

INNOCENCE PROJECT

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Judiciary Committee Listening Session Re: Draft LCO 3471 AAC Police Accountability

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The Innocence Project is a national organization dedicated to addressing and preventing wrongful convictions. We commend the Judiciary Committee for introducing this legislation. Enhancing police transparency and accountability would help to prevent and repair the damage of wrongful convictions.

The police killings of George Floyd in Minneapolis, Breonna Taylor in Louisville, and Rayshard Brooks in Atlanta have brought worldwide attention to law enforcement abuses of power. Not only does officer misconduct take Black and brown lives on our streets, but also in our courtrooms through wrongful convictions. In Connecticut, 60 percent of exonerations were of Black and Latino people, who spent an average of 11 years in prison.¹ The wrongful convictions cost nearly \$40 million in state compensation and federal civil rights lawsuits.² Many of these cases involved police brutalizing and framing innocent people.

For example, a corrupt New Haven detective sent Scott Lewis and Stefon Morant to prison for over two decades for a 1990 double murder they did not commit. Detective Vincent Raucci pressured Ovil Ruiz, who was being interrogated as a suspect in a different murder case, into implicating the two innocent men. Another detective overheard the coercive questioning and reported it to his supervisor, who took no action. When Raucci brought in Morant to be interrogated, he would not relent until Morant falsely confessed. Based on these coerced statements, Lewis was convicted and sentenced to 120 years in prison, and Morant to 75 years.

Meanwhile, Raucci's bad behavior continued. According to the *Hartford Courant*, he was accused of having sex with a rape victim in a case that he had investigated, leading to a reversal of the conviction in 1995. The next year he retired and was soon arrested for fraudulently claiming thousands of dollars in overtime pay and assaulting his ex-wife.³ Raucci jumped bail, fled to New Mexico and had a four-hour standoff with police before he was arrested. He pleaded no contest to larceny and domestic abuse and received a suspended sentence.⁴

Lewis and Morant were denied justice for over two decades. Finally, Lewis' conviction was overturned in 2015 after Ruiz admitted that he lied in exchange for Raucci promising to let him off in the other murder case. After his release, Lewis sued the New Haven Police Department and settled for \$9.5 million.⁵ However, Morant still hasn't cleared his name. The prosecutor gave him an impossible choice to either take an Alford plea and return home immediately, or face a long, uncertain retrial. He accepted the plea and returned to his family.

This legislation has the potential to prevent what happened to Lewis and Morant; particularly the measures improving access to police disciplinary records and allowing state civil rights lawsuits against abusive officers

¹ National Registry of Exonerations.

² Jeffrey S. Gutman, An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted, 82 Mo. L. Rev. (2017)

³ D'Arcy, Janice. One Cop's Legacy, A Mess of Justice. *Hartford Courant*. April 12, 2000.
<https://www.courant.com/news/connecticut/hc-xpm-2000-04-12-0004120026-story.html>

⁴ Id.

⁵ Jeffrey S. Gutman, An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted, 82 Mo. L. Rev. (2017)

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without qualified immunity. Additional measures that should be considered to strengthen police transparency and accountability are: 1) **enhancing police criminal discovery obligations** and 2) **removing the bar on civil rights lawsuits in the exoneree compensation law**.

How the Legislation Addresses Wrongful Convictions

- **Improving discipline and transparency.** The New Haven Police Chief and other supervisors knew that Detective Raucci had engaged in other misconduct before, during and after Lewis and Morant's wrongful convictions, but failed to intervene or discipline him. Officers had reported witnessing Raucci attempt to plant drugs on suspect.⁶ An internal affairs investigation determined that Raucci had hit a suspect in the face with a gun and lied about the incident. After a detective reported hearing Raucci coerce Ruiz into implicating Lewis and Morant, supervisors took no action and failed to disclose the complaint to the defendants.⁷

The legislation is an important step towards stopping bad cops like Raucci because it expands grounds for officer decertification and improves access to police disciplinary records. The transparency measures are particularly important for building public trust and accountability. While officer misconduct reports are supposed to be publicly available through Connecticut's Freedom of Information Act (FOIA) many police collective bargaining agreements are prohibiting these disclosures. The bill would ensure that FOIA disclosure requirements supersede secrecy measures in police contracts and would also ban these provisions in State Police collective bargaining agreements. We would recommend extending these provisions & requirements to local law enforcement agencies.

- **Allowing state lawsuits against police officers without a qualified immunity defense.** Qualified immunity has become a rallying cry for stopping police killings, and it is also important for preventing wrongful convictions. Filing federal civil rights lawsuits against officers is one of the few ways for victims of police misconduct to get justice. However, qualified immunity shields law enforcement from being sued unless a previous court ruling has already determined that the same conduct in a previous case was illegal.

Section 41 would allow police officers to be sued in state court without the defense of qualified immunity. The provision mirrors a new Colorado law that was just enacted last month. The Colorado law goes even further in creating accountability by requiring individual officers to pay 5% of the judgement or settlement, up to \$25,000.⁸

Creating an avenue for state lawsuits to be filed against abusive officers is a way to create accountability and help victims heal. Putting a cost on injustice creates a financial incentive for government entities and police agencies to stop abuses.

Additional Measures to Consider

- **Strengthen police disclosure obligations in criminal discovery.** Police transparency is perhaps most important in criminal cases in which people are facing potentially life-altering consequences. Criminal

⁶ *Lewis v. City of New Haven*, No. 3:16-cv-1382 (SRU) (D. Conn. Jan. 10, 2017)

⁷ *Id.*

⁸ Colorado Senate Bill 217.

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discovery—the process of information-sharing between the prosecution and defense—is critical to the truth-seeking function of the justice system.

Scott Lewis and Stefon Morant were wrongfully convicted because police withheld important evidence about Detective Raucci and the state’s key witness Ovil Ruiz. Had their defense attorneys known about the internal complaint filed against Raucci for coercing Ruiz, the deal for leniency that Ruiz was offered, or the long record of Raucci’s misconduct, the men probably would not have been convicted.

While police investigate and collect the evidence that will be the basis of prosecutions, Connecticut has only minimal requirements about what officers must disclose. Under current statutes and rules of evidence police officers must turn over “exculpatory” materials. The term “exculpatory” is subjective and individual pieces of evidence alone might not appear to negate a defendant’s guilty.

Rather than put the burden on police to decide which evidence is “exculpatory,” the statute should specify the types of evidence must be disclosed. Senate Bill 402, which the Joint Judiciary committee heard earlier this year, would specify that officers must share arrest reports, witness and co-defendant statements and results of tests and examinations, among other items. It would also require the head of the law enforcement agency must provide to the prosecution an itemized list of the materials that were disclosed and written acknowledgement that officers were asked for all discovery materials.

Strengthening criminal discovery obligations for both police and prosecutors is an important way that Connecticut can answer calls for accountability and justice. The committee should revisit Senate Bill 402.

- **Remove bar on civil lawsuits in state exoneree compensation law:** Connecticut’s exoneree compensation law provides financial redress for innocent people who lost years of their lives in prison. In 2016, the law was amended to require that exonerees waive their right to sue as a condition of receiving state compensation.

A state law barring exonerees from filing federal lawsuits against those who violated their civil rights is potentially unconstitutional. Washington State has a similar provision in its exoneree compensation law and it has been the subject of extensive litigation.⁹ In addition, the waiver places the burden on the state of Connecticut to pay for the wrongdoing of local actors. Shielding local agencies and officials from accountability disincentivizes them from implementing reforms to prevent future injustices.

A better solution is for Connecticut to adopt a civil payment offset provision, as several states including Kansas and Nevada have done. The civil offset provision offers the state an indirect way of recouping funds from local actors that engaged in misconduct. If an exoneree first obtains state compensation and then wins a federal lawsuit based on official misconduct, he or she must reimburse the state for the difference.

⁹ RCW 4.100.080. Lawsuits re: Civil litigation bar include: *Robert Larson, Tyler W. Gassman, & Paul Statler v. State of Washington*; *Donovan Allen v. State of Washington*; *Doris Green and Meredith Town v. State of Washington*