

BREWERY WORKERS

LOCAL UNION NO. 1035 OF SOUTH WINDSOR, CONNECTICUT

*Affiliated with the
International Brotherhood of Teamsters & Teamsters Joint Council 10*

**Testimony of Robert Ziobrowski
Secretary-Treasurer, Teamsters Local No. 1035**

Draft Bill LCO #3471

"An Act Concerning Police Accountability"

July Special Session Listening Session

July 17, 2020

Chairmen Winfield, Stafstrom, Ranking members Kissel and Rebimbas and distinguished members of the Joint Committee on Judiciary, thank you for the opportunity to submit written comments and testimony for **Draft Bill LCO #3471 "An Act Concerning Police Accountability."**

My name is Robert Ziobrowski and I am the Secretary-Treasurer, Teamsters Local No. 1035 in Central Connecticut region and our local represents sworn municipal police officers in the Town of Stafford Springs, Connecticut.

I respectfully submit these comments on their behalf and in the hope that you will take these comments into serious consideration as you begin deliberations on the public policy issues under consideration in Draft Bill LCO #3471.

The Committee is best served by considering: relevant law; incidents fully investigated and reviewed by professional officials and/or juries and/or courts; and credible statistics.

6. The Committee should not rely on: opinions, allegations and/or one-sided anecdotes that are unsupported by full investigations or above noted reviews

Let me begin by stating that many of the officers that I represent believe strongly in fair and unbiased law enforcement in their community. To that end, there are many areas that we support and hope to have additional input into as these issues are studied and examined during the next year by the Task Force in Section.

Our broad concern with the proposed legislation is that anything that is passed have no negative impact on the overall public safety of the community that we serve during the implementation of new programs or initiatives and to ensure that any of these new laws,

programs and initiatives receive the proper and necessary funding to assure their successful implantation.

Our specific concerns with the proposed legislation center on the following provisions that are of grave concern to our members and others in law enforcement.

- Drug testing for officers each review period This is a valid concern and testing would be beneficial. However, there is an ongoing cost which can be substantial for larger agencies such as mine.

- Mental health testing for officers every 5 years
This is also a valid concern and may be beneficial, however, there are also significant costs associated with this for larger agencies.

There are also the concerns related to Workers Compensation should an officer be taken out of service as well as possible ramifications related to Disability Pensions which must be reviewed.

- Dashboard Cameras
This is another beneficial program. We have had body cameras for many years and it has proven extremely valuable. However, outside the initial cost, the ongoing cost of storage and upkeep for numerous dashboard cameras for larger agencies would be cost prohibitive.

- No governmental or qualified immunity shall be defense of depriving constitutional rights in civil suit. This would have a chilling impact on police and other governmental officials and create additional financial costs to municipalities to defend suits. The U.S. Supreme Court has stated and noted that qualified immunity is needed to make sure government officials are not deterred from acting in split-second situations and that government officials do not face financial harms from a flood of insubstantial and frivolous lawsuits.

Specific Comments regarding LCO No. 3471.

As a general matter, we suggest that the effective dates contained in LCO No. 3471 -- particularly with respect to any new requirements for day-to-day police work in our communities -- must be pushed out so that all peace officers can receive the necessary training in order to comply with any new requirements.

Section 29 (Legal Standard for the Justified Use of Deadly Force)

The use of deadly force by a law enforcement officer is a last resort. Its use is a burden that the officer must carry for the rest of that officer's life. But it is an unfortunate requirement of the job that the residents ask us to do.

Currently the question as to whether use of is justified is as articulated by the US Supreme Court in Graham v. Connor, 490 U.S. 386, 396 (1989). **"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."**

The Court has said that the test of reasonableness under the Fourth Amendment is not capable of "precise definition" or "mechanical application" (*Bell v. Wolfish*, 441 U.S. 520, 559 (1979)). The United States Supreme Court has ruled that the Fourth Amendment to the Constitution prohibits the use of deadly force to effect an arrest or prevent the escape of a suspect unless

the police officer reasonably believes that the suspect committed or attempted to commit crimes involving the infliction or threatened infliction of serious physical injury and a warning of the intent to use deadly physical force was given, whenever feasible (*Tennessee v. Garner*, 471 U.S. 1 (1985)).

The Court goes on to state, “[t]he reasonableness of a particular use of force must be viewed from the perspective of a reasonable officer at the scene, rather than with 20/20 vision of hindsight” (*Graham v. Connor*, 490 U.S. 396, 397 (1989)).

Section 29 would judge an officer’s actions based on whether *his or her actions are objectively reasonable under the circumstances*. We strongly oppose this dramatic policy change to a reasonable (civilian) person standard instead of the more appropriate Graham v. Connor reasonable officer on the scene standard.

Section 3 – Post Decertification

Section 3 proposes to amend §7-294d for **revocation** of a Police Officer’s certification by POST by adding a provision that an officer can be decertified if it is “*found that an officer’s conduct tends to undermine the public confidence in police work*” and provides only a couple of ways (including but not limited to) that an officer could be subject to such a broad and wide-sweeping finding and subsequent decertification.

We respectfully suggest that this term is too broad and must be narrowed. It is possible that a patrol officer who appropriately challenges or questions his or her Chief’s orders could be deemed by POST to be *undermining the public confidence in police work* because the patrol officer was not obeying the chief and the “chain-of-command.” Another example could involve a chief or town official who wants to go after a patrol officer who is active in the police union, and uses this broad measure to have the officer potentially decertified at POST.

Section 3 takes effect **upon passage**, which means -- similar to the situation with Section 29 -- law enforcement officers across the state will not have sufficient time to be trained in the new POST certification and decertification requirements. The effective date should be delayed.

We respectfully believe that the standards must be precise, and the POST investigation and hearing process (and the necessary UAPA appeal process) should be fair – before a person’s livelihood and license to work (certification) can be taken away.

Section 41 (Qualified Immunity)

We believe that Section 41 should not be enacted in its current form. Just 3 weeks ago the Connecticut Supreme Court explained the important public policy reasoning for qualified immunity in **Borelli Estate of Giordano v. Renaldi** [No. 20232, 2020 WL 3467487, at *4 (CT Supreme Court June 24, 2020)]

The following principles of governmental immunity are pertinent to our resolution of the plaintiff’s claims. “The [common-law] doctrines that determine the tort liability of municipal employees are well established. ... Generally, a municipal employee is liable

for the misperformance of ministerial acts, but has a **qualified immunity** in the performance of governmental acts. ... Governmental acts are performed wholly for the direct benefit of the public and are supervisory or discretionary in nature. ... The hallmark of a discretionary act is that it requires the exercise of judgment. ... In contrast, [a ministerial act] refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion. ...

“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. ... Discretionary act immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury. ... (emphasis added).

Section 16 (Mental Health Assessments)

Section 16 requires a police officer to have mandatory, periodic mental health assessments. Respectfully, the current language in **Section 16** does not explain the goals or the reasoning for such mental health assessments.

The 2019 law Public Act 19-17 (discussed above) had a specific goal of helping certain public safety officers identify and receive treatment for PTSD, based upon the officers’ witnessing of horrific incidents and injuries to other people – which is an unfortunate reality for public safety officers.

Section 16 does not state what happens if an officer does have issues which need to be addressed. Does the officer make a workers’ comp claim? Does the officer receive disability benefits? Does the officer receive appropriate medical or psychological treatment? Does the officer receive paid medical leave? What are the human resources ramifications of the periodic mental health assessments?

Section 17 (Subpoena Power for Civilian Review Boards)

Connecticut Police officers are subject to several potential layers scrutiny from: police chiefs, internal affairs divisions, police commissions, the Chief State’s Attorney (or the newly proposed inspector general in **Section 33** of the proposal); and/or the State Labor Board. We respectfully believe that is not appropriate for the Legislature to now grant the authority for civilians on a civilian review board to have this extraordinary subpoena power.

Section 12 (Task Force)

Section 12 asks the Task Force to examine the possibility of police officers purchasing their own liability insurance. We are not aware that this type of insurance is even available in the market at an affordable price.

Section 12 also asks the Task force to examine whether a police officer is a necessity at a municipal road construction site. Police officers are at construction jobs in order to protect road workers, pedestrians, and drivers. This decision should remain with the towns.

In closing, I am requesting and am confident that you and our other elected leaders will carefully consider the potential negative impacts of this overreaching and counterproductive bill and see to it that it is not passed without substantial modifications that address issues of accountability without hindering our brave members of law enforcement from their ability to perform their duties as safely, efficiently and professionally as possible.

Thank you for your time, and we appreciate your consideration.

Fraternally,



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