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## OLR Bill Analysis

### HB 6004

#### *Emergency Certification*

### **AN ACT CONCERNING POLICE ACCOUNTABILITY.**

#### **TABLE OF CONTENTS:**

#### [§§ 1-4 & 15 — POLICE OFFICER CERTIFICATION AND DECERTIFICATION](#)

*Requires State Police officers to be POST-certified; deems current State Police officers to be POST-certified; authorizes POST to require police officers to pass a drug test as a condition of renewing their certification; expands the reasons for which POST may cancel or revoke a police officer's certification to include conduct undermining public confidence in law enforcement or excessive force; allows POST to suspend a certification in certain circumstances; and allows POST to develop guidance for law enforcement units on certification suspension, cancellation, or revocation*

#### [§§ 3 & 15-16 — BEHAVIORAL HEALTH ASSESSMENTS FOR POLICE OFFICERS](#)

*Requires police officers to receive behavioral health assessments at least every five years, authorizes POST to develop written policies regarding these assessments, and makes related changes*

#### [§§ 5 & 6 — CROWD MANAGEMENT POLICY](#)

*Requires POST, in consultation with specified entities, to adopt a uniform statewide policy for crowd managements by police officers*

#### [§ 7 — IMPLICIT BIAS TRAINING FOR POLICE OFFICERS](#)

*Adds implicit bias training to the required police training components*

#### [§§ 8 & 9 — COLLECTIVE BARGAINING AND PUBLIC RECORDS DISCLOSURE](#)

*Prohibits collective bargaining agreements entered into by the state from blocking the disclosure of certain files*

#### [§§ 10 & 11 — REPORTS ON RECRUITING MINORITY POLICE OFFICERS](#)

*Establishes a new reporting requirement and expands an existing one to include information on efforts to recruit, retain, and promote minority police officers*

#### [§ 12 — POLICE TRANSPARENCY AND ACCOUNTABILITY TASK FORCE](#)

*Expands the scope and extends the reporting deadlines of the task force to study police transparency and accountability to require it to examine, among other things, the*

*feasibility of requiring police to have professional liability insurance and how police execute no-knock warrants*

### § 13 — POST MEMBERSHIP CHANGES

*Revamps POST's membership by, among other things, (1) adding a member to the council, (2) reducing the number of gubernatorial appointments from 17 to 11 and adding six legislative appointments, and (3) requiring representation from additional stakeholders*

### § 14 — POLICE BADGE AND NAME TAG IDENTIFICATION REQUIREMENT

*Starting January 1, 2021, generally requires police officers to prominently display their badge and name tag on the outermost layer of their uniform*

### § 17 — CIVILIAN REVIEW BOARDS

*Allows each town's legislative body to establish a civilian police review board by ordinance*

### § 18 — FEASIBILITY AND IMPACT OF SOCIAL WORKERS RESPONDING TO CERTAIN POLICE CALLS

*Requires DESPP and local police departments to evaluate the feasibility and potential impact of using social workers to respond to calls for assistance or accompany a police officer on certain calls for assistance*

### §§ 19, 20 & 45 — BODY CAMERAS, DASHBOARD CAMERAS, AND RELATED GRANTS

*Principally, (1) expands the requirement to use body cameras to police officers in all state, municipal, and tribal law enforcement units, (2) requires these officers to use dashboard cameras in police patrol vehicles, and (3) authorizes \$4 million in GO bonds for a new grant program to fund related equipment and service purchases by municipalities*

### §§ 21 & 22 — LIMITS ON CONSENT SEARCHES

*Prohibits consent searches of individuals and limits searches of motor vehicles stopped solely for motor vehicle violations*

### § 21 — PROHIBITION ON ASKING FOR NON-DRIVING IDENTIFICATION OR DOCUMENTATION

*Generally prohibits law enforcement from asking for non-driving identification or documentation for stops solely for a motor vehicle violation*

### § 23 — PRE-DOCKETING PROSECUTORIAL REVIEW OF CRIMINAL CHARGES

*Requires the chief state's attorney, in consultation with the chief court administrator, to prepare a plan to have prosecutors review criminal charges before cases are docketed*

### §§ 24-28 — PENALTIES FOR FALSE REPORTING OR MISUSING THE EMERGENCY 9-1-1 SYSTEM BASED ON BIGOTRY OR BIAS

*Raises the penalties for false reporting crimes or misusing the emergency 9-1-1 system when committed with the specific intent to do so based on certain characteristics of the reported person or group (e.g., race, sex, or sexual orientation)*

### § 29 — JUSTIFIED USE OF DEADLY PHYSICAL FORCE AND CHOKEHOLDS

*Limits the circumstances when a law enforcement officer's use of deadly physical force is justified and establishes factors to consider in evaluating whether the officer's action was reasonable; Establishes when the use of chokeholds and similar restraints is justified*

#### §§ 30 & 43 — OFFICERS' DUTY TO INTERVENE AND REPORT USE OF EXCESSIVE FORCE

*Requires a police or correction officer to intervene and report another officer's use of excessive force; prohibits law enforcement units or DOC from taking retaliatory action against the intervening officer*

#### § 30 — USE OF FORCE RECORDKEEPING AND REPORTING

*Expands a law enforcement unit's recordkeeping and reporting requirements to include reports on police use of excessive force and requires OPM to review use of force reports*

#### §§ 31 & 32 — SECURITY SERVICE AND SECURITY OFFICER QUALIFICATIONS

*Prevents decertified police officers from acquiring a security services license or performing security officer work*

#### §§ 33 & 46 — OFFICE OF THE INSPECTOR GENERAL

*Establishes the Office of the Inspector General*

#### §§ 34 & 35 — OIG INVESTIGATIONS

*Requires the inspector general, rather than the Division of Criminal Justice, to investigate use-of-force cases and prosecute cases where the inspector general determines that the use of force was not justified*

#### §§ 36 & 37 — CHIEF MEDICAL EXAMINER INVESTIGATION OF DEATHS IN POLICE CUSTODY

*Requires the chief medical examiner to investigate deaths of people in police or Department of Correction custody and makes related changes*

#### §§ 38 & 39 — PROHIBITIONS ON PEDESTRIAN CITATION QUOTAS

*Prohibits municipal police departments and DESPP from imposing pedestrian citation quotas on their police officers*

#### § 40 — POLICE USING MILITARY EQUIPMENT

*Prohibits law enforcement agencies from acquiring new military equipment; allows the governor's office and DESPP commissioner to require them to sell, transfer, or dispose of the equipment; and requires an inventory report to be submitted to certain legislative committees*

#### § 41 — CIVIL CAUSE OF ACTION AGAINST POLICE OFFICERS WHO DEPRIVE INDIVIDUALS OF CERTAIN RIGHTS

*Establishes a civil cause of action against police officers who deprive an individual or class of individuals of the equal protection or privileges and immunities of state law*

#### § 42 — TASK FORCE RECOMMENDATIONS ON POLICE CIVIL CAUSE OF ACTION IMPLEMENTATION

*Requires the police transparency and accountability task force to make recommendations on implementing the bill's new civil liability provisions and their impact on obtaining liability insurance*

§ 44 — LAW ENFORCEMENT UNIT ACCREDITATION

*Starting in 2025, requires law enforcement units to obtain accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. and makes related changes*

**§§ 1-4 & 15 — POLICE OFFICER CERTIFICATION AND DECERTIFICATION**

*Requires State Police officers to be POST-certified; deems current State Police officers to be POST-certified; authorizes POST to require police officers to pass a drug test as a condition of renewing their certification; expands the reasons for which POST may cancel or revoke a police officer's certification to include conduct undermining public confidence in law enforcement or excessive force; allows POST to suspend a certification in certain circumstances; and allows POST to develop guidance for law enforcement units on certification suspension, cancellation, or revocation*

***POST Certification for State Police***

Current law exempts the State Police and any State Police training school or program from the requirement that police officers serving for more than one year be certified by the Police Officer Standards and Training Council (POST). The bill eliminates this exemption, thus requiring State Police officers to be POST-certified (§ 3(f)).

The bill automatically deems as certified any sworn, full-time State Police officers as of the bill's passage, except for probationary candidates (§ 3(d)). It requires these deemed certified officers to apply for recertification within a POST-established time frame unless they retire before then (§ 4(a)).

The bill requires sworn members of the State Police appointed on or after the bill's passage to become POST-certified within one year of their appointment (§§ 1 & 2). By law, the Department of Emergency Services and Public Protection (DESPP) commissioner appoints State Police officers.

The bill makes various conforming changes to POST's authority to include the State Police. For example, the bill:

1. authorizes POST to develop and revise comprehensive training plans for state and municipal police, not just a plan for municipal police as under current law (§ 3(a)(1));

2. requires POST to consult with DESPP when establishing uniform minimum educational and training standards for police (§ 3(a)(11));
3. specifies that POST's authority over police training schools includes schools for both state and municipal police (§ 3(a)(2-4)); and
4. provides that DESPP's regulations implementing POST-related laws are binding on the State Police (§ 4(c)).

The bill also makes related minor and technical changes.

### ***Drug Tests***

By law, police officers must renew their POST certification every three years. The bill authorizes POST to require police officers, as a condition of renewing their certification, to pass a urinalysis drug test that screens for controlled substances, including anabolic steroids. (The presence of any substances prescribed for the officer would not constitute a failed test.)

By law, if a police officer is not employed for two years and not on a leave of absence, his or her POST certification lapses. The bill requires these officers to pass such a drug test as described above as a condition of recertification.

These provisions, as well as the provisions below on "Revocation or Suspension of Certification," apply to all police officers under POST's jurisdiction. Under current law this includes sworn members of organized local police departments, appointed constables who perform criminal law enforcement duties, special police officers appointed for certain purposes, other members of law enforcement units who perform police duties, and other people who perform police functions. Under the bill, it also applies to the State Police.

### ***Revocation or Suspension of Certification (§ 3(c))***

Existing law sets various grounds upon which POST may cancel or revoke a police officer's certification, such as if the officer falsified a

document to obtain or renew the certificate or was convicted of a felony.

The bill expands these grounds to include conduct undermining public confidence in law enforcement or excessive force, as explained below. In both cases, the law enforcement unit, under its procedures, must have found that the officer engaged in this conduct. In cases of undermining public confidence, the unit must have considered any POST guidance (see below).

Under the bill, POST may cancel or revoke an officer's certification for conduct undermining public confidence in law enforcement, including (1) discriminatory conduct, (2) falsifying reports, or (3) racial profiling in violation of state law. In its evaluation, POST must consider conduct the holder undertook in a law enforcement capacity or when representing himself or herself as a police officer to be more serious than conduct in other circumstances.

Under the bill, POST may also cancel or revoke an officer's certification if the officer used excessive force or physical force found to be unjustified after investigation under the law's standards for police use of force. Existing law already allows POST to cancel or revoke an officer's certification if he or she used a firearm in an improper manner that resulted in someone else's death or serious injury.

As under existing law, before cancelling or revoking an officer's certification, POST must (1) give the officer notice and an adequate opportunity for a hearing and (2) make a finding of the improper conduct by clear and convincing evidence.

The bill additionally permits POST to suspend an officer's certification for up to 45 days and censure the officer upon any of the grounds that could lead to cancellation or revocation. POST may do so if, after giving notice and an adequate opportunity for a hearing, it finds clear and convincing evidence of improper conduct but that the severity of the act does not warrant cancellation or revocation.

The bill specifies that any such hearing to suspend, cancel, or revoke a certification must be conducted in accordance with the Uniform Administrative Procedure Act (UAPA), and any certificate holder aggrieved by a POST decision may appeal to court under the UAPA. (DESPP's POST-related regulations provide that all adjudicative hearings in contested cases must be conducted in accordance with the UAPA (Conn. Agencies Reg., § 7-294e-21).)

### **POST Guidance (§ 3(g))**

The bill allows POST to develop and issue written guidance to law enforcement units on grounds for certification suspension, cancellation, or revocation. The guidance may include, among other things, (1) reporting procedures that chief law enforcement officers must follow concerning these actions; (2) examples of discriminatory conduct and conduct that undermines public confidence in law enforcement; and (3) examples of misconduct while the certificate holder may not be acting in a law enforcement capacity or representing himself or herself to be a police officer, but may be serious enough for disciplinary action on the holder's certificate. POST must make any such guidance available on its website.

EFFECTIVE DATE: Upon passage

### **§§ 3 & 15-16 — BEHAVIORAL HEALTH ASSESSMENTS FOR POLICE OFFICERS**

*Requires police officers to receive behavioral health assessments at least every five years, authorizes POST to develop written policies regarding these assessments, and makes related changes*

Under the bill, starting January 1, 2021, the administrative heads of law enforcement units must require each police officer employed by the unit to submit to a periodic behavioral health assessment at least every five years as a condition of continued employment.

An "administrative head of a law enforcement unit" includes the DESPP commissioner, board of police commissioners, chief of police, superintendent of police, or other authority in charge of a law enforcement unit.

The assessment must be conducted by a board-certified psychiatrist or psychologist with experience diagnosing and treating post-traumatic stress disorder. The person conducting the assessment must give a written copy of the results to the officer and to the administrative head of the unit employing the officer.

The bill exempts from disclosure under the Freedom of Information Act (1) the results of any such assessment and (2) any records or notes a psychiatrist or psychologist maintains in connection with these assessments.

EFFECTIVE DATE: Upon passage

***Schedule; Waiver for Retiring Officers (§ 16(b))***

The bill allows law enforcement administrative heads to stagger the scheduling of the assessments so that approximately 20% of the unit's officers receive assessments each year over a five-year period.

If an officer submits written notification of his or her intent to retire, the administrative head may waive the assessment requirement for the officer, as long as the retirement will occur within six months after the assessment was scheduled to occur.

***Additional Assessments (§ 16(c))***

In addition to the required assessments, the bill authorizes law enforcement administrative heads to require officers to submit to additional behavioral health assessments for good cause shown. The administrative head must give the officer a written statement of the good faith basis for requiring the additional assessment. After receiving that statement, the officer has 30 days to submit to the assessment.

***Officers Previously Employed (§ 16(d))***

Under the bill, if a law enforcement unit hires a police officer from another law enforcement unit (in Connecticut or elsewhere), the hiring unit may require the officer to submit to a behavioral health assessment within six months of hire. When deciding whether to require this the hiring unit must consider how recently the officer

submitted to a behavioral health assessment.

**POST Policies (§ 3(a)(24))**

The bill authorizes POST, by January 1, 2021, and in consultation with the DESPP commissioner, to develop and implement written policies on the requirement that all police officers undergo periodic behavioral health assessments. At a minimum, these policies must address:

1. the confidentiality of these assessments, including compliance with the federal Health Insurance Portability and Accountability Act (HIPAA);
2. the good faith reasons that law enforcement administrative heads may rely upon when requesting that an officer undergo an additional assessment beyond those that are required;
3. the availability of behavioral health treatment services for any police officer required to undergo a behavioral health assessment;
4. the ability of officers to review and contest their assessments' results;
5. permissible personnel actions, if any, that law enforcement units may take based on the assessments' results, while considering the officers' due process rights;
6. how to select psychiatrists and psychologists to conduct the assessments; and
7. financial considerations that law enforcement units or police officers may incur due to the assessments.

**§§ 5 & 6 — CROWD MANAGEMENT POLICY**

*Requires POST, in consultation with specified entities, to adopt a uniform statewide policy for crowd managements by police officers*

**Development and Adoption (§ 5)**

The bill requires POST, in consultation with the DESPP

commissioner, chief state's attorney, Connecticut Police Chiefs Association, and Connecticut Coalition of Police and Correctional Officers, to adopt a uniform statewide policy for crowd management by police officers. The policy must define "crowd" and reflect factors that affect police officers' crowd management, including a crowd's size, location, purpose for gathering, and the time of day at which it gathers.

The policy must also establish guidelines for managing crowds in a manner that does the following:

1. protects individual rights and preserves the peace during demonstrations and civil disturbances,
2. addresses permissible and impermissible uses of force by a police officer and the type and amount of crowd management training that each police officer must undergo, and
3. sets forth required documentation after any physical confrontation between a police officer and a civilian during a crowd management incident.

The bill requires that the policy be adopted as a state agency regulation in accordance with the Uniform Administrative Procedure Act. It requires POST, in consultation with the above-listed parties, to (1) post on the eRegulations System by December 1, 2020, a notice of intent to adopt regulations containing the crowd management policy and (2) amend the regulations at least once every five years thereafter to update the policy.

### ***Implementation (§ 5)***

On and after the date the policy is adopted as a regulation, the bill requires the DESPP commissioner or a chief of police, as appropriate, to (1) inform each officer in his or her respective department and each officer responsible for law enforcement in a municipality with no organized police department of the policy's existence and (2) take necessary measures to ensure each officer understands it. It also requires, on and after the date the policy is adopted, that each basic or

review training program conducted or administered by the State Police, POST, or a municipal police department include training on the policy.

### ***Riot Suppression Privileges and Immunities (§ 6)***

Under current law, when the State Police participate in suppressing a riot or similar disorder, they are entitled to the same privileges and immunities as the organized militia (e.g., they are generally privileged from arrest and imprisonment). Under the bill, once the crowd management policy is adopted as a regulation, these privileges and immunities apply only to State Police members who substantially comply with the policy.

EFFECTIVE DATE: Upon passage

### **§ 7 — IMPLICIT BIAS TRAINING FOR POLICE OFFICERS**

*Adds implicit bias training to the required police training components*

The bill adds implicit bias training to the cultural competency, sensitivity, and bias-free training that police officers must receive under existing law. Under the bill, implicit bias training is training about recognizing and mitigating unconscious biases against particular people that might influence judgments and decisions when interacting with them.

By law, police basic and review training programs conducted or administered by the State Police, POST, and municipal police departments must include training on, among other things, (1) using physical force; (2) using body cameras and retaining the records they create; and (3) cultural competency, sensitivity, and bias-free policing.

EFFECTIVE DATE: Upon passage

### **§§ 8 & 9 — COLLECTIVE BARGAINING AND PUBLIC RECORDS DISCLOSURE**

*Prohibits collective bargaining agreements entered into by the state from blocking the disclosure of certain files*

Under current law, the provisions of a collective bargaining agreement or arbitration award between the state and a state employee

bargaining unit supersede any conflicting state statutes, special acts, or regulations as long as the superseding provisions are appropriate to collective bargaining.

The bill creates an exception for certain conflicts with the Freedom of Information Act (FOIA). Under the bill, if the provisions of an agreement or award (1) pertain to disclosing disciplinary matters or alleged misconduct and (2) would prevent document disclosures required by FOIA, then FOIA's provisions prevail. The bill applies to agreements and awards entered into before, on, or after the bill's effective date. It specifies that it should not be construed as diminishing a bargaining agent's access to information under state law.

The bill also bars any collective bargaining agreement or arbitration award between the state and any State Police bargaining unit from prohibiting the disclosure of any disciplinary action based on a violation of the code of ethics contained in a sworn member's personnel file. The prohibition applies to agreements and awards entered into before, on, or after the bill's effective date.

It is unclear whether applying these provisions to existing agreements and awards would conflict with the U.S. Constitution's contracts clause (see BACKGROUND).

EFFECTIVE DATE: Upon passage

### ***Background – Contracts Clause***

The U.S. Constitution's contracts clause (art. I, § 10) prohibits states from passing laws that impair the obligation of contracts. In a 2017 opinion (2017-06), Connecticut's attorney general noted that when a litigant raises a contracts clause challenge against a legislative act, courts use a three-factor analysis to determine whether the act violates the clause: (1) whether the impairment is substantial; (2) if so, does the law serve a legitimate public purpose; and (3) if so, are the means of accomplishing this purpose reasonable and necessary.

## **§§ 10 & 11 — REPORTS ON RECRUITING MINORITY POLICE OFFICERS**

*Establishes a new reporting requirement and expands an existing one to include information on efforts to recruit, retain, and promote minority police officers*

The bill establishes a new reporting requirement and expands an existing one to include information on efforts to recruit, retain, and promote minority police officers. By law, “minority” is an individual whose race is other than white or whose ethnicity is defined as Hispanic or Latino by the federal government for use by the U.S. Census Bureau.

Existing law, among other things, requires law enforcement units serving communities with a relatively high concentration of minority residents to make efforts to recruit, retain, and promote minority officers so that the unit’s racial and ethnic diversity is representative of the community. By January 1, 2021, and annually thereafter, the bill requires the board of police commissioners, the police chief or superintendent, or other authority over a law enforcement unit that serves such a community to report to POST on the community’s efforts to recruit, retain, and promote minority police officers.

By January 1, 2021, and annually thereafter, the bill requires the annual report POST already provides the governor and the General Assembly to also (1) include information on the recruitment, retention, and promotion of minority police officers and (2) be provided specifically to the Judiciary and Public Safety and Security committees. Existing law requires POST to report pertinent data on (1) the comprehensive municipal police training plan and (2) an accounting of all grants, contributions, gifts, donations, or other financial assistance.

EFFECTIVE DATE: Upon passage

## **§ 12 — POLICE TRANSPARENCY AND ACCOUNTABILITY TASK FORCE**

*Expands the scope and extends the reporting deadlines of the task force to study police transparency and accountability to require it to examine, among other things, the feasibility of requiring police to have professional liability insurance and how police execute no-knock warrants*

The bill expands the scope and extends the reporting deadlines of the 13-member task force to study police transparency and accountability established in PA 19-90. The bill extends the reporting

deadlines by a year and requires the task force to submit a preliminary report by January 1, 2021, and a final report by December 31, 2021. The task force terminates when it submits the final report or on December 31, 2021. As under the act, the task force must submit the reports to the Judiciary and Public Safety and Security committees.

The act required the task force to examine several issues, including the feasibility of having police officers who conduct traffic stops issue a receipt to each stopped individual that includes the reason for the stop and records the individual's demographic information. The bill requires the task force to also look at this proposal's merits.

Under the bill, the task force must also examine:

1. strategies that communities can use to increase the recruitment, retention, and promotion of minority police officers (the bill requires the task force to examine community efforts required by law, but the law cited (CGS § 7-291a) requires law enforcement units to increase recruitment, retention, and promotion of minority police officers);
2. strategies communities can use to increase the recruitment, retention, and promotion of female police officers;
3. the merits and feasibility of requiring (a) police officers to procure and maintain professional liability insurance as an employment condition or (b) a municipality to maintain the insurance on its officers' behalf;
4. the establishment of laws for primary and secondary traffic violations;
5. the establishment of a law that requires any police traffic stop to be based on enforcing a primary traffic violation;
6. how a police officer executes a warrant to enter a residence without giving audible notice of the officer's presence, authority, and purpose before entering in Connecticut and other states, including verification procedures of the address where

the warrant is executed and any documentation an officer should leave the residents where the warrant was executed;

7. how a professional bondsman, surety bail bond agent, or a bail enforcement agent takes into custody the principal on a bond who failed to appear in court and for whom a rearrest warrant or a capias has been issued in Connecticut and other states, including what address verification process is used and whether any documentation is left with a resident where the warrant was executed; and
8. whether any of the grounds for revoking or cancelling a police officer's certification should result in a mandatory, rather than discretionary, POST revocation or cancellation.

EFFECTIVE DATE: Upon passage

### **§ 13 — POST MEMBERSHIP CHANGES**

*Revamps POST's membership by, among other things, (1) adding a member to the council, (2) reducing the number of gubernatorial appointments from 17 to 11 and adding six legislative appointments, and (3) requiring representation from additional stakeholders*

The bill revamps POST's membership beginning January 1, 2021. Under current law, the council consists of 20 members, 17 appointed by the governor and three serving ex-officio (the DESPP commissioner and FBI special agent-in-charge for Connecticut, or their designees, and the chief state's attorney).

The bill increases the council's size to 21 members by adding the Connecticut State Police Academy's commanding officer. (It also retains the three ex-officio members listed above.) Additionally, it makes numerous changes concerning the appointed members. Principally, it (1) reduces the number of gubernatorial appointments from 17 to 11 and adds six legislative appointments and (2) requires representation from additional stakeholders.

The table below compares POST's appointed membership under current law with its appointed membership under the bill.

**Table: POST Appointment Criteria**

<b>Type of Appointee</b>	<b>Current Law (All appointments by governor)</b>	<b>The Bill (Beginning January 1, 2021)</b>	
		<b>Criteria</b>	<b>Appointed by</b>
Municipal officials	One chief administrative officer of a town or city	Two municipal chief elected officials or chief executive officers: <ul style="list-style-type: none"> <li>• one from a town or city with a population exceeding 50,000</li> <li>• one from a town or city with a population not exceeding 50,000</li> </ul>	Governor
	One chief elected official or chief executive officer from a town or city with no organized police department and a population of fewer than 12,000		
Higher education faculty member	One UConn faculty member	One Connecticut higher education faculty member who has a background in criminal justice studies	Governor
Police chiefs	Eight members of the Connecticut Police Chiefs Association who are holding office or employed as chief of police or the highest-ranking professional police officer of an organized municipal police department	One member of the Connecticut Police Chiefs Association who holds office or is employed as chief of police, deputy chief of police, or a senior ranking professional police officer of an organized municipal police department of a municipality with a population exceeding 100,000	Governor
		Two members of the Connecticut Police Chiefs Association who are holding office or employed as chief of police or the highest-ranking professional police officer of an organized municipal police department: <ul style="list-style-type: none"> <li>• one from a municipality with a population exceeding 60,000 but not exceeding 100,000</li> <li>• one from a municipality with a population exceeding 35,000 but not exceeding 60,000</li> </ul>	Governor
		Two appointees who are members of the Connecticut Police Chiefs Association or the person holding office or employed as chief of police or the highest-ranking professional police officer of an organized police department	One each by the House speaker and Senate president pro tempore
		One member of the Connecticut	Senate

		Police Chiefs Association who is holding office or employed as chief of police or the highest-ranking professional police officer of an organized police department from a municipality with a population not exceeding 35,000	minority leader
Sworn personnel	One sworn municipal police officer whose rank is sergeant or lower	Two sworn municipal police officers: <ul style="list-style-type: none"> <li>• one from a municipality with a population exceeding 50,000</li> <li>• one from a municipality with a population not exceeding 50,000</li> </ul>	Governor
Public members	Five public members	One public member who has a physical disability or who advocates on behalf of such individuals	Governor
		A crime victim or the immediate family member of a deceased crime victim	Governor
		One medical professional	Governor
		Two public members who are justice-impacted people	One each by the House and Senate majority leaders
		One public member who has a mental disability or who advocates on behalf of such individuals	House minority leader

As under current law, appointed members serve at the pleasure of their appointing authority for a term coterminous with their appointing authority (CGS § 4-1a). The bill additionally deems a member to have resigned from POST if he or she misses three consecutive meetings or 50% of the meetings held during any calendar year.

The bill retains provisions in current law that, among other things, require the governor to appoint the chairperson and specify that a nonpublic member ceases to be on the council if he or she terminates his or her holding of the office or employment that qualified him or her for appointment.

EFFECTIVE DATE: Upon passage

#### **§ 14 — POLICE BADGE AND NAME TAG IDENTIFICATION REQUIREMENT**

*Starting January 1, 2021, generally requires police officers to prominently display their badge and name tag on the outermost layer of their uniform*

Starting January 1, 2021, the bill generally requires police officers to prominently display their employer-issued badge and name tag on the outer-most layer of their uniform. The requirement applies to police officers who are (1) authorized to make arrests or (2) required to interact with the public daily.

By December 31, 2020, the bill requires the DESPP commissioner and POST to jointly develop and promulgate a model policy to implement the identification requirement. The model policy must include the time, place, and manner for ensuring compliance with the requirement. It may also include specified circumstances when compliance is not required due to public safety-related or practical considerations, such as the sensitive nature of a police investigation or an officer's involvement in an undercover assignment.

EFFECTIVE DATE: Upon passage

#### **§ 17 — CIVILIAN REVIEW BOARDS**

*Allows each town's legislative body to establish a civilian police review board by ordinance*

The bill allows each town's legislative body to establish a civilian police review board by ordinance. The ordinance must prescribe at least the following:

1. the board's scope of authority;
2. the number of members and their term of office; and
3. the process for selecting members, whether elected or appointed, and the procedure for filling vacancies.

The bill allows a review board established by ordinance to (1) issue subpoenas to compel witness attendance before the board and (2)

require the production of books and papers it deems relevant to any matter under investigation or in question. The bill specifies that it does not affect or limit any civilian police review board existing before the bill's enactment.

Under the bill, if a civilian police review board receives a written request from the Office of the Inspector General (OIG, see §§ 33-34 below), it must stay and take no further action on any proceeding that is the subject of an OIG investigation or criminal prosecution (e.g., police use of force investigations). Stays may last for up to six months from the day the board receives OIG's request, but OIG may terminate a stay sooner by written notice to the board.

EFFECTIVE DATE: Upon passage

## **§ 18 — FEASIBILITY AND IMPACT OF SOCIAL WORKERS RESPONDING TO CERTAIN POLICE CALLS**

*Requires DESPP and local police departments to evaluate the feasibility and potential impact of using social workers to respond to calls for assistance or accompany a police officer on certain calls for assistance*

The bill requires DESPP and each municipal police department to evaluate the feasibility and potential impact of the department using social workers to respond to calls for assistance (either remotely or in person) or go with a police officer on calls where a social worker's experience and training could provide help.

DESPP and each municipal department must complete their evaluations within six months after the bill's passage and submit them to POST as soon as they are complete.

The evaluation must consider whether social workers could entirely manage responses to, or their help could benefit, certain calls and community interactions. For municipal police departments, the evaluation also must consider whether the municipality would benefit from employing, contracting with, or otherwise engaging social workers to help the police department. Municipal police departments may consider using mobile crisis teams or implementing a regional approach with other municipalities as part of any process to engage, or

further engage, social workers to help the departments.

EFFECTIVE DATE: Upon passage

### **§§ 19, 20 & 45 — BODY CAMERAS, DASHBOARD CAMERAS, AND RELATED GRANTS**

*Principally, (1) expands the requirement to use body cameras to police officers in all state, municipal, and tribal law enforcement units, (2) requires these officers to use dashboard cameras in police patrol vehicles, and (3) authorizes \$4 million in GO bonds for a new grant program to fund related equipment and service purchases by municipalities*

#### ***Required Use of Body and Dashboard Cameras as of July 1, 2022***

Current law generally requires police officers to use body-worn recording equipment (i.e., body cameras) while interacting with the public in their law enforcement capacity if they are sworn members of (1) the State Police, (2) a municipal police department that has received reimbursement for body camera purchases under the state’s grant program, or (3) a public university or college special police force. Current law allows sworn members of all other municipal police departments to use body cameras as directed by their departments and in accordance with state law.

Beginning July 1, 2022, the bill expands the body camera requirement to all sworn members of law enforcement units and members of those units who perform police duties. By law and under the bill, “law enforcement unit” means any state or municipal agency or department (or tribal agency or department created and governed under a memorandum of agreement) whose primary functions include enforcing criminal or traffic laws; preserving public order; protecting life and property; or preventing, detecting, or investigating crime.

Beginning July 1, 2022, the bill also requires each law enforcement unit to require the use of dashboard cameras with a remote recorder (i.e., dashboard cameras, see BACKGROUND) in each police patrol vehicle used by any of the officers it employs. The officers must use the dashboard cameras according to their unit’s adopted policy and based on the DESPP-POST guidelines described below. Under the bill, a “police patrol vehicle” includes (1) any state or local police vehicle, besides administrative vehicles, with a body camera-wearing

occupant, (2) bicycles, (3) motor scooters, (4) all-terrain vehicles, (5) electric personal assistive mobility devices, and (6) animal control vehicles.

The bill requires the DESPP commissioner and POST to jointly evaluate and approve minimal technical specifications for dashboard cameras as well as guidelines on their use and retaining and storing their data; existing law requires them to do so for body cameras and digital storage devices and services.

### ***Applying Existing Body Camera Laws to Dashboard Cameras***

The bill applies several existing provisions concerning body cameras to dashboard cameras. Specifically, it extends to dashboard cameras the laws:

1. prohibiting the editing, erasing, copying, sharing, altering, or distributing of camera recordings or its data except as required by state or federal law;
2. permitting police officers to review recordings from their cameras to assist in preparing a report or performing their duties;
3. generally exempting specific recordings (e.g., ones involving minors) from disclosure under Connecticut's Freedom of Information Act and requiring they be confidential; and
4. requiring law enforcement units to follow DESPP-POST guidelines on using cameras, retaining their data, and storing the data safely and securely.

### ***DESPP-POST Camera Use Guidelines and Recording Prohibition***

The bill requires the DESPP commissioner and POST to add guidance on the types of detective work that should not be recorded to their guidelines on body and dashboard camera use.

Current law prohibits police officers from using body cameras to intentionally record in specific situations or settings (e.g., encounters

with undercover officers or informants) unless under an agreement between an officer's unit and the federal government. The bill applies this same prohibition to dashboard cameras and adds encounters with officers performing detective work described in the DESPP-POST guidelines to the list of situations covered by the prohibition.

### ***DESPP-POST Data Retention Guidelines***

The bill prohibits the DESPP-POST guidelines on retaining body and dashboard camera data from requiring law enforcement units to store that data for longer than a year except in cases where units know the data is pertinent to any ongoing civil, criminal, or administrative matter.

### ***Ensuring Functioning Equipment***

Current law requires (1) officers to inform their supervisors as soon as practicable after learning that body cameras are lost, damaged, or malfunctioning and (2) their supervisors to ensure that the reported cameras are inspected and repaired or replaced. The bill extends these requirements to dashboard cameras and specifies that officers must provide the notice in writing.

### ***New OPM Grant Program for Municipalities***

By law, the Office of Policy and Management (OPM) administers a grant program that reimburses municipalities for costs incurred in purchasing body cameras, eligible dashboard cameras, and related equipment and services (the reimbursement is generally up to 50% for eligible purchases made from FYs 19-21 and up to 100% for purchases made in FYs 13-18).

The bill requires OPM to administer an additional grant program to fund up to 30% or 50% of the cost of municipal purchases of these equipment and devices (as described below) and authorizes up to \$4 million in general obligation bonds to fund it. OPM must distribute the grants in FYs 21 and 22 and administer the program within available resources.

Under the bill, OPM may approve grants to municipalities for costs

associated with purchasing:

1. body cameras for use by the sworn members of the municipality's police department or constables, police officers, or others who perform criminal law enforcement duties under the supervision of a resident state trooper serving the municipality;
2. digital data storage devices or services;
3. dashboard cameras for the first time; and
4. dashboard cameras that replace ones purchased before December 31, 2010.

The equipment, devices, and services must conform to DESPP-POST's minimum technical specifications (see above) in order to be eligible for the grants.

OPM may award grant amounts of up to (1) 50% of the associated costs for distressed municipalities (see BACKGROUND) and (2) 30% for all other municipalities. In both cases, funding for digital data storage services is limited to the cost for up to one year.

Under the bill, the OPM secretary must establish the grant application process and may prescribe additional technical or procurement requirements as a condition of receiving the grants.

**EFFECTIVE DATE:** Upon passage, except the provisions concerning the use of body cameras and dashboard cameras are effective July 1, 2022.

***Background – Dashboard Cameras with a Remote Recorder***

By law, a “dashboard camera with a remote recorder” is a camera that (1) attaches to a dashboard or windshield of a police vehicle, (2) electronically records video of the view through the vehicle's windshield, and (3) has an electronic audio recorder that may be operated remotely (CGS § 7-277b(c)).

### **Background – Distressed Municipalities**

The Department of Economic and Community Development (DECD) annually ranks municipalities based on their relative economic and fiscal distress and designates the top 25 as “distressed municipalities.” In 2019, DECD designated the following municipalities as distressed: Ansonia, Bridgeport, Bristol, Chaplin, Derby, East Hartford, East Haven, Griswold, Hartford, Killingly, Meriden, Montville, Naugatuck, New Britain, New Haven, New London, Norwich, Putnam, Sprague, Sterling, Torrington, Waterbury, West Haven, Winchester, and Windham (CGS § 32-9p).

### **§§ 21 & 22 — LIMITS ON CONSENT SEARCHES**

*Prohibits consent searches of individuals and limits searches of motor vehicles stopped solely for motor vehicle violations*

The bill generally prohibits consent searches of individuals by specifying that a person consenting to a search is not justification for a law enforcement official to conduct one, unless there is probable cause.

The bill also limits the circumstances under which law enforcement officials may search motor vehicles stopped solely for motor vehicle violations. Under the bill, a law enforcement official may not ask for a driver’s consent to conduct a search of the vehicle or its contents. Any search must be (1) based on probable cause or (2) after receiving the driver’s unsolicited consent in writing or recorded from body-worn recording equipment or a dashboard camera.

EFFECTIVE DATE: October 1, 2020

### **§ 21 — PROHIBITION ON ASKING FOR NON-DRIVING IDENTIFICATION OR DOCUMENTATION**

*Generally prohibits law enforcement from asking for non-driving identification or documentation for stops solely for a motor vehicle violation*

The bill generally prohibits law enforcement officials, during stops solely for motor vehicle violations, from asking drivers for any documentation or identification other than a driver’s license, motor vehicle registration, insurance identity card, or other documentation or identification directly related to the stop. This prohibition does not apply if (1) there is probable cause that a felony or misdemeanor

offense has been committed or (2) the driver fails to produce a driver's license.

EFFECTIVE DATE: October 1, 2020

**§ 23 — PRE-DOCKETING PROSECUTORIAL REVIEW OF CRIMINAL CHARGES**

*Requires the chief state's attorney, in consultation with the chief court administrator, to prepare a plan to have prosecutors review criminal charges before cases are docketed*

The bill requires the chief state's attorney, in consultation with the chief court administrator, to prepare a plan to have a prosecutorial official review each charge in any criminal case before the case is docketed. By January 1, 2021, the chief state's attorney must submit the plan to the Office of Policy and Management and the Judiciary Committee.

EFFECTIVE DATE: Upon passage

**§§ 24-28 — PENALTIES FOR FALSE REPORTING OR MISUSING THE EMERGENCY 9-1-1 SYSTEM BASED ON BIGOTRY OR BIAS**

*Raises the penalties for false reporting crimes or misusing the emergency 9-1-1 system when committed with the specific intent to do so based on certain characteristics of the reported person or group (e.g., race, sex, or sexual orientation)*

Under specified circumstances, there are criminal penalties for (1) falsely reporting certain incidents, such as a crime or fire, or (2) misusing the emergency 9-1-1 system (E-9-1-1; see BACKGROUND). The bill raises the penalties for these crimes if committed with the specific intent to falsely report someone or a group of people or misuse the emergency system because of the person's or group's actual or perceived race, religion, ethnicity, disability, sex, sexual orientation, or gender identity or expression.

The following table shows the current penalties and the bill's increased penalties under the circumstances noted above.

**Table: Penalties for False Reporting Crimes and Misusing the E-9-1-1 System with Specific Intent Based on Certain Characteristics**

<i>Crime</i>	<i>Current Penalty</i>	<i>Bill's Increased Penalty</i>
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Falsely Reporting an Incident, 1 <sup>st</sup> Degree*	Class D felony, punishable by up to five years in prison, a fine of up to \$5,000 fine, or both	Class C felony, punishable by up to 10 years in prison, a fine of up to \$10,000, or both
Falsely Reporting an Incident Resulting in Serious Physical Injury or Death	Class C felony	Class B felony, punishable by up to 20 years in prison, a fine of up to \$15,000, or both
Falsely Reporting an Incident Concerning Serious Physical Injury or Death	Class D felony	Class C felony
Falsely Reporting an Incident, 2 <sup>nd</sup> Degree	Class A misdemeanor, punishable by up to one year in prison, a fine of up to \$2,000, or both	Class E felony, punishable by up to three years in prison, a fine of up to \$3,500, or both
Misusing the E-9-1-1 System	Class B misdemeanor, punishable by up to six months in prison, a fine of up to \$1,000, or both	Class A misdemeanor

\* Under existing law and the bill, in certain cases the court may order individuals convicted of this crime to make financial restitution to the state and local departments and agencies that provided the emergency response.

EFFECTIVE DATE: October 1, 2020

**Background – False Reporting and Misusing the E-9-1-1 System**

Under existing law, a person is guilty of falsely reporting an incident in the 1<sup>st</sup> degree when, knowing the information is false or baseless, he or she:

1. initiates or circulates a false report or warning of an alleged or impending fire, explosion, catastrophe, or emergency when it is likely to alarm or inconvenience the public;
2. reports to an official or quasi-official agency or organization that handles emergencies involving danger to life or property, an alleged or impending fire, explosion, or other catastrophe, or emergency that did not occur or does not exist; or
3. commits any of the above actions with the intent to cause a

large- scale emergency response.

A person is guilty of falsely reporting an incident in the 2<sup>nd</sup> degree if, knowing the information is false or baseless, he or she gratuitously reports to a law enforcement officer or agency:

1. an alleged offense or incident which did not in fact occur,
2. an allegedly impending offense or incident which in fact is not about to occur, or
3. false information relating to an actual offense or incident or to the alleged involvement of someone in the offense or incident.

There are separate crimes, with higher penalties, for committing (1) either the 1<sup>st</sup> or 2<sup>nd</sup> degree crime when it results in serious physical injury or death to another person or (2) the 2<sup>nd</sup> degree crime by falsely reporting someone else's alleged or impending serious physical injury or death.

By law, a person is guilty of misusing the E-9-1-1 system when he or she (1) dials E-9-1-1 or causes it to be dialed to make a false alarm or complaint or (2) purposely reports false information that could result in the dispatch of emergency services.

## **§ 29 — JUSTIFIED USE OF DEADLY PHYSICAL FORCE AND CHOKEHOLDS**

*Limits the circumstances when a law enforcement officer's use of deadly physical force is justified and establishes factors to consider in evaluating whether the officer's action was reasonable; Establishes when the use of chokeholds and similar restraints is justified*

The bill narrows the circumstances under which a law enforcement officer is justified in using deadly physical force. It establishes factors to consider when evaluating whether an officer's use of deadly physical force was objectively reasonable. The bill also limits an officer's use of a chokehold or similar method of restraint to instances when the officer reasonably believes such restraints is necessary for self-defense from deadly physical force.

For these provisions, law enforcement officers include peace officers

(see BACKGROUND), special police officers for the Department of Revenue Services, and authorized officials of the Department of Correction or the Board of Pardons and Paroles.

### ***Deadly Physical Force***

The bill narrows the circumstances under which a law enforcement officer is justified in using deadly physical force and establishes specific conditions that must be met in those circumstances.

Under current law, officers are justified in using deadly physical force when they reasonably believe it is necessary to:

1. defend themselves or a third person from the use or imminent use of deadly physical force or
2. (a) arrest a person they reasonably believe has committed or attempted to commit a felony that involved the infliction or threatened infliction of serious physical injury; or (b) prevent the escape from custody of a person they reasonably believe has committed a felony that involved the infliction or threatened infliction of serious physical injury.

In these circumstances, the bill requires the officer's actions to be objectively reasonable given the circumstances. And, in situations where an officer is making an arrest or preventing an escape, the bill places additional conditions on when deadly physical force may be used. Under the bill, the officer making an arrest or preventing escape must:

1. exhaust the reasonable alternatives to the use of deadly physical force and
2. reasonably believe that the force employed creates no substantial risk of injury to a third party.

As under existing law, the officer must also reasonably believe the use of the force is necessary to arrest or prevent the escape of the specified individual.

The bill further narrows the circumstances under which deadly physical force may be used. It does so by eliminating the justification for using such force in a situation when the officer reasonably believes a person threatens infliction of serious physical injury, both when making an arrest or preventing an escape from custody.

### ***Factors to Determine Reasonableness of Use of Deadly Force***

The bill establishes factors to consider when evaluating whether a law enforcement officer's use of deadly physical force was objectively reasonable (see BACKGROUND), including whether:

1. the person upon whom deadly physical force was used possessed or appeared to possess a deadly weapon,
2. the officer engaged in reasonable de-escalation measures before using deadly physical force, and
3. any of the officer's conduct led to an increased risk of the situation that led up to the use of such force.

### ***Limits on the Use of Chokeholds or Similar Restraints***

By law, law enforcement officers are justified in using physical force to the extent they reasonably believe it is necessary to:

1. make an arrest or prevent the escape from custody of someone they reasonably believe has committed an offense (unless the officers know that the arrest or custody is unauthorized) or
2. defend themselves or a third person from the use or imminent use of physical force while arresting or attempting to arrest someone or preventing or attempting to prevent an escape.

The bill sets a specific standard by limiting when an officer may use a chokehold or similar method of restraint (i.e. those applied to the neck area, or that otherwise impedes the ability to breathe, or that restricts blood circulation to the brain of another person) for these purposes to instances where the officer reasonably believes the use of these restraints is necessary to defend himself or herself from the use

or imminent use of deadly physical force. So, under the bill, it is only under these circumstances that an officer is justified in using a chokehold or other similar method of restraint.

EFFECTIVE DATE: April 1, 2021

### **Background — Peace Officers**

By law, the following individuals are designated peace officers: state and local police, Division of Criminal Justice inspectors, state marshals exercising statutory powers, judicial marshals performing their duties, conservation or special conservation officers, constables who perform criminal law enforcement duties, appointed special policemen, adult probation officers, Department of Correction officials authorized to make arrests in a correctional institution or facility, investigators in the State Treasurer's Office, POST-certified motor vehicle inspectors, U.S. marshals and deputy marshals, U.S. special agents authorized to enforce federal food and drug laws, and certified police officers of a law enforcement unit created and governed under a state-tribal memorandum (CGS § 53a-3(9)).

### **Background — Subjective-objective Test to Determine if Use of Deadly Force was Justified**

The Connecticut appellate court has applied a "subjective-objective" test in evaluating whether an officer was justified in using physical deadly force. Under this test, the jury must first determine whether the officer honestly believed that the use of deadly force, rather than a lesser degree of force, was necessary under the circumstances. If the jury determines that the defendant-officer, in fact, believed that the use of deadly force was necessary, the jury must then determine whether that belief was reasonable from the perspective of a reasonable police officer in the defendant's circumstances (*State v. Smith*, 73 Conn. App. 173, cert den. 262 Conn. 923 (2002)).

### **§§ 30 & 43 — OFFICERS' DUTY TO INTERVENE AND REPORT USE OF EXCESSIVE FORCE**

*Requires a police or correction officer to intervene and report another officer's use of excessive force; prohibits law enforcement units or DOC from taking retaliatory action against the intervening officer*

### ***Duty to Intervene***

The bill requires any police officer, while in his or her law enforcement capacity, to intervene and attempt to stop another police officer from using force that the witnessing officer objectively knows is unreasonable, excessive, or illegal, unless the witnessing officer is operating in an undercover capacity at the time. The bill also requires corrections officers to intervene and attempt to stop another correction officer from using this force.

Under the bill, any police or correction officers who fails to intervene in this type of incident may be prosecuted and punished for the same acts as the officer who used unreasonable, excessive, or illegal force in accordance with criminal liability for acts of another (CGS § 53a-8).

### ***Duty to Report after Witnessing Certain Use of Force***

The bill also requires any police officer who witnesses, or is otherwise aware of, another police officer using this unreasonable, excessive, or illegal force, to report the incident to the law enforcement unit that employs the officer who used the force. Likewise, a correction officer who witnesses, or is aware of, another correction officer using this force must report the incident to the witnessing officer's immediate supervisor, who then must immediately report it to the supervisor of the officer who reportedly used the force.

The report must be done as soon as practicable and any officer who fails to do so may be prosecuted and punished for 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree hindering prosecution. By law, 1<sup>st</sup> and 2<sup>nd</sup> degree hindering prosecution are both class C felonies, which are punishable by up to 10 years in prison, a fine up to \$10,000, or both; but a 1<sup>st</sup> degree violation carries a mandatory minimum five-year prison sentence. 3<sup>rd</sup> degree hindering prosecution is a class D felony, which is punishable by up to five years in prison, a fine up to \$5,000, or both.

### ***Retaliation Prohibited***

The bill prohibits law enforcement units or DOC from taking retaliatory personnel action or discriminating against a police or

correction officer because he or she intervened or reported another officer's unreasonable, excessive, or illegal use of force. Under the bill, an intervening or reporting police or correction officer is specifically protected by the whistle-blowing law (CGS § 4-61dd), and police officers are also protected by the law that protects employees who disclose their employer's illegal activities, among other activities (CGS § 31-51m). The whistle-blowing law protects state law enforcement and correction officers while the law providing protections for disclosing illegal activities protect both state and municipal officers. These laws provide protections that include prohibiting the employer from discharging, disciplining, or penalizing employees for making these disclosures.

EFFECTIVE DATE: October 1, 2020

### **§ 30 — USE OF FORCE RECORDKEEPING AND REPORTING**

*Expands a law enforcement unit's recordkeeping and reporting requirements to include reports on police use of excessive force and requires OPM to review use of force reports*

The bill expands a law enforcement unit's recordkeeping and reporting requirement to include reports on police use of excessive force. It also requires the Office of Policy and Management (OPM), within available appropriations, to review the reported use of force incidents and report the results and any recommendations to the governor and Judiciary and Public Safety and Security committees' leadership.

#### ***Law Enforcement Recordkeeping***

Existing law requires each law enforcement unit to create and maintain a record detailing any incident where a police officer (1) discharges a firearm, except during training exercises or when dispatching an animal; (2) uses physical force that is likely to cause serious physical injury or the death of another person; or (3) engages in vehicle pursuit. The bill expands this recordkeeping requirement to include any use of excessive force incident (1) reported by an officer who witnesses such an incident (see above) or (2) otherwise made known to the law enforcement unit.

Under existing law and the bill, the record must include the officer's name; the time and place of the incident; a description of what happened; and, to the extent known, the names of the victim and witnesses present at the incident.

The bill also specifies that physical force likely to cause serious physical injury includes striking another person with an elbow or knee, using a less lethal projectile on another person, using a method of restraint that impedes the ability to breathe or restricts blood circulation to the brain, or using any other form of physical force POST designates. By law, physical force likely to cause serious physical injury already includes, among other things, striking another person with the hand or certain other objects and using pepper spray, a chokehold, and other restraints to the neck area.

### ***Law Enforcement Unit's Annual Report to OPM***

Under existing law, each law enforcement unit must annually submit a report by February 1 concerning the incidents described above to OPM's Criminal Justice Policy and Planning Division. The bill eliminates the requirement that units provide summarized data and instead, starting with the February 1, 2021 report, requires them to submit the records electronically in a standardized method and form that allows the compilation of statistics on each use of force incident. The division and POST (1) must jointly disseminate the standardized method and form and (2) may revise the method and form and disseminate the revisions to law enforcement units.

By law, the statistics on each use of force incident 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.

### ***OPM's Review of Use of Force Incidents***

The bill requires OPM, within available appropriations, to (1)

review the reported use of force incidents and (2) starting by December 1, 2021, annually report the results and any recommendations to the governor and the Judiciary and Public Safety and Security committees' chairpersons and ranking members.

EFFECTIVE DATE: October 1, 2020

## **§§ 31 & 32 — SECURITY SERVICE AND SECURITY OFFICER QUALIFICATIONS**

*Prevents decertified police officers from acquiring a security services license or performing security officer work*

The bill adds decertification as a police officer, including POST's cancelation, revocation, or refusal to renew a certification, to the list of criteria that make a person ineligible for (1) a security service license; (2) a security officer license; and (3) employment with a security service to perform security officer duties while his or her security officer license application is pending.

Under existing law, unchanged by the bill, a person is ineligible for a security service license if, among other things, he or she has been (1) convicted of a felony; (2) convicted in the past seven years of any of 11 specified misdemeanors; (3) convicted of any offense involving moral turpitude; or (4) discharged from military service under conditions that demonstrate questionable moral character.

Existing law also prevents the DESPP commissioner from issuing a security officer license, and a security service from employing a license applicant to perform security officer work, for anyone:

1. convicted of a felony;
2. convicted of a sexual offense or crime involving moral turpitude;
3. denied a security service or security officer license for any reason except minimum experience;
4. whose security service or security officer license was ever revoked or is under suspension; or

5. who does not otherwise satisfy the requirements for licensure or employment.

EFFECTIVE DATE: October 1, 2020

## **§§ 33 & 46 — OFFICE OF THE INSPECTOR GENERAL**

*Establishes the Office of the Inspector General*

The bill establishes the Office of the Inspector General (OIG) as an independent office within the Division of Criminal Justice (DCJ). The bill requires OIG to do the following:

1. investigate peace officers' (i.e., law enforcement officers') use of force (see § 34 below);
2. prosecute any case in which (a) the inspector general determines the use of force was not justified or (b) a police officer or correctional officer fails to intervene in or report such an incident; and
3. make recommendations to POST concerning censure and suspension, renewal, cancellation, or revocation of a peace officer's certification.

EFFECTIVE DATE: Upon passage

### ***Appointment and Term***

Under the bill, the inspector general serves a four-year term and must be a deputy chief state's attorney from within DCJ whom the Criminal Justice Commission nominates (see BACKGROUND). Under current law, DCJ includes two deputy chief state's attorneys. The bill requires the commission to appoint a third deputy chief state's attorney, whom it must nominate to serve as inspector general (§ 46).

The bill requires the commission to (1) nominate the initial inspector general by October 1, 2020, and (2) make a new nomination on or before the term's expiration date or upon a vacancy. The bill allows the commission to re-nominate an individual who has previously served as inspector general. Under the bill, a person nominated to be

inspector general serves in an interim capacity pending confirmation by the legislature.

The bill allows the inspector general to be removed or otherwise disciplined only in accordance with existing law's procedures for removing or disciplining prosecutors (i.e., he or she may be removed only by the Criminal Justice Commission after notice and a hearing).

### ***Legislative Confirmation***

The bill subjects a nominee for inspector general to legislative confirmation procedures and requirements that are similar to those for judicial nominations. Among other things, it requires (1) referral of the nomination to the Judiciary Committee and action by the committee within 30 legislative days after receiving the referral (but no later than seven legislative days before the legislature adjourns) and (2) a roll call vote by both the House and Senate in order to confirm the nominee. If a nomination fails, the Criminal Justice Commission must make a new nomination within five days after receiving notice of the failure.

If the legislature is not in session, the bill allows the commission to fill an inspector general vacancy by submitting the proposed appointee's name to the Judiciary Committee. The committee may, upon either chairperson's call, hold a meeting within 45 days (presumably from receiving the name) to approve or disapprove the proposed vacancy appointment by majority vote. The bill deems the appointment approved if the committee does not act within this timeframe.

Under the bill, an appointment made when the legislature is not in session is effective until the sixth Wednesday of the next regular legislative session and until a successor is approved.

### ***Powers***

The bill allows the inspector general to issue subpoenas to municipalities, law enforcement units, and the Department of Correction (DOC), or any current or former employee of these entities. The subpoenas may (1) require the production of reports, records, or

other documents concerning an investigation by the inspector general (see §§ 34-35 below) and (2) compel the attendance and testimony of any person having knowledge pertinent to the investigation.

The bill allows a municipal chief of police and the DESPP and DOC commissioners to refer any use of force incident under OIG's jurisdiction to the inspector general for investigation (see §§ 34-35 below). The bill requires the inspector general to accept these referrals.

### ***Office Location and Staff***

The bill requires that OIG be at a location separate from the Office of the Chief State's Attorney or any of the state's attorneys for the judicial districts. It allows the inspector general to employ necessary staff whom he or she selects from DCJ's staff. Under the bill, the staff must include an assistant state's attorney or deputy assistant state's attorney, an inspector, and administrative staff, and, as needed and upon the inspector general's request, additional personnel with these job titles. The Office of the Chief State's Attorney must ensure this additional assistance.

Under the bill, the inspector general and any OIG staff not in a state employee bargaining unit must be transferred back to DCJ upon completing employment with OIG. They must be (1) transferred into a position equivalent or comparable to the one they held in DCJ before being employed by OIG and (2) compensated at the same level as they were immediately before returning to DCJ.

### ***Background – Criminal Justice Commission***

The state constitution (art. IV, § 27) establishes the Criminal Justice Commission and charges it with appointing a state's attorney for each judicial district and other attorneys as prescribed by law. It consists of seven members: the chief state's attorney and six members appointed by the governor and confirmed by the General Assembly. Two of the appointed members must be Superior Court judges.

## **§§ 34 & 35 — OIG INVESTIGATIONS**

*Requires the inspector general, rather than the Division of Criminal Justice, to investigate use-of-force cases and prosecute cases where the inspector general determines that the use of force was not justified*

### **Use of Force Investigations**

Under current law, DCJ must investigate whenever a peace officer, while performing his or her duties, uses physical force that causes someone's death or uses deadly force on another person. DCJ must determine whether the officer's use of force was appropriate under the law and submit a report of its findings and conclusions to the chief state's attorney.

The bill instead requires the inspector general to (1) conduct the investigation and (2) determine whether the use of force was justifiable, rather than appropriate as under current law. (The bill amends the circumstances under which the use force is justifiable; see § 29 above.) It also makes conforming changes, including requiring the inspector general, rather than DCJ, to (1) complete a preliminary status report and submit it to the Judiciary and Public Safety and Security committees within five business days after the cause of death is available and (2) submit the completed investigation report to the chief state's attorney.

The bill authorizes OIG to prosecute (1) any case in which the inspector general determines that a peace officer's use of force was not justifiable and (2) any failure by a peace officer or correctional officer to intervene in or report such an incident to the applicable law enforcement unit or DOC, respectively (see §§ 30 & 43 above). It specifies that the deputy chief state's attorney acting as inspector general and any state's attorney, assistant state's attorney, or deputy assistant state's attorney operating under OIG's direction is qualified to act in any jurisdiction in the state and in connection with any matter regardless of the district where the offense occurred (see BACKGROUND).

### **Other Investigations**

The bill also requires the inspector general to investigate whenever a person dies in a peace officer's or law enforcement agency's custody.

The inspector general must determine whether a peace officer used physical force on the deceased person and, if so, whether it was justifiable. Under the bill, if the inspector general determines that the person died as a result of possible criminal action not involving a peace officer's use of force, then he or she must refer the case to DCJ for potential prosecution.

The bill additionally requires the inspector general to investigate whenever a person dies in DOC's custody to determine whether the person died as a result of possible criminal action. If the inspector general finds this to be the case, he or she must refer the matter to DCJ for potential prosecution.

In both instances, if the inspector general finds that physical force was used, then he or she must follow the procedures for use-of-force investigations (see above).

EFFECTIVE DATE: October 1, 2020

### ***Background – Division of Criminal Justice***

The state constitution (art. IV, § 27) establishes DCJ within the executive branch and charges it with investigating and prosecuting all criminal matters. It vests the state's prosecutorial power in the chief state's attorney and the state's attorney for each judicial district.

### **§§ 36 & 37 — CHIEF MEDICAL EXAMINER INVESTIGATION OF DEATHS IN POLICE CUSTODY**

*Requires the chief medical examiner to investigate deaths of people in police or Department of Correction custody and makes related changes*

Existing law requires the chief medical examiner to investigate all deaths in certain categories, such as violent deaths (whether apparently homicidal, suicidal, or accidental) and deaths under suspicious circumstances. The bill additionally requires him to investigate any other death, not clearly the result of natural causes, that occurred while the person was in the custody of a peace officer, a law enforcement agency, or the Department of Correction (DOC).

In doing so, the bill extends to the chief medical examiner the

authority under existing law to take certain actions for death investigations. Examples of these actions include requiring autopsies for these deaths when deemed necessary and appropriate, issuing subpoenas, and accessing any objects in law enforcement custody that he believes may help establish the cause or manner of death.

Under existing law, certain parties (e.g., law enforcement officers, prosecutors, and physicians) must (1) notify the Office of the Chief Medical Examiner (OCME) when they learn of a death requiring his investigation, (2) assist in making the body and related evidence available, and (3) cooperate fully with OCME. The bill specifically extends these requirements to DOC employees.

In cases of apparent homicide or suicide, or accidental deaths with obscure causes, existing law requires that the scene not be disturbed until authorized by the chief medical examiner or his authorized representative. The bill extends this requirement to any other death, not clearly due to natural causes, that occurred while the person was in the custody of a peace officer, a law enforcement agency, or DOC.

Under existing law, in any case where there is a suspicion that a death resulted from a criminal act a state's attorney or assistant state's attorney can require that an autopsy be performed by a certified pathologist. The bill specifies that this includes (1) any deputy chief state's attorney and (2) any of these prosecutorial officials from the Office of the Inspector General created by the bill (see § 33).

EFFECTIVE DATE: October 1, 2020

## **§§ 38 & 39 — PROHIBITIONS ON PEDESTRIAN CITATION QUOTAS**

*Prohibits municipal police departments and DESPP from imposing pedestrian citation quotas on their police officers*

The bill prohibits municipal police departments and DESPP from imposing pedestrian citation quotas on their police officers. It defines "quota" as a specified number of citations issued to pedestrians within a specific time period. The bill also specifies that data relative to the issuance of pedestrian citations may be used to evaluate a police

officer's performance so long as it is not the only performance measurement.

By law, municipal police departments and DESPP are prevented from imposing quotas regarding the issuance of summons for motor vehicle violations and exclusively evaluating officers based on how many summonses they issue.

EFFECTIVE DATE: October 1, 2020

#### **§ 40 — POLICE USING MILITARY EQUIPMENT**

*Prohibits law enforcement agencies from acquiring new military equipment; allows the governor's office and DESPP commissioner to require them to sell, transfer, or dispose of the equipment; and requires an inventory report to be submitted to certain legislative committees*

The bill prohibits any law enforcement agency from acquiring certain military equipment (i.e., controlled equipment) after the bill's passage. The prohibited "controlled equipment" is military designed equipment classified by the U.S. Department of Defense as part of the federal 1033 Program (see BACKGROUND) that is:

1. a controlled firearm, ammunition, bayonet, grenade launcher, grenade, including stun and flash-bang, or an explosive;
2. a controlled vehicle, highly mobile multi-wheeled vehicle, mine-resistant ambush-protected vehicle, truck, truck dump, truck utility, or truck carryall;
3. an armored or weaponized drone;
4. a controlled aircraft that is combat configured or combat coded or has no established commercial flight application;
5. a silencer;
6. a long-range acoustic device; or
7. an item in the federal supply class of banned items.

By December 31, 2020, the bill requires each law enforcement

agency to report to the Judiciary and Public Safety and Security committees on its inventory of controlled equipment possessed when the bill passed. Each agency must also report (1) the equipment's use or proposed use and (2) whether the use or proposed use is (A) necessary for the department's operation or safety or (B) for disaster relief or rescue efforts or other public safety purposes. "Law enforcement agency" means the State Police or any municipal police department.

Under the bill, the governor's office and DESPP commissioner may order a law enforcement agency to lawfully sell, transfer, or otherwise dispose of controlled equipment if they jointly find it is unnecessary for public protection. A municipal police department may request that the governor's office and commissioner reconsider the order. They may jointly amend or rescind the order if the police department (1) held a public hearing in the municipality it serves on the request for reconsideration and (2) demonstrates in its request that the use or proposed use is necessary for the purposes stated above.

The governor's office and DESPP commissioner must notify the Judiciary and Public Safety and Security committees of controlled equipment that is ordered sold, transferred, or otherwise disposed of.

The bill also prohibits law enforcement agencies that are allowed to keep controlled equipment from using it for crowd management or intimidation tactics.

EFFECTIVE DATE: Upon passage

### ***Background – 1033 Program***

Under federal law, known as the 1033 Program, the defense secretary may transfer law enforcement agencies certain excess military property he determines is suitable for use in law enforcement activities (e.g., small arms and ammunition) (10 U.S.C. § 2576a). There is a requisition process where law enforcement submits requests to a state coordinator and a federal agency for approval.

## **§ 41 — CIVIL CAUSE OF ACTION AGAINST POLICE OFFICERS WHO DEPRIVE INDIVIDUALS OF CERTAIN RIGHTS**

*Establishes a civil cause of action against police officers who deprive an individual or class of individuals of the equal protection or privileges and immunities of state law*

The bill establishes a civil cause of action against police officers who deprive an individual or class of individuals of the equal protection or privileges and immunities of state law. By creating a cause of action against police officers in statute, the bill, in certain circumstances, eliminates the possibility of claiming governmental immunity (i.e., common law protection from civil suit, see BACKGROUND) as a defense to such suits. The bill generally requires employers to indemnify police officers in such suits.

### ***Civil Suit***

The bill prohibits a police officer, acting alone or in conspiracy with another, from depriving an individual or class of individuals of the equal protection or privileges and immunities of state law, including those guaranteed under the Article First of the Connecticut Constitution.

Under the bill, those who have been aggrieved by a police officer's actions may bring a civil action for equitable relief (i.e., nonmonetary relief, such as an injunction) or damages in Superior Court. A civil action brought for damages must be triable by a jury.

In these civil actions, governmental immunity is not a defense (1) for actions solely seeking equitable relief and (2) in actions seeking damages unless, at the time of the conduct complained about, the officer had an objectively good faith belief that his or her conduct did not violate the law. Under the bill, there is no interlocutory appeal of a trial court's denial of the application of a governmental immunity defense.

In these actions, each municipality or law enforcement unit must protect and save harmless the defendant police officer from financial loss and expense. This includes any legal fees and costs arising out of any claim, demand, or suit against the officer for any action the officer took while discharging his or her duties. If a court judgment is entered

against the officer for a malicious, wanton, or willful act the (1) officer must reimburse the municipality for incurred defense expenses and (2) municipality must not be held liable to the officer for any financial loss or expense resulting from the officer's act.

The court may award costs and reasonable attorney's fees if it finds the violation was deliberate, willful, or committed with reckless indifference.

Under the bill, a civil action must be commenced within one year after the cause of action accrues. Statutory notice of claim provisions do not apply to an action brought under this provision (e.g., requirements that notice of one's intention to file suit against a municipality for damages be filed with the town clerk in CGS §§ 7-101a(d) and 7-465(a)).

EFFECTIVE DATE: July 1, 2021, and applicable to any cause of action arising from an incident committed on or after July 1, 2021.

### ***Background – Governmental Immunity***

Under the common law sovereign immunity doctrine, the state cannot be sued without its consent. Limitations exist under both statute and common law on the liability of the state and municipalities for the acts of their officials and employees.

State law gives state officials and employees immunity from liability when discharging their duties and acting within the scope of their employment (CGS § 4-165). But they are not immune from liability for wanton, reckless, or malicious acts. Unlike the state, municipalities have no sovereign immunity from suit, but there are several limitations and exceptions to municipal liability (e.g., wanton, willful, or malicious acts) (CGS § 52-557n).

Additionally, the law generally requires state and municipalities to indemnify or reimburse their employees for financial loss arising out of legal proceedings in certain circumstances when the employee acted in the discharge of his or her duties (CGS §§ 4-165, 7-101a, and 7-465).

## **§ 42 — TASK FORCE RECOMMENDATIONS ON POLICE CIVIL CAUSE OF ACTION IMPLEMENTATION**

*Requires the police transparency and accountability task force to make recommendations on implementing the bill's new civil liability provisions and their impact on obtaining liability insurance*

The bill requires the task force to study police transparency and accountability established in PA 19-90 (see § 12) to also make recommendations to the Judiciary Committee related to the implementation of the police civil liability provisions and the anticipated impact implementing these provisions will have on a police officer's or municipality's ability to obtain liability insurance. The bill requires these recommendations to be submitted by January 1, 2021.

EFFECTIVE DATE: Upon passage

## **§ 44 — LAW ENFORCEMENT UNIT ACCREDITATION**

*Starting in 2025, requires law enforcement units to obtain accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. and makes related changes*

Current law requires, within available appropriations, POST and DESPP to jointly develop, adopt, and revise, as necessary, minimum standards and practices for administering and managing law enforcement units, based in part on standards of the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA). Law enforcement units must adopt and maintain (1) POST's minimum standards and practices or (2) a higher level of accreditation standards developed by POST or CALEA.

The bill removes the condition that POST and DESPP only develop these standards within available appropriations. It also sunsets these provisions after 2024. Starting in 2025, it instead requires law enforcement units to obtain and maintain CALEA accreditation. If a unit fails to meet this requirement, POST must work with them to do so.

As under current law for the standards, the bill prohibits lawsuits against a law enforcement unit for damages arising from its failure to

obtain and maintain accreditation as required.

The bill also makes conforming changes to the law on POST's authority (see § 3(a)(22)).

EFFECTIVE DATE: Upon passage