

HB 6004: What Connecticut Officers Need to Know...

Description

In the State of Connecticut, an Act Concerning Police Accountability has garnered a lot of attention over the past few weeks. HB 6004 was passed by the House of Representatives in the General Assembly on July 24, 2020 and the Senate on July 29, 2020. We have fielded many calls and emails regarding the Police Accountability Bill. This document is our attempt to reduce sixty-four pages of information to seven pages that you must review. The Bill includes an array of substantial changes to policing in Connecticut; some of the changes are minor and may be welcomed, while others merely codify best practices to which many Connecticut police agencies already adhere. However, there are some sections of the Bill which will have a profound impact on Connecticut policing.

The article that follows will attempt to provide agencies with a brief overview of the Bill and its implications. Specific sections will need to be reviewed in detail by departments and their legal counsel. It is expected, and in some cases mandated by the Bill, that many of these sections will be subject to further guidance from the Police Officer Standards and Training Council. In the future, as POSTC, the Transparency & Accountability Task Force, and the General Assembly committees provide clarification on the points raised, additional articles will follow.

Police Officer Standards and Training Council: (*Effective from passage*) The Bill provides for additional mandates for the POSTC. A major section of the Bill addresses the Council's ability and the creation of a process to cancel or revoke officer certification. Specifically, POSTC has been given the authority to cancel or revoke officer certification under the following circumstances: (a) the certification was issued by administrative error; (b) the certification was issued through misrepresentation or fraud; (c) the certificate holder falsified any document to obtain certification; (d) the certificate holder has been convicted of a felony; (e) the certificate holder was found not guilty of a felony by reason of mental disease or defect; (f) the certificate holder was refused, cancelled or revoked a certification or similar authorization in another jurisdiction; (g) the certificate holder was found by a law enforcement unit to have used a firearm in an improper manner which resulted in the death or serious physical injury of another person; (h) the holder has been found to have engaged in conduct that undermines the public confidence; (i) the holder has been found by a law enforcement unit to have used physical force on another person in a manner found not to be justifiable.

Pursuant to the Bill, POSTC will have to determine what specific conduct "undermines the public confidence," but the General Assembly included: discriminatory conduct, falsification of reports, or violations of the *Alvin Pen Act* as examples. The Bill stated that the severity of the incident must be considered as well as whether the officer was working in a law enforcement capacity or not when the conduct occurred.

After a hearing POSTC (if they choose not to revoke or cancel certification) has the ability to suspend certification for up to 45 days.

Drug Testing: (*Effective from passage*) The Bill authorizes POSTC to require police officers to pass a urinalysis drug test as part of a condition for renewal of officer certification. The drug test would screen

for controlled substances, including anabolic steroids.

Implicit Bias Training: *(Effective from passage)* Implicit Bias Training will be added to the cultural competency, sensitivity, and bias-free training that officers already receive under current law. Implicit Bias Training is about recognizing and mitigating unconscious bias against particular people that might influence judgements and decisions while interacting with them.

Crowd Management Training and Statewide Policy: *(Effective from passage)* POSTC is mandated to create a statewide uniform crowd management policy that: (1) protects individual rights and preserves the peace during demonstrations and civil disturbances, (2) addresses the permissible and impermissible uses of force by a police officer and the type and amount of training in crowd management that each police officer shall undergo, and (3) sets forth the documentation required following any physical confrontation between a police officer and a civilian during a crowd management incident. This training would also be mandated at basic training as well as recertification training.

Badges and Name Tags: *(Effective January 1, 2021)* Officers shall affix their badge and name tag to the outermost garment of their uniform. POSTC will promulgate rules and exceptions to this section.

Reporting on Recruiting, Retaining and Promoting Minority Police Officers: *(Effective from passage)* The Bill attempts to set forth guidelines for recruiting, retaining, and promoting minority officers. The Bill dictates that if a law enforcement unit serves a community “with a relatively high concentration of minority residents,” the unit shall make efforts to recruit, retain, and promote minority police officers so that the racial and ethnic diversity of such unit is representative of such community. The Bill states that some efforts may include efforts to attract young persons such as police athletic leagues, explorer programs, cadet units, and other community outreach. Other efforts include the implementation of policies providing that when there is a vacant position in such unit, such position shall be filled by hiring or promoting a minority candidate when the qualifications of such candidate exceed or are equal to that of any other candidate or candidates being considered for such position when such candidates are ranked on a promotion or examination register or list. Additionally, these departments would need to report such efforts to POSTC on an annual basis.

Police Accountability and Transparency Task Force: *(Effective from passage)* The Bill seeks to expand the charge of the Transparency and Accountability Task Force which was originally created under Public Act 1990. The Task Force is to submit a preliminary report to the General Assembly by January 1, 2021. In addition to the previous mandates under Public Act 19-90, the Task Force has been directed to look at, among other things, the feasibility of police officers having professional liability insurance, how officers conduct “no-knock” warrants, the establishment of primary and secondary traffic violations, and the requirement that traffic stops be based on the primary violation.

Behavioral Health Assessments: *(Effective from passage)* Starting January 1, 2021, officers must undergo a periodic Behavioral Health Assessment as a condition of hiring or continued employment. The behavioral health assessment must be conducted by a board-certified psychiatrist or psychologist who has experience diagnosing and treating post-traumatic stress disorder. Each officer must undergo such an assessment at least once every five years and the Chief may stagger the assessments for the department so that 20% have such assessments annually. Additionally, pursuant to the Bill, the Chief can, when good cause is shown, require additional mental health assessments. It is important to note that the results are provided to the officer and Chief and are not subject to disclosure under FOIA.

Civilian Review Boards: (*Effective from passage*) Legislative body of the town may create a civilian review board via local ordinance. If a town chooses to do so, the ordinance shall include: the scope of the board, the number of members, the process for selection, the term of office, and the procedure for filling vacancies. The ordinance may also provide the civilian review board with the powers to issue subpoenas and require the production of papers and any books that such board deems relevant.

Feasibility and Impact of Social Workers Responding to Police Calls for Service: (*Effective from passage*) Each law enforcement unit shall conduct a feasibility study of the potential impact of the use of Social Workers by the department for the purpose of: (1) remotely responding to calls for assistance; (2) responding in person to such calls; or (3) accompanying a police officer on calls where the experience and training of the social worker could provide some assistance. 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. Finally, 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.

Dashboard Cameras and Body-Worn Cameras: The General Assembly has mandated Dashboard Cameras in all police vehicles by July 1, 2022. In order to determine which vehicles require such cameras, the General Assembly provided and/or modified the following definitions in §7-277b:

- “Police officer” means a sworn member of a law enforcement unit or any member of a law enforcement unit who performs police duties
- “Police patrol vehicle” means any state or local police vehicle other than an administrative vehicle in which an occupant is wearing body-worn camera equipment, a bicycle, a motor scooter, an all-terrain vehicle, an electric personal assistive mobility device, as defined in subsection (a) of section 14-289h, or an animal control vehicle.

Beginning July 1, 2022, body-worn cameras shall be worn by police officers and dashboard cameras shall be used in each police patrol vehicle. Each department will provide training for such devices.

Officers are responsible to notify their supervisor, in writing, if their camera equipment is lost, damaged, or malfunctioning.

Limits on Consent Searches: (*Effective October 1, 2020*) The General Assembly also limited law enforcement’s ability to search motor vehicles with changes set to take effect on October 1, 2020. Specifically, law enforcement officers will no longer be able to ask for consent to search a motor vehicle if the vehicle was stopped solely for a motor vehicle violation. Any search of a motor vehicle that was stopped solely for a motor vehicle violation shall be: (a) based on probable cause, or (b) after having received the **unsolicited** consent to such search from the operator of the motor vehicle in written form or recorded by body-worn recording equipment or a dashboard camera.

The bill also generally prohibits consent searches of individuals without probable cause. Important to note here, that this does not limit your ability to pat down someone based on reasonable suspicion that the person has committed, is committing, or is about to commit a crime and the officer has a reasonable belief that the person may be armed based on *Terry v. Ohio*.

Prohibition on Asking for Non-Driving Identification: *(Effective October 1, 2020)* Officers may not ask the operator of a motor vehicle to provide any documentation other than an operator's license, registration, insurance card, or other documentation directly related to the stop, unless probable cause exists to believe an offense has been committed or the operator failed to produce a valid operator's license.

Pre-Docketing Prosecutorial Review: *(Effective January 1, 2021)* The Chief State's Attorney is required to prepare a program to have a prosecutorial review of each charge in any criminal case before the cases is docketed.

Penalties for Falsely Reporting an Incident or Misusing the 911 System Based on Bigotry or Bias: *(Effective October 1, 2020)* The Bill provides changes to the Falsely Reporting an Incident statute 53a-180 and Misuse of 911 System to increase penalties for each if they are made, "with specific intent to falsely report another person or group of persons because of the actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity or expression of such other person or group of persons."

Use of Force Changes: *(Effective April 1, 2021)* Chokeholds or similar methods of restraint are limited to deadly force situations.

Under the Bill, an officer's conduct must be objectively reasonable under the circumstances after the officer (1) has exhausted the reasonable alternatives to the use of deadly physical force and (2) reasonably believes that the force employed creates no substantial risk of injury to a third party. Officers are also required to give a warning of their intent to use deadly physical force, if feasible.

The Bill has eliminated the justification for using deadly force in situations when the officer reasonably believes a person threatens infliction of serious physical injury in situations where making an arrest or preventing an escape from custody.

The Bill establishes factors that must be considered when determining whether the officer's use of force was objectively reasonable. Specifically, factors to consider include:

1. Whether the person upon whom deadly physical force was used possessed or appeared to possess a deadly weapon
2. Police officer engaged in reasonable de-escalation measures prior to using deadly physical force
3. Any conduct of the police officer led to an increased risk of an occurrence of the situation that precipitated the use of such force (i.e., provocation)

Use of Force Reporting: *(Effective October 1, 2020)* Agencies are required to maintain records detailing any incident where an officer (1) discharges a firearm (except training or dispatching an animal), (2) uses physical force that is likely to cause serious physical injury or the death of another person, (3) engages in a vehicular pursuit.

No later than February 1, 2021 agencies will electronically submit use of force reports to OPM for review. The submitted data must include: (1) the race and gender of the person the force was used upon, based on the police officer's observation and perception, (2) the number of times force was used on such person, and (3) any injury the person suffered.

Security Officer Qualifications: *(Effective October 1, 2020)* Any officer who has their POSTC certification canceled, revoked, or refused will be ineligible from obtaining a security service license or performing security officer work.

Duty to Intervene: *(Effective October 1, 2020)* The duty to intervene is broken into three sections:

1. *Duty to Intervene:* Requires police officers and corrections officers to intervene and attempt to stop another police officer from using force that the witnessing officer objectively knows is unreasonable, excessive, or illegal. A failure to intervene could be considered a violation of C.G.S. §53a-8: Criminal Liability for the Acts of Another.
2. *Duty to Report:* Requires police officers and corrections officers who witness or are otherwise aware of another officer using force that is unreasonable, excessive, or illegal to report such conduct to the force-using officer's agency. Failure to do so could constitute a felony under the Hindering Prosecution statutes.
3. *Retaliation Prohibited:* Agencies and officers are prohibited from retaliating against an officer who reports such conduct on the part of another officer.

Creation of the Officer of the Inspection General: *(Effective from passage)* The Bill creates an Officer of the Inspector General position within the division of criminal justice.

The OIG shall investigate whenever a peace officer, in the performance of such officer's duties, uses physical force upon another person and such person dies as a result thereof or uses deadly force. The Inspector General shall investigate and determine whether the use of physical force by the peace officer was justifiable under section 53a-22. Additionally, the OIG will prosecute any use of force case which it determines was not justified or any failures to intervene. The OIG will also make recommendations to POSTC concerning officer censure, suspension, renewal, cancellation, or revocation of certification.

Office of the Chief Medical Examiner Investigations: *(Effective October 1, 2020)* Requires the OCME to investigate the deaths of individuals who die in the custody of law enforcement or corrections.

No Quotas: *(Effective October 1, 2020)* Departments are prohibited from imposing pedestrian citation quotas upon their officers.

Controlled Equipment (1033 Program): *(Effective from passage)* Departments will be prohibited from acquiring new military equipment via the federal 1033 equipment. Such equipment includes: (A) a controlled firearm, ammunition, bayonet, grenade launcher, grenade, including stun and flash-bang, or an explosive, (B) a controlled vehicle, highly mobile multi-wheeled vehicle, mine-resistant ambush-protected vehicle, truck, truck dump, truck utility or truck carryall, (C) a drone that is armored or weaponized, (D) controlled aircraft that is combat configured or combat coded or has no established commercial flight application, (E) a silencer, (F) a long-range acoustic device, or (G) an item in the federal supply class of banned items.

No later than December 31, 2020, any agency having such equipment must report inventory of such items to the joint standing committee of the General Assembly. The report shall include the use or proposed use of each item in its inventory and whether such use or proposed use is necessary for the operation and safety of the department or is for relief or rescue efforts in the case of a natural disaster or for other public safety purposes.

The DESPP commissioner may order such items to be sold, transferred, or otherwise disposed of if they find it unnecessary for public protection. Departments may request the office of the Governor and the commissioner to reconsider such order. The office of the Governor and the commissioner may jointly amend or rescind such order if the police department has held a public hearing in the municipality it serves concerning the proposed request for reconsideration and the department demonstrates in its request for reconsideration that the use or proposed use of the controlled equipment is necessary for the operation and safety of the department or is for relief or rescue efforts in the case of a natural disaster or for other public safety purposes.

The Bill also specifies that any controlled equipment possessed by the agency cannot be used for crowd management or intimidation tactics.

Civil Lawsuits Against Police Officers (Qualified/Governmental Immunity): Effective July 1, 2021, and for incidents that occur July 1, 2021 and in the future, the Bill has created a state law/ civil cause of action against police officers who deprive individuals of the equal protections or privileges and immunities of State law as listed in Article First of the Connecticut Constitution. Simply, this provides that state civil lawsuits for alleged violations of an individual's state civil rights. Furthermore, governmental immunity (the state law term for the corresponding federal term of qualified immunity) is not a defense in these cases.

It is important to note that in these cases, "each municipality or law enforcement unit shall protect and save harmless any such police officer from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand or suit instituted against such officer by reason of any act undertaken by such officer while acting in the discharge of the officer's duties."

However, "[i]n the event such officer has a judgment entered against him or her for a malicious, wanton or willful act in a court of law, such municipality shall be reimbursed by such officer for expenses it incurred in providing such defense and shall not be held liable to such officer for any financial loss or expense resulting from such act."

Mandated CALEA Accreditation: The Bill mandates CALEA accreditation for all agencies beginning in 2025.

We thank the DLG Subcontractors Captain Joseph Race, Esq. and Assistant Chief Lawrence Terra, Esq. for their work interpreting HB 6004.

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