

To: The Judiciary Committee

From: Curt Johnson, J.D., environmental advocate

Date: 7-17-2020

Re: Review of LCO 1271, Police Reform Bill

I offer the following observations on the working draft LCO 1271, as an attorney who practiced in environmental law for over two decades and has observed how critical statutory criteria is to the enforcement of law. I also am the President/CEO of Save the Sound (previously CFE/Save the Sound).

First, thank you Sen. Winfield for your ongoing work on these issues, and especially in this moment in time. Second, I'd like to reflect on how valuable CONECT has been in bridging the world of environmental justice and racial equity. These observations below are personal, and are offered independent of my work at Save the Sound, and in solidarity with CONECT (my Church, Spring Glen Church is a member) and in recognition of how much my friend and colleague, Justin Farmer, has done to raise my awareness to the police threats to the black and brown community and to the hundreds of victims of police violence, many of whom are from black and brown communities.

I've reviewed the comprehensive working draft (the "draft"), and after outlining what I perceive as critical themes contained therein, I proffer comments for your consideration. My goal is to provide concrete ways to enhance the bill based, in part, on a review of the work of Campaign Zero.

Body and Dashboard Cams and the right to film Police

The draft mandates that body cams "shall" be worn and requires dashboard mounted cameras as well. (Lines 811, 841) These are positive changes.

Concepts for Consideration:

1. Consider: **The Right to Record Police:** Ban police officers from taking cell phones or other recording devices without a person's consent or warrant and give people the right to sue police departments if they take or destroy these devices. (Ex: Colorado Law) Videos of police conduct, taken by 3rd parties, is often critical evidence in use of force matters.
2. Consider: **Accountability for failure for Police to Record:** While the draft now mandates the use of body cams, what happens if Police do not record an incident involving bodily harm/use of force? Consider

establishing a rebuttable presumption that if there is no video recording of an incident involving use of force, the Police officer is presumed to be guilty of an illegal use of force. This presumption can be rebutted, as described in later Use of Force section.

Training

The draft requires establishing a police standards and training council that is to develop an extensive training program for managing crowds during “riots” (Sect. 5), and for training and re-training of Police. The authority given the council is broad, and its representation is heavily weighted toward police representation.

Concepts for Consideration:

1. **Implicit Bias training strengthened.** While included as a requirement (lines 347-355), consider that the most important implicit bias training and evaluation is in shoot/strike or no shoot/no strike simulations. Include language that specifically requires this focus within training, and mandates re-assignment of Police personnel who show this bias to locations outside of communities of color.
2. **Mandate subjects of training:** Campaign Zero recommends that training include the following concepts. Consider explicitly requiring these subjects be incorporated into the training requirements:

Consider:

- De-escalation and minimizing the use of force
 - Procedural justice
 - Relationship-based policing
 - Community interaction
 - Crisis intervention, mediation, conflict resolution, and rumor control
 - Appropriate engagement with youth
 - Appropriate engagement with LGBTQ, transgender and gender nonconforming individuals
 - Appropriate engagement with individuals who are English language learners
 - Appropriate engagement with individuals from different religious affiliations
 - Appropriate engagement with individuals who are differently abled
3. **Expand the representation on the Council** to include at least five (6) members representing communities of color of which at least (3) should be youth activists who have been engaged in fighting against police misconduct.

4. **Require frequent re-training:** consider requiring a reasonable re-training requirement (every two years? Every 4 years?)

Use of Force

I applaud Senator Winfield for focusing on this provision. It is the heart of the matter. Inserting the phrase “objectively reasonable” (line 1227) is a bit helpful. The draft inserts the following factor: whether the Police have “exhausted all alternatives to the use of deadly force” (line 1233). These are good starts. However, there are still difficulties in the State’s Attorney Office investigators relying on these two standards. First, “objectively reasonable” may be viewed from the lens of an assumed largely white attorney work force. I support incorporating “necessary” as a substitute language. Second, there is no definition of the meaning associated with the phrase “exhausted all alternatives to the use of deadly force.” With that in mind, consider:

1. **Establish standards and meaning for “alternatives to use of deadly force”:**

Consider this phrase from Tennessee statues on alternatives:

(b) Notwithstanding subsection (a), the officer may use deadly force to effect an arrest only if all other reasonable means of apprehension have been exhausted or are unavailable, and where feasible, the officer has given notice of the officer’s identity as an officer and given a warning that deadly force may be used unless resistance or flight ceases.

Include some more detail on what alternatives to use of deadly force. Here is an example from Seattle police: In reviewing the tactics employed, were de-escalation tactics employed including verbalization and warnings; creating distance, creating time and space; tactical repositioning of personnel. NOTE: These alternatives should be mirrored as training requirements.

2. **Consider limiting deadly force to the Police protecting themselves or others from imminent harm and allow for broader objective review of tactical decisions.** Consider inserting the following stricter standard for use of deadly force from the LA police department (see below). This removes a practice of training and accepting that our police can kill when they perceive they need to do so to arrest a subject or keep them from fleeing or stopping any crime, no matter how minor. By enacting this standard, we are placing human life above the importance of an arrest or stopping a crime that does

not place people (the officer or bystanders) in imminent threat of death or serious bodily injury.

Below is the relevant portion from the LA Police limitation on deadly force:

Deadly Force. Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an **imminent** threat of death or serious bodily injury; or,
- Prevent a crime where the suspect's actions place person(s) in **imminent** jeopardy of death or serious bodily injury; or,
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force.

5. **Consider creating a rebuttable presumption of improper behavior if body cam recordings are not available.** While the Draft mandates use of body cams, there is no penalty for not using body cams. As noted above, under body cams and dashboard section, consider establishing that in the absence of body cam recordings, the police officer is presumed to be guilty of an illegal use of force. This presumption can be rebutted by establishing that the police officer reported an equipment failure of the body cam or dashboard cam; or that the evidence submitted by the police officer of his having met the standard overcomes this presumption of illegal use of force.

Thank you for your work on this critical issue and Godspeed in passing an enhanced bill out of Committee. Respectfully submitted,

Curt Johnson
53 Jefferson Place, Branford, CT
cell: 203 645 7335