

## **Testimony – Raised Bill 6462 – Keith Mello, Chari person POST Council**

Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Fishbein, distinguished members of the Judiciary Committee.

My name is Keith Mello and I am the Chief of Police for the City of Milford and the Chairperson of the Police Officers Standards and Training Council, having been appointed first by Governor Malloy and then reappointed this year by Governor Lamont. I also currently serve on the Legislative Task Force on Police Accountability and Transparency and the CT Bar Association Task Force on Police Reform. I am also the immediate Past President of the CT Police Chiefs Association and I currently serve on their Board of Directors.

I am here today representing the POST Council to speak in favor of Raised Bill 6462, An Act Concerning Use of Force by a Peace Officer.

Specifically, the amendments to section 29 of Public Act 20-1, better known as an Act Concerning Police Accountability.

We recognize that Police Officers are vested with extraordinary authority to use force to achieve the lawful purpose of protecting the lives of others and to protect themselves. With this authority comes great responsibility to exercise sound judgement and restraint, using force judiciously and only to the extent necessary. Everyone must certainly all agree that physical force must be considered a necessary and last resort when there is no other reasonable alternative available under the unique circumstances each interaction presents. Deadly force must only be used to avert life-threatening danger and only when there is no other reasonable alternative. Please note the emphasis on the term **reasonable alternative**.

Before this legislature publicly introduced any legislative proposals during the last summer's session, the POST Council voted on June 6, 2020, to establish a sub-committee to create a mandated Use of Force Policy and Training Program for all CT Police Officers. We did so because we recognized the need to provide police officers with stronger guidance and direction when making life altering decisions to use force on another person.

We focused on holding officers accountable who intentionally break the law or violate their oath. We also focused on providing officers with better tools to make

use of force decisions, often under very stressful, rapidly evolving conditions and most often with imperfect information. Decisions that they often must make in seconds, but decisions that we as police chiefs, the media, the courts and the public will dissect frame by frame, second by second, for months and years.

We focused on some of the very issues that you addressed during your deliberations for section 29. A peaceful resolution is always the most desired outcome and our training and our culture must reflect that goal. A continued and renewed focus on the art of de-escalation and diffusion strategies is an imperative and our policy, our training and our culture must reflect that. The sanctity of human life and the respect for every person's rights and dignity must be reflected in not just in the application of force, but in everything we do.

With these values as our framework, we must also remember that police officers have a very difficult job. We must support them by providing them with clarity in the law and clarity in our policy and training. During the POST committee's work they found certain aspects of the statutory language to be ambiguous and difficult to interpret. Our goal is to prevent confusion and provide for a consistent application of the law, of the policy and of the training.

I believe that we can accomplish these mutually agreed upon goals through policy and training. I come here today, with the support of the POST Council and the backing of the CT Police Chiefs Association, (although you should here that from there representative who will be here later today). I come here to support changes to section 29 in five areas.

In my view, these changes do not in any significant way alter the intent of this section. But they provide clarity to the police officers who unfortunately may have to someday use force to save a life, including their own. I hope that you agree that is vital that our police officers have a clear understanding of the potential criminal liability and the intent of this legislative body when you crafted the original bill.

I believe that the changes reflected here in 6462 are consistent with your original intent.

I will quickly highlight those changes for the record because I know you have them in front of you:

Line 1265 of PA 20-1, reads “He or she has exhausted the reasonable alternatives to the use of deadly physical force”. We are asking that the word exhausted be substituted by the word “considered”. The line will then read “He or she has considered the reasonable alternatives to the use of deadly physical force”. Some would argue that the term “exhausted the reasonable alternatives” is saying the same thing as considered. Our concern is that the word “*exhausted*” creates an expectation that a police officer will have to progress through other alternatives before they can move to the next alternative. That is not always possible. All other alternatives should certainly and thoughtfully be *considered*, but the officer must respond in a manner that is proportional to the threat. To expect an officer to try lesser responses that are disproportionate and ineffective places his or her life and the safety of the public at risk.

In fact, the National Consensus Policy and Discussion Paper on the Use of Force states that, “Officers should only use force when no reasonably effective alternative appears to exist...”

Line 1267 (beginning on line 1266) reads, “reasonably believes that the force employed creates no substantial risk of injury to a third party”. We are asking that the word “*substantial*” be replaced with “*unreasonable*”. The line will then read, “reasonably believes that the force employed creates no *unreasonable* risk of injury to a third party”

When we think of substantial, we think of significant, considerable, or consequential. When a police officer uses deadly force by discharging a firearm, there is always a present danger that that bullet will miss and continue to travel for long distances until it hit strikes someone, something or eventually falls. Consider the suspect who has just committed a felony involving the infliction of serious injury to another person. Arresting this person or preventing him or her from escaping may save lives. And you recognize that because you already allow for that in the bill.

Instead of substantial, using a commonly accepted standard of “reasonableness”, is more appropriate. In fact, you have used the word “reasonable” throughout the original bill, so you recognize the standard.

Line 1282, after “deadly weapon”, add the term “dangerous instrument”, as defined by C.G.S 53a-3. “*Dangerous instrument*” means any instrument, article or

*substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury..."*

The term Dangerous Instrument is present in many of our serious assault statutes. Certainly, police officers should have that same protection. A person can kill a police officer with a baseball bat or a pipe or other instruments included in the state's legal definition.

Line 1286, (beginning on 1285) reads, "any conduct of the peace officer". We are asking that word "unreasonable" be placed in front of conduct. The line will then read, "any *unreasonable* conduct of the peace officer". I realize that this may already be implied, but we are seeking some clarification in the language.

Finally, we are asking that the current deadline of April 1<sup>st</sup> of this year be extended to October, 1, 2022.

The POST Council committee that crafted the mandated UOF policy needed 5 months to complete their work. That piece represented the first phase of the project to improve outcomes and better guide our officers on the use of force. We are now entering the second and final phase of the plan to develop a state mandated training program that reflects the policy and the state statute. I expect that piece to be completed by the last quarter of this year. The next step will be for the POST Academy to train every certified UOF Instructor in the new policy and training program. The final step will be for those trainers to return to their departments and their regions and train every single police officer in the state. We are confident that we can have that completed by October 1, 2022.

In summary, our goal is to improve Connecticut's Use Force Statute that you enacted last July. We are now faced with the task of training police officers to operate on this new legal standard, which represents a change in the long-standing principles for which every Connecticut Police Officer has previously been trained. Further, because section 29 departs in some areas from the principles established by the Supreme Court in (*Graham v. Conner*, 490 U.S. 396, 397 (1989)) and (*Tennessee v. Garner*, 471 U.S. 1 (1985)), decided in 1989 and 1985 respectively, it is critical that our police officers have the clarity, the direction and the guidance they need to not only keep the public safe, but also keep themselves safe.

