Dear Esteemed Legislators and Members of the State Judiciary Committee,

Over the past several years, I have had the opportunity to appear before you on behalf of the Division of Criminal Justice, presenting testimony on various proposed bills before the committee. Today I write to you as a resident of the State of Connecticut in opposition to certain provisions of LCO 3471. While sections of the bill being proposed are acceptable and aimed to address issues within our police departments, numerous provisions within this bill will only serve to unduly restrict our police officers in their solemn duty to enforce the laws of the State of Connecticut. Having seen this body take substantially more time and consideration on matters of much less consequence, it my hope and respectful request the Judiciary Committee and the state legislature as a whole reject LCO 3471, and take this incredibly important issue up during a full legislative session

As a prosecutor in Connecticut for over 25 years, I have seen all the various legislative proposals affecting criminal law and the criminal justice system that have been considered by the legislature. In many instances, laws that were quickly passed in "high emotion" after a horrific event without sufficient review and deliberation have had significant unintended consequences that render the laws essentially unenforceable or adversely affects those they are looking to protect. In review of LCO 3471, while many provisions regarding police officer training requirements and other issues are sound, many other provisions are purely reactionary, not based in or supported by sufficient facts, and will only harm the residents of Connecticut.

Section 2, draft bill lines 180-183: "(ix) the holder has been found by a law enforcement unit, pursuant to procedures established by such unit, to have engaged in conduct that *undermines public confidence in law enforcement, including, but not limited to, discriminatory conduct*"

- In this provision, there is no adequate definition of conduct that "undermines public confidence" or "discriminatory conduct," which would leave enforcement up to potentially arbitrary and capricious interpretation by police departments. This apparently intentionally nebulous term does not set forth the necessary standard of proof for such allegation to be determined proven and may lead to numerous unwarranted claims of impermissible conduct for what is acceptable and authorized police actions simply based upon an apparent perceived slight on behalf of the complaining party.
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Section 17, draft bill lines 737-746: "(a) The legislative body of a town may, by ordinance, establish a police civilian review board. The ordinance shall prescribe the number of members of the review board, 739 the method of selection of board members, the terms of office and the procedure for filling any vacancy. (b*) Any police civilian review board established pursuant to subsection (a) of this section may be vested with the authority to: (1) Issue subpoenas to compel the attendance of witnesses before the review board; and (2) require the production for examination of any books and papers that the review board deems relevant to any matter under investigation or in question*."

- This provision creates a civilian review board that carries with it greater authority and ability to conduct investigations than is afforded the Division of Criminal Justice, specifically investigative subpoena powers. By allowing the issuance of investigative subpoenas as part of a "police civilian review board," this provision would essentially foreclose any law enforcement investigation from obtaining or using any documents or testimony obtained by this review

board, based upon Connecticut and U.S. Supreme Court decisions regarding compelled testimony in employment proceedings. (Malloy v. Hogan, 378 U.S. 1 (1964); Garrity v. New Jersey, 385 U.S. 493 (1967); Uniformed Sanitation Man Association v. Commissioner of Sanitation (Uniformed Sanitation I), 392 U.S. 280 (1968)).

Sections 20 -21, draft bill lines 1028 – 1058 "*Consent of an operator of a motor vehicle to conduct a search of a motor vehicle or the 1029 contents of the motor vehicle that is stopped by a law enforcement official solely for a motor vehicle violation shall not, absent the existence of probable cause, constitute justification for such law enforcement official to conduct a search of the motor vehicle or the contents of the motor vehicle*. Sec. 22. Section 54-33b of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2020): [The officer serving a search warrant may, if such officer] (a*) The consent of a person given to a law enforcement official to conduct a search of such person shall not, absent the existence of probable cause, constitute justification for such law enforcement official to conduct such search.* (b) A law enforcement official serving a search warrant may, if such official has reason to believe that any of the property described in the warrant is concealed in the garments of any person in or upon the place or thing to be searched, search the person for the purpose of seizing the same."

- These provisions effectively eliminate the longstanding 4th Amendment exception of consent searches, repeatedly upheld by both the Connecticut and U.S. Supreme Court. Proponents of this provision present only anecdotal and/or personal evidence, but widespread misuse of such consent searches has not been verified or legally determined within Connecticut. Claims related to impermissible "profiling" of automobile operators that results in "impermissible searches" have been litigated on both the criminal and civil side, with Connecticut courts consistently finding that there is no evidence of impermissible "profiling" resulting in disproportionate and /or illegitimate searches of motor vehicles. Such searches are valuable tools to stem the illicit trafficking of narcotics and weapons into and through the state, and have been increasingly useful in stemming the tide of child trafficking along our state border regions. Furthermore, preventing valid consent searches of suspects helps ensure officer and public safety by removing items such as illicit narcotics and weapons that may be secreted upon the person of the suspect. The determination of whether or not legally sufficient consent is given by a suspect, and not overborne by the acts of a law enforcement officer is best left to the specifics of the situation as determined by the court, and not destroyed by a blanket ban.

Section 23, lines 1059-1066 – "The Chief State's Attorney shall, in consultation with the Chief Court Administrator, prepare a plan to have a prosecutorial official review each charge in any criminal case before the case is docketed. Not later than January 1, 2021, the Chief State's Attorney shall submit such plan to the Office of Policy and Management 1063 and, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary."

- This requirement is a redundant duplication of responsibilities and duties of any prosecutor. At the time of arraignment and initial presentment, a prosecutor is obligated to review the charges and police report to determine if sufficient probable cause is present warranting further prosecution on the listed charges. If any charge is not supported by probable cause, it is a

prosecutor's ethical obligation to not pursue such charge. An initial screening of charges prior to docketing would only cause additional delays in the presentment of cases (particularly domestic cases which are required to be heard the day following an arrest) and create unfunded mandates that further burden already understaffed prosecutors' offices.

Section 29, draft bill lines 1199-1256 – "(a) (1) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense*. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody*. … (b) Except as provided in subsection (a) or (d) of this section, a peace officer, special policeman appointed under section 29-18b or authorized official of the Department of Correction or the Board of Pardons and Paroles is justified in using physical force upon another person when and to the extent that he or she reasonably believes such use to be necessary to: (1) Effect an arrest or prevent the escape from custody of a person whom he or she reasonably believes to have committed an offense, unless he or she knows that the arrest or custody is unauthorized; or (2) defend himself or herself or a third person from the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape. (c) [A] (1) Except as provided in subsection (d) of this section, a peace officer, special policeman appointed under section 29-18b or authorized official of the Department of Correction or the Board of Pardons and Paroles is justified in using deadly physical force upon another person for the purposes specified in subsection (b) of this section *only when his or her actions are objectively reasonable under the circumstances*, and (A) he or she reasonably believes such use to be necessary to [: (1) Defend] defend himself or herself or a third person from the use or imminent use of deadly physical force; *or [(2) (A)] (B) he or she (i) has exhausted all reasonable alternatives to the use of deadly physical force, (ii) reasonably believes that the force employed creates no substantial risk of injury to a third party, and (iii)* ***reasonably believes*** *such use of force to be necessary to (I) effect an arrest of a person whom he or she* ***reasonably believes*** *has committed or attempted to commit a felony which involved the infliction [or threatened infliction] of serious physical injury, or [(B)] (II) prevent the escape from custody of a person whom he or she* ***reasonably believes*** *has committed a felony which involved the infliction [or threatened infliction] of serious physical injury and if, where feasible under this subdivision, he or she has given warning of his or her intent to use deadly physical force.* (2) For purposes of evaluating whether actions of a peace officer, special policeman appointed under section 29-18b or authorized official of the Department of Correction or the Board of Pardons and Paroles are reasonable under subdivision (1) of this subsection, *factors to be considered include, but are not limited to, whether (A) the person upon whom deadly physical force was used possessed or appeared to possess a deadly weapon, (B) the peace officer, special policeman appointed under section 29-18b or authorized official of the Department of Correction or the Board of Pardons and Paroles engaged in reasonable deescalation measures prior to using deadly physical force, and (C) any conduct of the peace officer, special policeman appointed under section 29-18b or authorized official of the Department of Correction or the Board of Pardons and Paroles led to an increased risk of an occurrence of the situation that precipitated the use of such force*."

- In my experience in reviewing thousands of cases that have involved police use of force to gain compliance of a suspect (particularly cases involving the offenses of Interfering with an Officer & Assault on a Police Officer), situations involving any type of police use of force are extremely

fluid and dynamic. Most situations that result in the necessity for police use of force to control a suspect are the result of the sudden escalation of non-compliance by a suspect, not the acts of the officers involved. In such situations, a suspect can go from willing and compliant to non-compliant and combative in a matter of mere seconds. As set forth in lines 1231 - 1232 of the proposed bill, this establishes a stark requirement of exhausting *"all reasonable alternatives," and* omits language previously used in the same section providing "to the greatest extent possible." By omitting this provision, the proposed provisions fail to recognize the fluidity of these use of force situations.

- As set forth in lines 1252-1256 of the proposed bill, one of the factors used in considering the "reasonableness" of the use of force by an officer is if "*any conduct of the [officer] led to an increased risk of an occurrence of the situation that precipitated the use of such force*." As previously presented, this intentionally vague language creates a situation wherein any action taken by an officer can unjustifiably be called into question. Would an act such as an officer ordering a suspect to stop fall into the definition of creating an "increased risk" of use of force? Would the act of an officer physically grabbing a suspect who they reasonably believed was attempting to flee, or an officer pursuing a suspect they reasonably believed committed a crime fall into such a category? All of these acts may be justifiable in a given situation but could still be called into question because they may have "increased the risk" of potential use of force. As such, the phrase "*any conduct"* as presented in unacceptably vague, can unreasonably call into question acceptable police actions, and creates a situation where officers may fail to act in their lawful capacity out of fear that anything they do could be considered an "increased risk" under this provision.

<u>Section 40, draft bill lines 1842-1848</u> – "*On and after the effective date of this section, no law enforcement agency may acquire or use controlled equipment for training purposes or as part of a response to an incident, except as provided in subsection (d) of this section. (c) (1) Not later than six months after the effective date of this section, each law enforcement agency shall lawfully sell, transfer or otherwise dispose of any controlled equipment the agency has in its possession."*

- As presented in the definitions of "controlled equipment," the proposed bill enumerates various items such as "small arm, night vision devices," and other such items. As presented in this bill, this appears to be a flat restriction barring law enforcement agency from acquiring such equipment by <u>*any*</u> means, not just through DOD/DOJ programs. The equipment listed very often have valid law enforcement purposes, such as
    - the use of night vision equipment or aerial drones (falling under the category of aircraft) that would aid in search and rescue operations; or
    - the use of small arms and night vision equipment in effectuating valid search and seizure warrants at night.

  In the ever increasing proliferation of illegal large caliber weapons in the commission of crimes, barring the use of such equipment that would aid in the effective evaluation and appropriate protection of officers in the execution of their duties would place law enforcement officers at a great disadvantage and unnecessarily endanger officers' lives.

<u>Section 41, draft bill lines 1896-1900</u> – *"Neither governmental immunity nor qualified immunity shall be a defense to a violation of subsection (b) of this section. Nor shall it be a defense to a violation of*

subsection (b) of this section, that a violation committed by a police officer was not made in furtherance of a policy or practice of the law enforcement unit."

- This elimination of governmental and /or qualified immunity for law enforcement officers is an unjust act that only serves to impede officers in the execution of their duties. Many positions across the state enjoy the valid protections of governmental or qualified immunity. This even applies to the conduct and comments of legislators under the provision of governmental speech and "due deliberation" protections. Officers should rightly be protected against concerns of defending against frivolous lawsuits, which protections would be eliminated by the language of this bill. In cases of excessive and unlawful use of force, such immunity would not apply, since the actions in question would be beyond the scope of their lawful authority and outside the protections of any such immunity. All this provision does is expose officers to the potential of frivolous lawsuits simply for carrying out their lawful duties.

In most arguments for the imposition of such restrictions as presented in this proposed bill, proponents cite the studies conducted by Artur Rizer and Emily Mooney regarding the evolution of modern police tactics. While presenting their arguments, the authors overstate the issue of *unlawful and excessive* use of force by police and fail to present or address competing research in the field. Other studies conducted by researchers such as Rafael Mangual place the research conducted by Rizer and Mooney in proper legal context. (Mangual, R., *Police Use of Force and the Practical Limits of Popular Reform Proposals: A Response to Rizer and Mooney," Federalist Society Review, Volume 21, p. 128-135 (May, 2020).*

Thank you for your time and attention to this very serious matter. For these reasons presented, in conjunction with the many other voices speaking out in opposition of this bill, I am respectfully asking this body to reject LCO 3471. The residents of Connecticut deserve more than having such an incredibly important issue of such consequential magnitude being considered acted upon in such a short session, that does not adequately allow for the full examination and discussion of the issue.

Respectfully submitted,

Lou Luba

Tolland, CT