



2020 Testimony

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JUDICIARY COMMITTEE

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The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent all 169 towns and cities.

An Act Concerning Police Accountability (LCO 3471)

CCM commends the Committee for taking such bold action to address police accountability. The bill embraces a variety of issues, most all of which would have a direct impact on towns and cities.

Enacting police accountability reform should enhance community and law enforcement relationships. Several provisions of the proposal may be beneficial to improve those relationships, including: implementing implicit bias training for law enforcement; improving efforts to recruit and retain minority police officers; prohibiting the use of chokeholds; enacting policies requiring police officers to intervene when they witness misdeeds of another officer; improving the representation and authority of the Police Officers and Standards Training (POST) Council; and imposing additional penalties for false reporting and misusing 9-1-1.

Connecticut towns and cities are protected by law enforcement personnel that consist of well-qualified men and women. That is certainly the case for most officers, however, there are certainly instances of a police officer engaging in actions that are unbecoming of what society expects of them. CCM appreciates the provisions that would allow POST to consider additional actions of an officer when considering decertification or suspension of an officer. **To improve upon that section, CCM would recommend that additional language be added that would provide specific clarity in statute that if an officer lost their certification that they can no longer be a police officer.** CCM members are able to provide several examples in which the State Labor Board has required a municipality to rehire an officer that was terminated from employment even though they were decertified. Without this clarification, a municipality may not have the flexibility or mechanism to effectively address labor issues, and consequently not afford residents with proper law enforcement protection.

The proposals to address police accountability should be balanced between the intent in providing a meaningful benefit for society and whether they are too onerous, which may result in de-policing. While the proposal as drafted does contain some meaningful reforms, **CCM has serious concerns with section 41 which would remove government and qualified immunity.**

There already exists a process to bring legal action against a police officer for excessive force. There appears to be a common misconception that qualified immunity is a special protection for

police that insulates them in liability cases to the extent that an officer who commits an egregious acts of misconduct are not held culpable. That is certainly not the intent of qualified immunity. CGS 7-465 and 7-101a enable suits to be filed against municipalities and police officers respectively for actions that infringe upon a person's civil rights or where there were physical damages.

On June 24, 2020, the Connecticut Supreme Court maintained in *Borelli v. Renaldi* that an officer is protected by immunity for discretionary decisions. The Court reiterated the well-established law that municipal employees are liable for the ministerial duties and policies that are not performed in a proscribed manner, but have qualified immunity for acts, which require the exercise of judgment and discretion.

As the Connecticut Supreme Court stated, "Municipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society..." Society has an interest in allowing public officials to perform discretionary duties "unhampered by fear of second guessing and retaliatory lawsuits." Simply put, these immunities encourage governmental employees to perform their duties without fear of unwarranted lawsuits.

The present attacks on qualified immunity focuses on alleged police excessive force. There have been several excessive force cases decided by the Supreme Court and Circuit Courts. In current practice, it is difficult to dispose of an excessive use of force case based on qualified immunity. Therefore, as a practical matter the argument that removing qualified immunity will reduce excessive force has little merit. Rather, other provisions of the bill that implement new removal policies, testing of police officers, body and dash cameras and training will accomplish this goal.

CCM also recommends creating and mandating separate bargaining units between rank and file officers and their supervisors, which would help facilitate the removal of bad actors as well. This change will bring greater autonomy in bringing action against rogue officers or their supervisors by reducing the chances for retaliatory actions.

Also, too often, municipalities attempt to remove a police officer for misconduct only to have them returned to duty by the State Labor Relations Board. Providing municipalities and POST with a greater ability to remove police officers whose misconduct places society and their department at risk will help set in place an environment where malicious, willful and wanton behavior or misconduct will not be tolerated within police departments.

From a practical manner, if removed, it is not the police who will pay for the judgments or litigation, it will be the property taxpayers. The liability insurance coverage that law enforcement currently has assumes some risk for particular actions. The provisions in this proposal would expose municipalities with additional liability and make them subject to punitive damages. The effect of this change in law would make municipalities and their departments uninsurable since intentional actions and punitive damages are not insurable.

The proposal contradicts the long established federal policy regarding direct liability for law enforcement agencies and their municipalities established in the 1978 Supreme Court decision,

Monell v. Department of Social Services of the City of New York. Eliminating government immunity established by the Monell Doctrine, will unfairly place the financial burden on the shoulders of property taxpayers of municipalities. In addition, there is concern that residents may also suffer the loss of less effective law enforcement because officers may be reluctant to perform their duties.

CCM understands the willingness to enact changes quickly. We would caution that without thorough review and consideration, there may be unintended consequences that will be difficult to remedy in the future. Therefore, CCM would encourage the Legislature to consider in Special Session those beneficial reforms where consensus may be obtained by all parties. The other sections, in particular the removal of government and qualified immunity, should not be addressed in Special Session, rather reviewed thoroughly by all the different stakeholders and, if necessary, considered during the regular legislative session.

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