JUDICIARY COMMITTEE

February 22, 2021

The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent 168 towns and cities.

HB 6462 An Act Concerning Use Of Force By A Peace Officer

CCM **supports** the bill as it will (a) delay the implementation of the new law regarding the use of force provisions for police officers, and (b) modify the "use of force" section in order to reduce ambiguity and provide law enforcement with greater direction of the actions that they will need to employ in the field.

Delaying the implementation of the provisions will afford local police departments the opportunity to become more adequately adjusted to the new requirements. CCM is fearful that if implemented too quickly and without deliberation, law enforcement officers may be in situations where they may question their instincts while under duress, which may result in in their own injury or death. Further, time to adjust to the new requirements by employing updated training and polices are necessary for the safety and proper execution of the new law.

In addition, the bill also makes other reasonable modifications to Section 29 of PA 20-1 which will reduce ambiguity and provide guidance for police officers. These are minor adjustments that will have a significant impact on law enforcement operations and public safety.

Section 29 of PA 20-1 codified two dramatic changes to CGS §53a-22 – use of force provisions for law enforcement - by adding a (1) "de-escalation" requirement for police officers and (2) recognizing the "provocation doctrine". The previous statute authorized a law enforcement officer to use physical force upon another person to effect an arrest, prevent an escape, or defend himself or herself or a third person from the imminent use of physical force. Under the revised section, an officer who uses deadly force would need to prove that he or she:

> "(i) has exhausted all reasonable alternatives to the use of deadly force, (ii) reasonably believes that the force employed creates no substantial risk of injury to a third party, and . . . [F]or purposes of evaluating whether actions of a peace officer . . . are reasonable . . . factors to be considered include, but are not limited to, whether (A) the person upon whom deadly physical force was used possessed or appears to possess a deadly weapon, (B) *the peace officer . . . engaged in reasonable de-escalation measures prior to using deadly physical force, and (C) any conduct of the peace officer . . . led to an increased risk of an occurrence of the situation that precipitated the use of such force."*

The last two requirements, de-escalation measures and provocation, would be new elements that a police officer in a deadly force case would need to prove. From a legal perspective, it is unclear whether the plaintiff or the officer, would have the burden of proof on these issues.

From a practical perspective, unchanged, these provisions may lead to negative implications for law enforcement in the field. For example, a police officer who confronts a deranged or suicidal person who is threatening a family member or third party with a gun might not be authorized to use deadly force to protect that innocent victim, or even protect the officer himself, or herself, from being killed, until *after* the officer first tried to negotiate (de-escalate) with the gunman.

If the officer drew his or her firearm, or raised his or her voice prior to negotiation or de-escalation, and demanded that the gunman "drop the weapon," this would be viewed as the opposite of de-escalation. An argument can be made that the officer provoked the deadly confrontation and must be held liable, and be criminally charged because the deadly force was not justified.

The latter issue, the provocation doctrine, was explicitly rejected by the United States Supreme Court in City and County of Los Angeles v. Mendez, 137 S. Ct. 1539 (2017). The provocation theory has been specifically rejected because, under well-established law, the United States Supreme Court has directed that courts must not judge an officer's conduct with "the 20/20 vision of hindsight." Graham v. Connor, 109 S.Ct. 1865 (1989). This new law would deprive law enforcement officials of legal protections and precedents that have been established for decades.

For these reasons, **CCM urges the Committee to favorably report HB 6462.**

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If you have any questions, please contact Mike Muszynski, State and Federal Relations Manager of CCM at mmuszynski@ccm-ct.org or 203-500-7556.