

**Written Testimony Regarding LCO No. 3471,
An Act Concerning Police Accountability**

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Rebimbas, and distinguished members of the Judiciary Committee:

My name is Melvin J. Medina, and I am the public policy and advocacy director for the ACLU of Connecticut (ACLU-CT). I am testifying regarding LCO No. 3471, An Act Concerning Police Accountability. This bill contains some important measures of police accountability and police divestment, which we support. This bill also contains some provisions which require changes before their intent of meaningfully reshape policing can be fully realized. We urge this Committee to pass this bill with the changes we recommend.

The ACLU-CT is committed to ending police violence and racism in policing in all forms. Accountability measures alone are not enough. Connecticut must also divest from policing and reinvest in programs that build strong and safe communities. Policymakers must reduce policing's responsibilities, scale, and tools to build an equitable future for all people in Connecticut. This bill cannot be the end of the conversation. If the General Assembly is committed to ending police violence, it must revisit this issue over coming sessions to pass more accountability and divestment laws.

Some Provisions Are Strong Steps Toward Police Accountability & Divestment.

Section 41 is a strong limitation on qualified immunity. Qualified immunity is a significant barrier to holding police civilly liable when they violate people's constitutional rights. Abolishing it provides a chance, that does not exist now, to check police violence and misconduct through the civil courts. Allowing punitive damages and attorneys' fees in some situations would also reduce police insulation. Currently, police are almost never held criminally liable for uses of force and are similarly protected in civil suits. Changing the civil standard, as this bill does, creates a path towards redress where none exists now.

Section 40 is a strong step toward demilitarizing police departments, as it prohibits future acquisitions of military-style equipment and requires police departments to dispose of the equipment they already have. Ideally, all armored vehicles would also be flatly prohibited,

but this section nonetheless significantly limits the militarized equipment available to police. This is a true divestment move which limits harmful tools currently available to police.

Section 21 and 22 prohibit vehicular and personal searches, respectively, based on less than probable cause, in most situations. For vehicular searches, this means that police who stop cars for motor vehicle violations do not get to search the car, even if the driver consents, unless there is probable cause that a crime was committed. For personal searches, this aims to put an end to stop-and-frisk searches which police frequently make on a lower standard of suspicion than probable cause. In Connecticut, data shows police disproportionately search the vehicles of Black and Latinx drivers, even though those searches are much less likely to find criminal activity than searches of white drivers.¹ Stop-and-frisk searches are not only racist, but also result in police abuses, with physical force used in almost 25% of stops in some states.² Decreasing police interactions and limiting opportunities for discriminatory searches will make significant inroads to reducing the harms that police can perpetuate.

Section 30 creates a new duty to intervene for police who witness wrongful uses of force. Police who fail to intervene may be charged with the same conduct as the person committing the violence. This duty should be strengthened by also requiring intervention into illegal searches. The “blue wall of silence” – an unwritten code that prevents police from acting against coworkers – is a major barrier to effecting police reform. Changes to police culture are necessary and may be expedited through prescriptive policies like this.

Section 17 provides that municipal civilian review boards may be vested with subpoena power to compel witnesses and documents. This helps ensure civilian review boards have actual power and are not just an empty gesture. This section should automatically imbue civilian review boards with this power, rather than requiring that affirmative decision by a municipal legislative body. Either way, subpoena power is a necessary component for civilian review boards to provide meaningful oversight instead of toothless bureaucracy.

Section 8 would prevent state employees’ unions from adopting any collective bargaining agreement that conflicts with the Freedom of Information Act. Right now, the State Police union contract exempts the agency from FOIA requirements; this section would change that. Policing is already an area where very little information is available to the

¹ The most recent findings are from 2018. See Ken Barone, James Fazzalano, Jesse Kalinowski, and Matthew B. Ross, State of Connecticut Traffic Stop Data Analysis and Findings, 2018 (May 2020), at xii, available at <http://www.ctrp3.org/wp-content/uploads/2020/05/2018-Connecticut-Racial-Profiling-Report.pdf>.

² See Rose Lenehan, “What ‘Stop-and-Frisk’ Really Means: Discrimination and Use of Force.” Prison Policy Initiative (Aug. 17, 2017), available at <https://www.prisonpolicy.org/reports/stopandfrisk.html>.

public; FOIA exemptions make the policing black box even more opaque. This change is critical to learning more about Connecticut State Police behavior.

Section 9 would prohibit the State Police union contract from preventing the disclosure of police employees' discipline. Though this restriction, as written, is limited to discipline based on a code of ethics violation (an unclear reference) and should be expanded to all disciplinary actions, this change is still important. Any ethical code that is referenced in the bill should also be posted publicly. The public lacks access to police discipline files. This is an important step to increase transparency.

Section 12 adds areas to the purview of the Police Transparency and Accountability Task Force. Some of the proposed new responsibilities, including investigating primary and secondary traffic violations, reviewing no-knock warrants, and investigating liability insurance requirements for police employees and/or departments, could lead to important reforms. Since we are committed to ongoing policy changes to bring about an end to police violence, we believe vesting the Task Force with the responsibility for exploring bold policy solutions for future proposals is a smart move.

Section 23 requires the Chief State's Attorney and the Chief Court Administrator to together craft a plan ensuring that a prosecutor reviews the charges in a criminal case before docketing. This is a common-sense reform that, frankly, is already required by court rules and therefore should already be happening. To fully achieve this result, this section should very explicitly mandate that every charge must be reviewed. Prosecutors, not police, should be in control of when and charges are filed– this section is a step in that direction.

Sections 36 and 37 provide some crime scene control to the chief medical examiner when a person dies in police or DOC custody. Granting authority to the chief medical examiner is a step toward ensuring that custodial deaths are investigated more independently. Including DOC custodial deaths is important – between 2001 and 2016 nearly 300 people died in DOC custody³ – and should be replicated throughout the bill.

Some Well-Intentioned Provisions Would Benefit from Amendments to Effect Their Desired Outcomes.

Section 29 revises the standard under which prosecutors determine if police who use physical force were justified in using that force. LCO 3471 intends to increase liability for

³ US Department of Justice, Mortality in State and Federal Prisons, 2001-2016, at Table 11, *available at* <https://www.bjs.gov/content/pub/pdf/msfp0116st.pdf>.

police who wrongfully use force, recognizing that the current standard contributes to few police ever being prosecuted. While LCO 3471 improves the current use of force standard, the legislature should make additional changes to fully implement its intent, including (a) measuring whether the use of force was necessary, rather than objectively reasonable⁴, (b) making it more explicit that the entire police interaction, rather than just the moment of violence, should be considered when determining if the violence was justified, (c) defining “de-escalation” to provide greater clarity and certainty to the public and to police employees, and (d) making necessity and proportionality required in every use of force, rather than in a subset of cases. Overall, the bill as drafted is an improvement over the current use of force standard, but additional changes would make it much easier to prosecute violent police employees.

Sections 33 through 35 create a new inspector general to investigate and prosecute police uses of force, and to investigate DOC custodial deaths. It is critical that there be a dedicated independent prosecutor in charge of policing matters in Connecticut, and the inspector general proposed in LCO 3471 is therefore a good step toward greater police accountability. This bill clearly intends to create an independent prosecutor, but the legislature must make some changes to realize that intent. Chiefly, the position should be a newly-created deputy chief state’s attorney position, for which the Criminal Justice Commission will oversee appointment, reappointment, and removal, instead of the current schema which provides the Chief State’s Attorney too much control over hiring and firing.

Also, if the Inspector General is given authority to investigate custodial deaths, that person should also prosecute those deaths, regardless of whether force was a factor. Likewise, if an Inspector General investigation turns up evidence of police criminality outside of uses of force, the Inspector General should be mandated to include an analysis of whether the officers involved violated department policy and/or state law and should recommend suspension or decertification if so. Finally, the Inspector General should be required to provide periodic status updates on investigations in police uses of force and should make their final report in the community where the violence occurred.

⁴ Prosecutors are generally already applying an objectively reasonable standard when assessing whether police uses of force were justified. *See generally* Use of Force Reports, available at <https://portal.ct.gov/DCJ/Whats-News/Reports-on-the-Use-of-Force-by-Peace-Officers/Reports-on-the-Use-of-Force-By-Police-Officers>. Including this standard in the statute should be seen as a codification of the standard commonly in use.

Sections 10, 11, and 16 impose new reporting and mental health assessment requirements on police departments, but do not provide meaningful consequences for police departments that fail to implement these changes. A good solution might be to limit the state funding allocated by this bill for body and dash cameras, in Section 19 and 20, to departments that are not in compliance with Sections 10, 11, and 16.

Cautions

Sections 1 through 4 and 15 make important changes to create a stronger police certification and de-certification process. Requiring police licensure like that required of other professions is an important accountability measure, but vesting that power in the Police Officer Standards and Training Council (POSTC) is problematic. POSTC is a majority law-enforcement body, meaning placing oversight in POSTC is expecting the police to police themselves. Moreover, POSTC already has certification authority, which, to date, it has not effectively used to limit police violence. There is no reason to think, even with the constituency changes set forth in Section 13, that POSTC will make strides towards meaningful police accountability when it has failed to do so in the past. Most professions do not govern themselves, but instead are regulated by an independent body. Policing, as a profession, should be treated the same. Certification and decertification provisions are rendered less effective if they are controlled by POSTC rather than an independent agency.

Section 18 tasks municipal police departments with evaluating whether social workers would be a useful supplement or replacement to certain aspects of policing work. The intent of this provision is clearly to explore a promising policy solution but leaving this assessment up to police departments – which have an interest in maximizing their budgets and protecting their scope of work – will not lead to meaningful evaluation of the proposal. A better solution would be for an independent body (perhaps the Police Transparency and Accountability Task Force) to make this assessment objectively.

Police violence happens in Connecticut, especially to Black and Latinx people. People are in the streets across this state because it happens here, all too often. This bill contains some important measures of police accountability and police divestment, and it merits support from lawmakers. With the amendments suggested today, the reforms in this bill would be even stronger. We urge this committee to recommend this bill and ask that the General Assembly pass this bill with suggested amendments to make a more equitable and safe Connecticut.