

September 4, 2020

Connecticut Bar Association Policing Task Force (“CBAPTF”) Draft Recommendations Subject to Review and Approval by the CBA:

Draft Recommendations #1, 2 and 4 regarding the Office of the Inspector General:

Draft Recommendation #1:

The CBAPTF recommends that Section 33(a) of An Act Concerning Police Accountability, Bill 6004 (“The Act”) be changed so that candidates outside of the State Criminal Justice Commission are eligible for the position of Inspector General and for positions within the staff of the Inspector General’s Office.

Rationale:

Section 33(a) of the Act states:

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

The Act requires that all candidates for the position of Inspector General (IG) and for IG staff positions be from within the Division of Criminal Justice (“DCJ”). See also Section 33(j) (IG Office Staff). This precludes the Criminal Justice Commission from making selections from a larger pool of well-qualified candidates including, but not limited to, federal prosecutors, private practitioners from the plaintiff’s bar and/or civil rights attorneys. As these other potential candidates are independent from the DCJ, they would avoid the appearance of a conflict of interest which members of the DCJ will face as they regularly work with police officers some of whom will be the subject of the IG investigations. As it is critical that these investigations have the full confidence of the public and avoid any appearance of a lack of independence, we recommend that the Act be amended to allow the Criminal Justice Commission to consider candidates outside of the DCJ for the position of IG as well as IG staff positions.

Draft Recommendation #2:

The CBAPTF recommends that the Inspector General be directed to make findings regarding whether police officers involved in incidents under investigation violated any police procedures, policies or protocols during the course of the incident.

Rationale:

A review of the 76 investigative Reports on the Deadly Use of Force By Police Officers written by CT State’s Attorneys from 2001 to the present (“the Reports”) shows that the Reports understandably focus on the determination of whether the use of physical force by the police officer(s) was appropriate under state law as that is what the governing statute requires that they do. CGS Section 51-277a(c). In

a number of the Reports, although there is no finding that the officers involved violated state law, the facts plainly indicate that the officers violated police procedures, policies or protocols. It is appropriate for the Inspector General who is most familiar with the facts of the incidents to make independent findings regarding violations of police procedure as well.

Draft Recommendation #4;

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

Rationale:

Section 33(g) of the Act states:

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

If the Inspector General can only subpoena law enforcement/municipal witnesses, his/her investigations will not have the benefit of the testimony of civilians who may have witnessed or participated in the incidents and/or may have relevant materials (video recordings, medical records) that are highly relevant to the investigations. Without the compulsion of a subpoena, these lay witnesses may be unwilling or fearful of cooperating in such investigations, leaving the investigations without access to material information.