TO: MEMBERS OF THE CONNECTICUT GENERAL ASSEMBLY & GOVERNOR NED LAMONT

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Written Testimony Regarding "An Act Concerning Police Accountability," LCO NO. 3471

Good afternoon members of the committee,

Thank you for your service to the great State of Connecticut and for taking the time to read this testimony. My name is Ronald J. Pugliese Jr. I am a retired Sergeant from the Naugatuck Police Department with twenty years of law enforcement experience and an Attorney representing police officers and police unions.

I first want to say that Police Unions and the law enforcement community in general can support many of the proposed provisions in this bill. We, as whole, feel that a number of changes addressed here will improve the relationship between law enforcement officers and the communities they police, making the individual officers' job safer and more satisfying, leading to better customer service.

Most of the police officers across the country do the job because they feels it's a calling. They are there for the right reasons and are willing to put their lives on the line for the community they protect. Police officers are heroes and should be treated as such.

In the current climate, police officer are feeling betrayed and attacked by the communities they keep safe and the people they have been sworn to protect. Moreover, officers feel like they have no support from politicians who are pandering to political pressure. Combined, this makes it very difficult to do the job and is causing veteran officers and potential candidates to rethink their careers.

What happened to George Floyd in Minneapolis was a tragedy and never should have happened. The officers used poor tactics which directly resulted in a death that was very preventable, and they should face justice. That, however, does not mean that every officer across the county should be punished for the acts of a few bad apples.

With that said, police unions and the law enforcement community in general can and will support many of the measures in this bill. This includes the duty to intervene, reporting of excessive use of force, and the mandatory use of body cameras. Furthermore, additional training in biased based policing, de-escalation, a model use of force policy, and the banning of chokeholds but for deadly force situations will only help to bridge the divide between the police and the community. These are all positive changes that will help heal the divide seen today.

However, not everything in this bill is positive. Many of the provisions are not designed to improve policing in Connecticut, but designed to punish police officers and make this already extremely difficult job, almost untenable. Some of the controversial topics are outlined below.

SECTION 16: Mental Health Assessments

This bill will require mental health assessments every five years. This provision could be very helpful to law enforcement officers if administered correctly. Over the past few years, it has become widely known that this job is very stressful and can potentially cause post-traumatic stress disorder (PTSD). In fact, this was addressed last year in Public Act 19-17. If administered properly, this provision can help to reduce the stigma of seeking mental health treatment, thus reducing the risk of mental illness among officers, including preventing officer suicides. Notwithstanding, this provision needs to be reworded to allow for mental health evaluation and treatment, without the fear of being placed on leave. The mental health screening should be exactly that; a mental health screening designed to detect stress or precursors to PTSD. It should not simply be a repeat of the entry level "psychological examination," which is not designed for that purpose.

SECTION 29: Adjusting the Legal Standard for Justifying the Use of Deadly Force

Another area of concern is the proposed change to the legal standard used to justify the use of deadly force. Police officers only use force as a last resort. In fact, when an officer has to use deadly force, it is most likely the worst day of that officer's career.

Currently the question as to whether the use of deadly force is justified is 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."

On July 13, 2020, the Office of Legislative Research (OLR) issued a report validating the Graham v. Connor standard. The report states in part:

> **Constitutional Requirements for Using Deadly Force**
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> The U.S. Supreme Court has ruled that the Fourth Amendment to the U.S. 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 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 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))**. **Additionally, there must be "allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."**

As stated in the OLR report, deadly use of force is a split second decision. The officer does not have time to think, and training must take over. This provision effectively changes the standard from the standard prescribed by the Supreme Court to a standard where "Monday morning quarterbacking," or as the Court put it "20/20 vision of hindsight" has a place. This is dangerous to the officer and the public and should be not be enacted into law. Moreover, any deviation from the standard set by the United States Supreme Court will lead to litigation over every use of force incident. Therefore, the standard should be left as is and not changed by this bill.

SECTION 41: Elimination of Qualified Immunity

Qualified Immunity is a protection that allows all government employees, not just police officers, to do their jobs without the fear of personal liability. Police work would be almost impossible without this protection.

On June 24, 2020, The Connecticut Supreme Court ruled on the application of qualified immunity in Borelli Estate of Giordano v. Renaldi. "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 mis-performance 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…."

This is a very important protection afforded to all government employees and should not be changed by this, or any other bill. Eliminating qualified immunity would open the door to large judgments against municipalities for the acts of workers from every department, not just police officers. This would cause insurance premiums to skyrocket and already high taxes to increase. Thus, qualified immunity must not be reduced or eliminated in any way.

SECTION 3: POST-C Decertification of Police Officers

This section looks to expand POST-C's ability to decertify police officers. The language used is very ambiguous and must be clarified. The term "found that an officer's conduct tends to undermine the public confidence in police work" could have such a broad meaning that almost every police officer can be decertified depending on the perspective of the person making the evaluation. As is, this language must be stricken from this bill because it has no real meaning and will only lead to litigation every time this section is used to decertify an officer.

Section 12: Task Force

Section 12 looks to examine the possibility and the feasibility of police officers purchasing their own liability insurance. At this point in time, there does not appear to be a product to cover an officer's potential liability on the market. If, and when a plan becomes available on the open market, the cost will most likely be prohibitive. Meaning, current and potential police officers will not be able to afford insurance coverage, thus, reducing the number of quality candidates looking to become police officers and forcing veteran officers into retirement or a career change.

Furthermore, the task force has also been asked to look at the practice of assigning police officers to constructions sites. This practice provides additional police protection in the community without cost. In fact, most municipalities make money off assigning officers to construction sites. Private companies pay for this service, and the fee charged includes the cost of the officer plus an administrative fee that generally goes into the town or city's general fund. Additionally, assigning police officers to construction sites provides protection for construction workers, pedestrians, and drivers and increases the overall public safety of construction sites.

This section should be removed from the bill. Police officers should not be required to purchase their own liability insurance and should remain assigned to constructions sites.

As I said from the start, Police Unions and the law enforcement community in general will support many of the proposed provisions in this bill. Conversely, there are a number of provisions that will harm public safety and make the job of policing almost

impossible. That will lead to a mass exodus of highly experienced officers and a reduction in the number of qualified candidates who want to be police officers. In the end, enacting many of the provisions in this bill, as outlined above, will only reduce the effectiveness of law enforcement officers, and make our communities must less safe.

Again, thank you for the opportunity to submit testimony and when all is said and done, I know you will do what's right for the heroes in blue that keep you, your families, and your constituents safe.