



**State of Connecticut**  
DIVISION OF CRIMINAL JUSTICE  
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**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

**IN SUPPORT OF:**

**AN ACT CONCERNING POLICE ACCOUNTABILITY**

**JULY 2020 SPECIAL SESSION**

**JOINT COMMITTEE ON JUDICIARY**

July 17, 2020

The Division of Criminal Justice supports the concept of An Act Concerning Police Accountability but would respectfully recommend several significant and important changes to the draft as presented.

The Division commends the Committee for drafting this legislation which deals with many of the same issues the Division has worked with the General Assembly to examine and resolve for several years. The current national attention on police accountability provides an appropriate opportunity to more thoroughly address and resolve the concerns of all.

The Division of Criminal Justice was established as an independent agency of the executive branch of state government through the enactment of Article 23 of the Connecticut Constitution, approved by statewide vote and certified by the Secretary of the State on November 28, 1984. The Division is composed of the Chief State's Attorney and the State's Attorneys for each of the thirteen Judicial Districts, all of whom are independent constitutional officers. The Chief State's Attorney, by virtue of the constitutional amendment, serves as the chief law enforcement officer of the State of Connecticut, while each of the State's Attorneys is the chief law enforcement officer for the Judicial District in which they serve. The prosecutorial power of the state is solely vested in the Chief State's Attorney and the State's Attorneys, each of whom is responsible for the investigation and prosecution of all criminal matters in their jurisdiction. This constitutional authority includes the sole responsibility for the investigation into the use of deadly force by peace officers and the determination of whether such use of force is justified.

The Division supports the concept of an office as proposed in the draft legislation that is dedicated to investigating incidents of police use of force and prosecuting those cases in which such use of force is found to be unjustified and potentially criminal in nature. The Division is unable, however, to support Section 33 of the bill, creating an Office of the Inspector General, as

proposed, because it is constitutionally precarious and subject to challenge. Pursuant to Article XXIII, the Division “shall be in charge of the investigation and prosecution of all criminal matters.” See also General Statutes §§ 51-277 (a), 51-286a (a) (enabling legislation). The provision of section 33 (a) of the bill, making the Office of the Inspector General “an independent office within the Division of Criminal Justice for administrative purposes only[.]” and authorizing the inspector general independently to “prosecute any case” in which he or she determines that a peace officer unjustifiably used force, infringes upon the Division’s aforementioned exclusive authority to prosecute all criminal matters, and effectively deprives it of that authority in such cases. Section 33 (c) and (d), making an inspector general nominee subject to legislative confirmation and appointment, infringes upon the exclusive authority conveyed upon the Criminal Justice Commission pursuant to General Statutes § 51-278 to appoint all prosecutorial officials.

The Division advocates the creation of an Office of the Inspector General that is: (1) within the Division for all purposes and subject to the authority of the Chief State’s Attorney; (2) headed by a Deputy Chief State’s Attorney – Inspector General, who is appointed by the Criminal Justice Commission to serve a four-year term of office, and is subject to reappointment; (3) properly funded and additionally staffed with an Assistant State’s Attorney, Chief Inspector, six Inspectors, paralegal, and crime scene analyst or similar position; (4) vested with investigative subpoena power that is appropriately tailored, inter alia, to protect potential witnesses who are subject to criminal prosecution; and (5) authorized to investigate and make findings under General Statutes § 53a-22, and to make findings and recommendations regarding compliance with police policies and procedures governing the use of force for appropriate regulatory, administrative, and/or police officer certification purposes.

The Division cannot understate the fact that if this important reform is to succeed, the Inspector General must have investigative subpoena power and the office must be properly staffed and funded. Investigations into the use of deadly force involve complex legal and evidentiary issues that by their nature, are very time-consuming and labor intensive. The Inspector General also must have the ability to compel relevant testimony in the course of these investigations. Connecticut is unique in the nation in that state prosecutors operate without a viable and effective grand jury system and have no investigative subpoena power whatsoever.

It is indeed ironic that proposals have been made to grant subpoena power to civilian review boards when such authority is not allowed to those with the Constitutional responsibility to determine whether the use of deadly force in a specific incident was legally justified. We would urge the committee to approach the question of granting narrowly tailored subpoena authority to a civilian board with caution as this could result in interference with a criminal investigation. One approach might be to establish a clear timeframe for when a civilian review board could issue subpoenas, likely after the criminal investigation is completed.

With regard to body-worn cameras, the Division strongly endorses their use but also warns that there are circumstances in which that use might, in fact, prove detrimental to the interest of justice. While body-worn cameras certainly are important to document police interaction with the public, there are circumstances where that is simply not the case. Some examples include a reluctant witness who wishes to remain anonymous, the innocent victim of a crime or a confidential informant. The Division recommends the statewide adoption of exiting technology that senses when an officer’s firearm is unholstered and automatically turns on both that officer’s body camera and nearby body cameras.

The Division also must reiterate the potential fiscal impact. Every time another officer puts on a camera, it generates footage that will have to be reviewed not only by prosecutors but also by defense attorneys and public defenders. Currently, DCJ is struggling under the unfunded mandate created by previous body camera legislation. We have already seen a cost impact in terms of collecting, storing, reviewing and distributing the tremendous volume of body camera data already being collected.

The Division agrees in principal with Sections 24-28 of the act, proposing changes to General Statutes § 53-180 et sq. which create new violations for falsely reporting incidents with specific discriminatory intentions. Rather than creating a new offense with an often difficult to prove element of specific intent, the legislature may wish to instead increase the maximum sentence range for violations of the various statutes, and provide authority for the imposition of an increased penalty within the range for violations that the trial court determines on the basis of all of the evidence were committed for a discriminatory purpose based on the race, religion, ethnicity, disability, sex, sexual orientation, gender identity or expression of another person or group of persons.

The Division notes its concern with Section 21 that the consent of a motorist stopped solely for a motor vehicle violation shall not constitute justification for police to search the vehicle or the contents of the vehicle.

This provision is in conflict with Federal constitutional law which allows a motor vehicle operator to consent to a search of their vehicle upon the request of a law enforcement officer. With the use of body-worn and dashboard cameras in police cars during motor vehicle stops, any concern about whether there is a valid consent can be documented and addressed in court. Statutorily removing a constitutionally permitted exception to the 4th Amendment, will be in conflict with well-established caselaw.

Body-worn and dashboard cameras can be used to determine the validity of consent as has been the case with video recording of statements, including the *Miranda* warnings. Elimination of consent searches would significantly impair the ability of law enforcement officers to obtain perishable evidence necessary to solve crimes, including the interdiction of illegal firearms. This provision result would thwart proper law enforcement activity carried out for the safety and security of the community as evidenced by the recent uptick in gun violence in Connecticut.

Lack of ability to consent may also drastically inconvenience the person stopped. If a warrant is required, an officer with probable cause to search will now have to detain the subject and secure the scene or vehicle until the warrant is drafted and signed. Consent allows the officer on the scene to quickly verify or refute their concern based upon probable cause.

With regard to Section 23, the Division looks forward to working with the Chief Court Administrator to prepare a plan to have a prosecutorial official review each charge in any criminal case before the case is docketed. It must be noted, however, that any such system would be contingent on the successful implementation of the Criminal Information Sharing System (CISS).

In conclusion, the Division of Criminal Justice supports the concept of An Act Concerning Police Accountability but respectfully recommends that the Committee address the concerns stated in this testimony. The Division thanks the Committee for affording this opportunity to provide input on this matter and would be happy to provide any additional information the Committee might require or to answer any questions you might have.

