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Re: Connecticut Bar Association Policing Task Force Recommendations

**Recommendations #1-4 relate to the Office of the Inspector General:**

**Recommendation #1:**

The Connecticut Bar Association (“CBA”) Police Task Force (“CBAPTF”) recommends that Section 33(a) of An Act Concerning Police Accountability, Bill 6004 (the “Act”) be amended to permit candidates outside of the State Division of Criminal Justice (“DCJ”) to be eligible for the position of Inspector General (“IG”) and for positions within the staff of the Office of the Inspector General (“OIG”).

**Rationale:**

Section 33(a) of the Act states:

“There is established the Office of the Inspector General that shall be an independent office within the [Connecticut State] Division of Criminal Justice. Not later than October 1, 2020, the Criminal Justice Commission . . . shall nominate a deputy chief state's attorney from within the division as Inspector General who . . . shall lead the Office of the Inspector General. The office shall: (1) Conduct investigations of peace officers . . .; (2) prosecute any case in which the Inspector General determines a peace officer used force found to not be justifiable . . . or where a police officer or correctional officer fails to intervene in any such incident or to report any such incident . . .; and (3) make recommendations to the Police Officer Standards and Training Council . . . concerning censure and suspension, renewal, cancelation or revocation of a peace officer's certification.”

The Act requires that all candidates for IG and OIG staff positions be drawn from within the DCJ. *See also* Section 33(j) (OIG staff). This precludes the Criminal Justice Commission from selecting potential IG and OIG staff from a larger pool of well-qualified candidates including, but not limited to, federal prosecutors, private practitioners from the plaintiff’s bar, and civil rights attorneys. It is critical that OIG investigations have the full confidence of the public and avoid any appearance of a conflict of interest. Candidates drawn exclusively from the DCJ could, however, appear to have such conflicts given that they regularly work with police officers, some of whom may be the subject of OIG investigations. Candidates who are independent from the DCJ, on the other hand, would be less likely to have the appearance of

such a conflict of interest. Accordingly, we recommend that the Act be amended to permit the Criminal Justice Commission to consider candidates outside of the DCJ for IG and OIG staff positions.

**Recommendation #2:**

The CBAPTF recommends that the IG be directed to make findings regarding whether police officers involved in incidents under investigation violated any department procedures, policies, or protocols during the course of the incident and, if such violations occurred, whether discipline should be considered.

**Rationale:**

A review of the investigative Reports on the Deadly Use of Force by Police Officers authored by Connecticut State’s Attorneys from 2001 to the present (the “Reports”) shows that, in accordance with the applicable statute, *see* CGS Section 51-277a(c), the Reports focus on whether the use of physical force by the police officer(s) violated state law. In several Reports, although there is no finding of a violation of state law, the facts plainly demonstrate that the police officers violated police procedures, policies, or protocols. Accordingly, we recommend that the IG, who is most familiar with the facts of the incidents, also make independent findings regarding potential violations of police procedures, policies, and protocols.

**Recommendation #3:**

Public reports issued by the IG concerning police use of deadly force should include a comprehensive recitation of the facts to ensure public confidence in the investigative process. In addition to the facts germane to each incident and the legal analysis as to whether the use of physical force was permissible under the law, all such IG reports should include:

1. A timeline of significant events relevant to the incident, including whether mental health considerations may have contributed to the incident.
2. Information concerning the police officers involved in the incident, including, but not limited to:
  - a. Officer demographics (race, ethnicity, gender, age).
  - b. Officer’s number of years of service (including years with other police agencies).
  - c. Officer rank and assignment at the time of the incident (e.g., patrol or any specialized unit).
  - d. Whether the officer has been involved in other deadly use of force incidents and the officer’s role in such incidents.
  - e. Whether the officer has been involved in any other use of force incidents where physical injury resulted, or may have resulted, within three years of the current incident.
  - f. A review of the officer’s relevant disciplinary file and related records, including any relevant findings of misconduct and any related discipline or remedial action imposed.
  - g. The number of relevant citizen complaints filed against the officer; the general nature

of the allegations in any such complaints; any substantiated findings of misconduct by the officer; and any relevant disciplinary or other remedial action taken as a result of such findings.

h. A review and summary of the officer's training records.

3. Information concerning the victim/subject of the incident, including, but not limited to:
  - a. Demographic information (race, ethnicity, gender, age).
  - b. Town of residence.

Any evidence indicating that the officers involved in the incident were aware at the time of the incident that the victim/subject previously had been arrested or convicted of a violent offense; had been involved in the use of force against police officers; or had possessed, or was believed to possess at the time of the current incident, a firearm.

4. The identification of any police department procedures, policies, or protocols that were violated during the incident.
5. Recommendations for future actions. (*See, e.g., Report of the State's Attorney Concerning the Death of Edward R. Gendron, Jr.*).

#### **Rationale:**

The CBAPTF has reviewed the Reports concerning deadly use of force incidents since 2001. These incidents were investigated by at least 23 different State's Attorneys, each of whom made his or her own determination about the types of information to report. The above-described information was not consistently included in the Reports. To ensure all relevant facts are available to the public, and to enable meaningful analysis of these incidents over time, the above-described information should consistently be reported.

#### **Recommendation #4:**

The CBAPTF recommends granting the IG authority to issue subpoenas to civilians who may have witnessed a use of force incident and/or have relevant knowledge or information regarding the incident.

#### **Rationale:**

Section 33(g) of the Act states: "The Inspector General may issue subpoenas to municipalities, law enforcement units, . . . Department of Correction and any employee or former employee of the municipality, unit or department (1) requiring the production of reports, records or other documents concerning [the Inspector General's] investigation . . . , and (2) compelling the attendance and testimony of any person having knowledge pertinent to such investigation."

If the IG can subpoena only law enforcement and municipal employee witnesses, the OIG's investigations will not have the benefit of the testimony of civilians who may have witnessed or participated in the incidents, or who may possess documentary evidence (*e.g.*,

video recordings, medical records) relevant to the investigation. Without compulsory process, the IG will be unable to compel civilian witnesses, who may be unwilling or fearful of cooperating in such investigations, to provide relevant testimony or other evidence.

**Recommendation # 5 (Statute of Limitations in Section 41(g) of the Act):**

The CBAPTF recommends that the one-year statute of limitations for bringing an action pursuant to Section 41 of the Act be extended to three years.

**Rationale:**

Section 41(g) of the Act provides: “A civil action brought pursuant to this section shall be commenced not later than one year after the date on which the cause of action accrues.”

Three reasons support extending the statute of limitations to three years.

*First*, the one-year limitations period is tied to the period of time that police departments are required by statute to retain body-camera footage. At first blush, this seems logical. Our research shows, however, that as a matter of custom and policy, police departments retain body-camera footage involving use-of-force incidents for up to four years. Moreover, an aggrieved citizen contemplating a lawsuit could put a police department on notice and request that the department retain its body-camera footage beyond the one-year statutory floor.

*Second*, the one-year limitations period is very short. This may serve as an artificial barrier to the filing of meritorious cases or, alternatively, force plaintiff’s counsel to file lawsuits prematurely to avoid exceeding the limitations period.

*Third*, the federal district court will likely adopt the statute of limitations established in Section 41(g) of the Act for civil rights lawsuits brought in the District of Connecticut pursuant to 42 U.S.C. § 1983. “Since Congress did not enact a statute of limitations governing actions brought under § 1983, the courts must borrow a state statute of limitations.” *Lounsbury v. Jeffries*, 25 F.3d 131, 133 (2d Cir. 1994). “In Connecticut, the three-year limitations period set forth in Conn. Gen. Stat. § 52–577 is applicable to claims asserted under section 1983.” *Harnage v. Shari*, No. 16 Civ. 1576 (AWT), 2020 WL 5300913, at \*3 (D. Conn. Sept. 4, 2020). Extending the statute of limitations to three years will preserve the status quo for Section 1983 lawsuits brought in the District of Connecticut.

**Recommendation # 6 (Accreditation Standards):**

The CBAPTF recommends that the accreditation standards for law enforcement agencies be revised to give police chiefs the option of complying with the Connecticut Police Officer Standards and Training Council (“POSTC”) Tier III standards (“Tier III standards”), or the national Commission on Accreditation for Law Enforcement Agencies (“CALEA”) standards. Those departments opting to achieve Tier III accreditation by 2025 should reach Tier I accreditation by 2021 and Tier II accreditation by 2023.

## **Rationale:**

The Act requires that all departments satisfy the CALEA standards. Currently, only 24 of 92 departments in Connecticut are CALEA certified. The Tier III standards are very similar to the CALEA standards, but include additional state-specific standards. The CALEA standards also include a facility-update requirement that differs from the facility-update component required by the state accreditation process, including requirements relating to detention centers and the location of evidence storage. Under the current CALEA on-site assessment process, assessors from outside of Connecticut spend a minimal amount of time at each police department (2-3 days) reviewing policies, practices, and facilities, as well as conducting staff interviews. Most of the department's files are reviewed remotely by assessors who may be unfamiliar with Connecticut law and regulations. By contrast, the Connecticut Tiered Accreditation Program uses a POSTC assessor and a local team of three or four assessors who are familiar with Connecticut law and regulations to review the department's policies, practices, and facilities.

In addition, adoption of the Tier III standards would result in significant cost savings for many departments. CALEA requires departments to recertify every five years at significant cost, typically \$15,000 over the course of the assessment period. Although Bill 6004 provides some funding (via issuance of bonds), the costs of CALEA accreditation are expected to be a major challenge for many departments. Although Tier III requires recertification every four years, it is much more cost-effective.

## **Recommendation #7 (Citizen Complaints):**

The CBAPTF recommends that the POSTC be tasked with updating and developing a state-wide standardized form and process for reporting citizen complaints. The form should (1) state clearly that complaints can be made anonymously and do not need to be notarized; (2) request information about the race, ethnicity, and gender of the police officer and complainant, among other information; (3) be available online and easy to locate; (4) be available in hard copy at local police stations and other municipal buildings, including public libraries; and (5) be available in Spanish and/or other foreign languages, depending on the needs of the local population.

In order to promote transparency and facilitate detection of any problems or patterns of behavior, police departments should promptly submit complaint data to an online database maintained by the Office and Policy Management ("OPM"). Departments should report complaint data without the names or other identifying information of complainants or police officers. Instead, OPM and departments should use unique tracking numbers for officers and complainants that will allow for the determination of whether other complaints have been filed against the officer and whether the complainant has filed other complaints. The OPM database should be publicly accessible and searchable.

POSTC should determine which types of complaints must be submitted to OPM by departments, to include racial profiling, discourteous behavior, and excessive force complaints. POSTC should not permit departments to wait to report required data until after complaints are investigated and substantiated. POSTC must develop an audit policy to ensure that departments

are making the complaint form widely available and promptly submitting the required data to OPM. On a bi-annual basis, OPM should publicly issue a report on complaint data received during that time period. OPM could outsource maintenance of the database and analysis of the complaint data to a university.

**Rationale:**

The Act does not address citizen complaints. POSTC has developed certain minimum standards for reporting complaints, but we found that these are insufficient. Currently there is no standardized statewide form for reporting citizen complaints. Nor is there a central repository for collecting complaints, a database for analyzing them, or a method for publicly reporting such data. The model complaint form developed by POSTC in 2015 has certain problems, including not making clear that the complaint can be reported anonymously. The form also needs to be updated to ensure that important data is regularly collected. For at least certain categories of citizen complaints, including complaints about excessive force, racial profiling, and discourteous behavior, this lack of standardized data collection and reporting is particularly problematic.

**Recommendation #8:**

The CBATF recommends that Section 18 of the Act be expanded to include a comprehensive feasibility study on the use of social workers and mobile crisis units by police in Connecticut. In support of this study, the CBATF, in collaboration with the Police Transparency and Accountability Task Force, would assess the DESPP and police evaluations submitted to POSTC on the use of social workers to respond remotely to calls for assistance, to respond in person to such calls, and/or to accompany police officers on calls where the experience and training of a social worker could provide assistance.

**Rationale:**

Section 18 of the Act states:

“Not later than six months after the effective date of this section, the Department of Emergency Services and Public Protection and each municipal police department shall complete an evaluation of the feasibility and potential impact of the use of social workers by the department for the purpose of remotely responding to calls for assistance, responding in person to such calls or accompanying a police officer on calls where the experience and training of a social worker could provide assistance. Such evaluation shall consider whether responses to certain calls and community interactions could be managed entirely by a social worker or benefit from the assistance of a social worker. Municipal police departments shall additionally consider whether the municipality that the police department serves would benefit from employing, contracting with or otherwise engaging social workers to assist the municipal police department. Municipal police departments may consider the use of mobile crisis teams or implementing a regional approach with other municipalities as part of any process to engage or further engage social workers to assist municipal police departments. The Commissioner of Emergency Services and Public Protection and each municipal police department shall submit such evaluation immediately upon completion to the Police Officer Standards and Training Council established under section 7- 294b of the general

statutes.”

The mobile crisis team approach to public safety is well known in Connecticut, particularly with respect to responses to children and adolescents and others experiencing behavioral or mental health needs or crises. [See “Mobile Crisis Intervention Services Performance Improvement Center \(PIC\) Annual Report: Fiscal Year 2019](#). Several Connecticut cities and towns have adopted, or are adopting, mobile crisis unit (or “Co-Responder Team” or “Crisis Intervention Team”) strategies. See, for example, descriptions of such programs in [Hartford](#), [New Haven](#), and [a consortium comprised of Suffield, Windsor Locks, East Windsor and Granby](#).

Moreover, the movement to mobile crisis team approaches to public safety has been robustly supported by the U.S. Department of Justice and by funding provided by the federal Substance Abuse and Mental Health Administration and the Connecticut Department of Mental Health and Addiction Services. *See, e.g.*, [Law Enforcement Best Practices: Lessons Learned from the Field; Building Safer Communities: Improving Police Responses to Persons with Mental Illness](#); and [Police Mental Health Collaborations: A Framework for Implementing Effective Law Enforcement Responses for People Who Have Mental Health Needs](#). Both former President Trump and President Biden have expressed support for the co-responder model. *See* [Trump Executive Order on Safe Policing for Safe Communities](#) and [Joe Biden's Criminal Justice Policy](#).

The mere fact that the General Assembly has mandated that police departments submit feasibility and impact studies is no guarantee that the opportunities created by the legislation will be fully grasped. While some police departments will see the Act as an opportunity to recommend imaginative movements toward adoption of mobile crisis unit policing, the responses are almost certain to be highly variable. If we wish to see the DESPP and the municipalities meaningfully consider these opportunities, we must support their efforts by supplying them with the resources and advocacy necessary to fully consider the options available to them.

## **Recommendation # 9: Minimum Standards for Civilian Review Boards**

The CBAPTF recommends that municipalities consider the following minimum standards when creating a CRB pursuant to Section 17(a).

### **Background:**

In June 2020, the CBAPTF Oversight subcommittee was tasked with providing best practices for creating and implementing a civilian police review board (CRB). Soon thereafter, the Connecticut legislature passed HB 6004/PA-20-1 (An Act Concerning Police Accountability), which became law on July 31, 2020. Section 17 of the law permits municipalities to establish a CRB by ordinance. Section 17(a) requires that ordinances establishing CRBs shall, at a minimum, set forth the following:

1. The scope of authority of the CRBs
2. The number of members of the CRBs

3. The process for the selection of board members, whether elected or appointed
4. The term of office for board members
5. The procedure for filling any vacancy of the membership of the CRBs

The Oversight subcommittee surveyed and drafted a summary of 24 different CRBs from across the nation (see attached). While the subcommittee's survey was not exhaustive, the CRBs that were reviewed varied in size, scope, composition, and authority. The survey included CRBs from municipalities and counties with populations ranging from 37,000 in Amherst Town, MA, to nine million in Los Angeles County. The subcommittee also reviewed and considered the U.S. Department of Justice publication, *Citizen Review of Police*. Based on the subcommittee's survey and analysis, the CBAPTF recommends the following for municipalities in Connecticut to consider:

**Rationale:**

Although Section 17(a) outlines the minimum requirements for a CRB ordinance, the legislation does not offer specific guidance for establishing a CRB. This is understandable in light of the different needs of the communities that CRBs might serve. The following recommendations, therefore, provide guidance for the municipal ordinance and the creation of CRBs.

*Sec. 17. (a) The legislative body of a town may, by ordinance, establish a civilian police review board. The ordinance shall, at a minimum, prescribe:*

- (a) The scope of authority of the civilian police review board

The CBAPTF recommends that the following factors be considered when deciding between an investigatory-based or review-based CRB.

- Does the police department have a history of being open and transparent with the community?
- Is the police department currently under a consent decree/federal oversight, or does it have a history of being under a consent decree/federal oversight?
- Does the municipality have the funding and resources needed to finance an investigative CRB (including office equipment, computers, video equipment)?
- What are the implications for failure to comply with subpoenas?
- What enforcement measures are available to compel subpoena compliance?

These questions will assist a municipality in deciding what type of CRB to choose. A community with a police department that has a demonstrated track record of being open and transparent with the community may chose a review-based CRB. Conversely, an investigative-based CRB is more appropriate for a police department that is currently, or was previously, under a federal consent decree and/or is working to create stronger trust with the community.



An investigative-based CRB will be labor-intensive and require members to have an investigative background and training. The CRB will require subpoena power to compel witnesses and/or the production of documents. The CRB will conduct administrative internal affairs investigations that are not intended to be a substitute for, or to interfere with, any related criminal investigation. As provided in Section 17, the Inspector General will have the authority to stay a CRB investigation to prevent interference with an ongoing criminal investigation. An investigative-based CRB is also likely to have significant collective bargaining implications.

A review-based CRB, by contrast, will evaluate a department's own internal affairs investigation to assess whether it was objective, factual, and thorough. The CRB will sustain or reject the findings and make recommendations to the Chief of Police or other individuals who have the authority to discipline officers.

*(b) The number of members of the civilian police review board*

The subcommittee recommends that a CRB contains at least five members and not more than eleven members. The attached CRB survey identifies boards ranging from five to eleven members. To avoid votes ending in a tie, boards should be composed of an odd number of members. Using 60% of members in attendance as the basis for a quorum, a board consisting of five members would need only three members in attendance to conduct business. The subcommittee does not believe it would be adequate for a CRB to have less than three persons deciding the issues coming before a CRB. On the other hand, a CRB with too many members may present difficulties in attaining a quorum. Also, too many people on a CRB may lead to unproductive lengthy debates and discussions of differing opinions, thereby slowing the review process.

*(c) The process for the selection of board members, whether elected or appointed*

CRBs are charged with assessing interactions between police officers and civilians, sometimes based upon conflicting accounts and evidence. To ensure that their factual findings and proposed recommendations are respected by all parties involved, members of CRBs must be viewed as objective and impartial. Accordingly, the selection of CRB members must be approached with thoughtfulness and care.

The CRB selection process should yield a diverse CRB with members of different genders, races/ethnicities, professional backgrounds, experiences, and worldviews. The process of selecting CRB members, whether elected or appointed, should include a background check. The background check should not be used unfairly to preclude any individual's participation, but rather to elicit a diverse collection of lived knowledge and identify possible implicit biases. Prospective board members should also be required to participate in training, including citizen's academy, scenario training, ride-a-long, and confidentiality training. CRB members should also be required to sign a confidentiality agreement prior to their appointment.

*(d) The term of office for board members*

We recommend that CRB members' terms be staggered, thus reducing the likelihood of an entire CRB turning over at the same time. Terms should be for a minimum of two years and generally for a maximum of five years. There should also be a maximum number of terms that a CRB member can serve before a break in service. Members must recognize the civic commitment attached to the role, and absent hardships and personal emergencies, members should serve their full term. CRBs require consistency of membership to garner adequate collective knowledge in order to perform their mission effectively.

*(e) The procedure for filling any vacancy in the membership of the civilian police review board.*

Depending on the amount of time remaining in the vacated term and the amount of training required for new board members, it may be in the CRB's best interest not to fill a vacancy. Should the CRB choose to fill the vacancy, however, the process should take into account the perspective of the initial selection committee and the existing CRB's opinions. The selection committee or the CRB should fill vacancies either by vote or appointment.

There should also be a process to address the removal of a board member. The following factors should be considered as a basis for removal: breach of confidentiality; breach of ethics (*i.e.*, using one's position of power to coerce another, falsifying information, nepotism, and not disclosing conflicts of interest); a pattern of poor attendance; or other conduct unbecoming of a board member. It is essential to recognize that accountability, trust, and integrity are just as integral for CRB members as they are for police officers.

**Recommendation # 10: Establishment of Civilian Review Boards**

The CBAPTF recommends that Section 17 be amended to require all communities with police departments, or under the jurisdiction of the Connecticut State Police Resident Trooper Program, establish a CRB (if one does not already exist). For the purpose of this recommendation, communities that have an active police commission with oversight of the police department shall be considered to have satisfied the requirement of having a CRB.

**Rationale:**

This recommendation will further the goals of the Police Accountability Act because it will bring standards, oversight, and consistency to all of our Connecticut communities regardless of police jurisdiction. A fundamental purpose of the Act is to provide standards for, and oversight of, the police officers and departments tasked with keeping communities safe. CRBs are a proven accountability mechanism that provide an independent review of police departments. In carrying out this function, CRBs serve as a check and balance on the exercise of police authority, which, in turn, fosters civilian trust, police transparency, and community engagement.

## **Recommendation # 11: Deadly Use-of-Force Database**

The CBAPTF recommends that the Inspector General (“IG”) create and maintain a public database of pertinent information derived from completed investigative reports issued by the IG concerning police use of deadly force.

### **Rationale:**

The DCJ must investigate and determine whether the use of physical force by a police officer(s) violates state law. From 2001 to the present, in accordance with the applicable statute, *see* CGS Section 51-277a(c), Reports on the Deadly Use of Force by Police Officers (“Reports”) were authored by Connecticut State’s Attorneys. Section 33(a) of the Act provides that the IG must now conduct such investigations and issue public investigative Reports.

To promote transparency with the public and to facilitate detection of any trends or patterns of problematic behavior, a public database that captures relevant information from each incident is necessary. The public database should, at a minimum, include the following information:

- Basic Incident Information: Date, time, location, weather conditions, officer initiated, or officer dispatched.
- Subject Information: name, gender, race, ethnicity, age, town of residence
- Indicate whether death occurred because of police use of force, and while in police custody or in a medical facility
- Nature of initial interaction and underlying alleged offense
- Activity that lead to incident (based on CT use of force form)
- Subject’s resistance resulting in application of force (based on CT use of force form)
- Control methods used (based on CT use of force form)
- Officer Information: unique officer ID, assignment at time of incident, race, ethnicity, gender, age, years of service, prior involvement in other deadly use of force incidents, number of complaints on record at the time of the incident, prior relevant discipline
- Investigative Information: camera footage available and type (body cam, dash cam), charges filed, officer discipline imposed

## **Recommendation # 12: Early Warning System Pilot Program**

The CBAPTF recommends that certain police departments develop and implement an early intervention system (“EIS”) pilot program to detect and prevent adverse incidents. Those departments whose officers are involved in the greatest number of deadly force incidents would most benefit from such a program. The CBAPTF recommends an EIS program that would identify police officers most at risk of adverse incidents through a data-driven approach based on the model developed by the Center for Data Science and Public Policy at the University of Chicago (“UC”).

## **Rationale:**

Most Connecticut police departments do not have an EIS. Those departments that do have such systems use a threshold-based model which, for example, “flags” officers who have a threshold number of citizen complaints within a designated time period. Although these programs attempt to identify officers with patterns of problematic performance or signs of stress in order to prevent adverse incidents, they tend to have a high rate of false flags. This can overload departments and undermine the efficacy and legitimacy of the EIS.

The UC-based EIS model has been deployed by departments across the country and been shown to be more accurate and effective than the threshold-based model. The UC model is based on a broader set of data, including officer demographics, training, days off, secondary jobs to detailed police activities (traffic stops, dispatches, arrests, use of force, vehicle pursuits) and civilian compliments, complaints, and civil lawsuits. Using machine learning to detect patterns that precede adverse incidents, the model analyzes thousands of variable combinations (stops, arrests, use of force incidents, dispatches) over time to determine which factors best identify officers at risk. The model then generates risk scores that the department can use to identify officers for whom intervention may be appropriate.

The EIS system would be developed in collaboration with the department, including the definition of what constitutes an “adverse incident” (for which an Internal Affairs investigation leads to a finding) and what kind of intervention (training, counseling, disciplinary action) is most appropriate for particular findings.

As communities discuss the potential reallocation of police resources, an investment in the development and use of a UC-based EIS that is data-driven would be beneficial. Piloting this program in a small number of departments would be a worthwhile first step.

## **Recommendation # 13: Factual Observations derived from Data regarding Deadly Force Incidents in Connecticut**

The CBAPTF reviewed in detail the investigative reports relating to the 89 incidents involving police use of deadly force in Connecticut from 2001 to the present (“the Reports”). The Task Force’s final public report will include a detailed analysis of these incidents. In the interim, we highlight meaningful factual observations derived from the data that inform our recommendations.

First, almost half of the incidents involved people struggling with mental health conditions. Police responding to these incidents report that 46% of the incidents involved people who were emotionally disturbed/in mental distress and/or deemed suicidal. This data calls out for municipalities and law enforcement to seriously consider the role that mobile crisis units or other social services can be used to support responses to police calls.

Second, half of the subjects/victims of deadly force incidents were either Black or Hispanic. In 30% of the incidents, the subject/victim was Black; and in 20% of the incidents, the

subject/victim was Hispanic. While there are factors that might begin to explain this racial disparity – including the racial composition of neighborhoods where some of these incidents occur – the hard truth is that half of the subjects/victims of deadly force incidents are persons of color. In this same vein, of the 89 deadly force incidents we have reviewed, 18 individuals were unarmed. Of those 18 individuals, 39% were Black and 28% were Hispanic.

Third, six police departments were involved in 55% of all deadly force incidents; and the same six departments were each involved in more than three such incidents. These departments would most benefit from the implementation of robust early warning systems.

Fourth, in 26% of the incidents, a vehicle was involved, usually as part of a pursuit. On November 14, 2019, POSTC adopted an updated Model Pursuit Policy in accordance with Public Act 19-90, Section 5. Recognizing that pursuits of fleeing motor vehicles present a danger to the lives of the public, police officers, and those inside the vehicles, the policy serves as the minimum standard for all police pursuits. The policy is robust and detailed. At its core, the policy permits pursuits only when an officer reasonably believes that the driver or occupant has committed, or is attempting to commit, a crime of violence or there are exigent circumstances that warrant the timely apprehension of a suspect because of potential harm to the public. Officers are prohibited from discharging their firearms at a vehicle or its occupants unless the occupants are using or threatening the use of deadly physical force against the officer or another person by means other than the vehicle. This pursuit policy, which was borne out of the type of data analysis being conducted in many areas of policing, is a meaningful development in minimizing the occasion of deadly force incidents engendered by police car pursuits.

Fifth, most of the incidents occurred on the second shift (3:00 p.m. – 11:00 p.m.), and the vast majority of officers who fired their weapons were between 26-35 years old and relatively new to policing, having under ten (and in many cases, under five) years of experience. The Reports do not always make clear whether supervisory personnel were dispatched and on scene prior to the use of force. The presence of experienced supervisory personnel on scene, particularly when incidents may involve significant threat to the safety of officers and others, may help to facilitate safer outcomes. We recommend reinforcement of, and adherence to, model guidelines issued by CALEA and POSTC, which include directives requiring, whenever possible, to have supervisors and/or veteran officers respond to the scene of serious incidents, including all shooting calls (other than calls concerning hunters), verified robbery calls, burglaries in progress, serious assaults, hostage or barricaded suspect calls, officer-needs-assistance calls, kidnapping, incidents involving large groups, strikers or protesters, and incidents involving individuals experiencing mental health or suicide related issues.

#### **Recommendation # 14: Mental Health**

The CBAPTF recommends that the Act be amended to prohibit discharging, disciplining, discriminating, or otherwise penalizing a police officer because of the results of a behavioral health assessment.

Connecticut General Statutes § 7-291d currently states: “(a) No law enforcement unit, as defined in section 7-294a, shall discharge, discipline, discriminate against or otherwise penalize a

police officer, as defined in section 7-294a, who is employed by such law enforcement unit solely because the police officer seeks or receives mental health care services or surrenders his or her firearm, ammunition or electronic defense weapon used in the performance of the police officer's official duties to such law enforcement unit during the time the police officer receives mental health care services. The provisions of this subsection shall not be applicable to a police officer who (1) seeks or receives mental health care services to avoid disciplinary action by such law enforcement unit, or (2) refuses to submit himself or herself to an examination as provided in subsection (b) of this section."

The CBATF recommends amending section 7-291d(a) as follows: "(a) No law enforcement unit, as defined in section 7-294a, shall discharge, discipline, discriminate against or otherwise penalize a police officer, as defined in section 7-294a, who is employed by such law enforcement unit solely because (i) the police officer seeks or receives mental health care services; (ii) the police officer surrenders his or her firearm, ammunition, or electronic defense weapon used in the performance of the police officer's official duties to such law enforcement unit during the time the police officer receives mental health care services; **or (iii) because of the results of a behavioral health assessment conducted pursuant to section 7-291e. Nothing in this subsection should be construed as preventing a law enforcement unit from considering the results of a behavioral assessment in evaluating whether a subsequent fitness-for-duty evaluation is appropriate.**

#### **Rationale:**

Section 16 of An Act Concerning Police Accountability, Bill 6004, requires behavioral health assessments for police officers when they begin their employment, not less than once every five years, and for good cause shown. The CBATF's proposed amendment seeks to protect law enforcement officers who undergo required periodic behavioral assessments or for good cause shown. The proposed amendment will help eliminate any stigma or adverse employment effects that may result from such assessments.

The CBATF makes this recommendation because ensuring the health and wellbeing of all police officers is a priority and serves the public good. Police officers should be encouraged to disclose mental health issues and to seek treatment without fear of discipline, loss of employment, or any other adverse effect on their careers. The same legal protections that are currently afforded officers who voluntarily seek or receive mental health care services should be extended to officers when they are required to obtain behavioral health assessments.

This recommendation is not intended to shield any officer from a more comprehensive follow-up examination, should such an examination be deemed necessary. The CBAPTF also encourages municipalities and police departments to consider requiring behavior assessments of officers more frequently than once every five years, and allocating additional resources to permit more frequent assessments and availability of mental health treatment for officers.

#### **Recommendation # 15: Pattern & Practice**

The CBAPTF recommends amendment of the Act to grant civil "pattern-or- practice" enforcement authority to the Attorney General. This authority would be invoked only when there

is evidence of a persistent pattern of misconduct in a police department or evidence of a regular practice in place that unlawfully discriminates or violates civil rights, rather than an isolated incident. The remedy for a pattern-or- practice violation must include whatever reforms may be necessary within the police department to remedy systemic problems such as use of excessive force, racial profiling, and other biased policing and unlawful practices. To be effective, pattern-or- practice enforcement authority must include authorization to conduct investigations, including issuing subpoenas and civil investigative demands, as well as the power to commence litigation when appropriate.

### **Rationale:**

An Act Concerning Police Accountability, Public Act 20-1 (Bill 6004), does not include civil authority for pattern-or-practice review. This authority lies beyond the scope of the criminal authority granted to the Inspector General. Although the federal Government has the authority to conduct pattern-or-practice investigations, the Connecticut Attorney General does not currently have this authority. Because the federal Government has a national focus, systemic and egregious misconduct in local police departments which are lower profile or less urgent relative to departments outside of the State may go unchecked.

State government is in the best position to monitor local police departments for patterns and practices of civil rights abuses. The Connecticut Attorney General is already well positioned to provide necessary oversight and accountability. The Office of the Attorney General is focused solely on the State of Connecticut, and it has the expertise and capacity to investigate and bring any necessary cases.

By definition, “pattern-or-practice” authority is only invoked when there is evidence of a persistent pattern of misconduct in a police department or evidence of a regular police practice that unlawfully discriminates or violates civil rights, rather than an isolated incident. The goal of a pattern-or-practice action is to secure whatever reforms may be necessary within a department to remedy systemic problems such as use of excessive force, racial profiling, and other biased policing and unlawful practices.

In response to concerns about the limitations of this authority, the grants of authority in other jurisdictions around the country can be instructive. Distinct from criminal investigations or charges that may be pursued for a single violation of law, this authority is aimed at addressing multiple instances and systemic abuses or violations within a department. State AG enforcement may avoid the costs associated with similar DOJ enforcement by consent decree (which may require a court monitor and a more expansive scope of review and/or modification) and shorten the mandated period of oversight.

### **Recommendation # 16: Use of Force**

The CBAPTF recommends that the Connecticut General Assembly pass H.B. 6462, *An Act Concerning Use of Force By A Peace Officer*.

## **Background:**

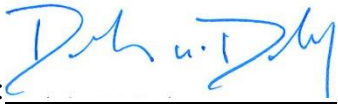
On March 8, 2021, the Judiciary Committee unanimously approved H.B. 6462 (Joint Favorable Substitute), which provides that Section 29 of Public Act 20-1 of the July special session concerning the use of force by peace officers (1) shall take effect on January 1, 2022; and (2) shall be amended as follows:

- (a) Clarify that whether a police officer's actions were "objectively reasonable" should be determined based upon "the given circumstances at that time," rather than just "the circumstances";
- (b) to require that before a police officer may use deadly force, the officer must, among other requirements, have "reasonably determined that there are no available reasonable alternatives to the use of deadly physical force," instead of requiring officers to have "exhausted" any such reasonable alternatives;
- (c) require that before a police officer may use deadly force, the officer must, among other requirements, "reasonably believe[] that the force employed creates no unreasonable risk of injury to a third party," rather than a "substantial" risk of such injury;
- (d) require that before a police officer may use deadly force to "effect an arrest of a person whom he or she reasonably believes has committed or attempted to commit a felony which involved the infliction of serious physical injury," the officer must, "where feasible," provide "warning of his or her intent to use deadly physical force";
- (e) require that before a police officer may use deadly force to "prevent the escape from custody of a person whom he or she reasonably believes has committed a felony which involved the infliction of serious physical injury," the officer must also reasonably believe that the person "poses a significant threat of death or serious physical injury to others" (and, "where feasible," provide "warning of his or her intent to use deadly physical force"); and
- (f) for purposes of evaluating whether actions of a police officer are "reasonable" under the statute, the (non-exhaustive) factors to be considered include whether "any unreasonable conduct" of the officer led to an increased risk of an occurrence of the situation that precipitated the use of such force, rather than "any conduct" of such officer.



**Rationale:**

The CBAPTF supports passage of H.B. 6462 as adopted on a unanimous, bipartisan basis by the Judiciary Committee. The bill makes small, but important, textual amendments to Section 29 Public Act 20-1 of the July special session that are consistent with the spirit and intent of last year's Police Accountability Act. These amendments provide important clarifications that will help further guide the use of deadly force by police officers in the field. The amendments also provide additional protections for the public against unreasonable uses of deadly force by the police. Lastly, the bill provides a realistic timeline for implementation of the new deadly use of force statute that will allow police officers in the state to be properly trained on the law.



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