statutes.

Unsurprisingly, Connecticut law in this area cloaks officers with governmental “discretionary act” immunity. Policing has largely been an area where our courts have almost exclusively interpreted their actions as discretionary. See Soderlund v. Merrigan, 110 Conn. App. 389, 400 (2008) (“Police officers are protected by discretionary act immunity when they perform the typical functions of a police officer.”). Without the ability to hold municipal employers liable for the negligent and unconstitutional conduct of their officers, there’s no real deterrence or incentive for change. Money talks. Without the ability to place pressure in the area where it will actually hurt, our laws will continue in failing to address the great number of instances wherein officers should not be—but are—protected by some form of governmental immunity for their misconduct. I imagine this rollback on discretionary act governmental immunity, under Conn. Gen. Stat. §§ 52-557n and 7-465, may upset big stakeholder like municipal associations and police unions, who will undoubtedly sound the alarm of the “opened floodgates of litigation.” However, perhaps a middle-ground is for drafters to include, within this legislation, specific language, that might expand the limited class of persons recognized by our courts (i.e. currently, only school children) within the class of persons eligible under the “identifiable person/imminent harm” exception for discretionary-act governmental immunity, to include vulnerable groups, such as the criminally accused. The Connecticut Supreme Court, in Grady v. Somers, noted that “[o]ther courts, in carving out similar exceptions to their respective doctrines of governmental immunity, have also considered whether the legislature specifically designated an identifiable subclass as the intended beneficiaries of certain acts....” 294 Conn. 324, 350-51 (2009). Perhaps, this draft legislation is the opportunity for the legislature to take up this call of action to draft legislation that will expand the group of persons who can successfully sue police officers for negligence, under the identifiable person/imminent harm exception—if it is unwillingly to expressly rollback discretionary-act governmental immunity for police officers (in this wave of sweeping police reform legislation), which triggers municipal liability. While it is important to have draft legislation to address and correct the problems of “bad apples” in policing, it would be *even better* to have legislation that creates a

huge and *costly* disincentive for officers (and their municipal employers) to practice (or allow) misconduct within their police force.

In sum, I've addressed a few questions, confusions, and concerns in my reading of the draft legislation that I feel present challenges and limitations, with respect to its pragmatic application. I trust that these suggestions, questions, and concerns will lead to creative problem-solving in later versions of the legislation. The current draft is a **great** start, but the silence with respect to the procedural challenges in access to the courts—for the ability to vindicate violations of civil rights—may be a significant shortcoming in bringing about widespread accountability and deterrence for police misconduct.

Thank you for your consideration.

Sincerely,

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