

Connecticut Bar Association Policing Task Force (“CBAPTF”) Draft Recommendations

Recommendations #1-4 relate to the Office of the Inspector General:

Recommendation #1 (Approved by the CBA):

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, and if violations occurred, whether discipline should be considered.

Rationale:

A review of the 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 #3:

Public reports issued by the Inspector General involving police use of deadly force should include a comprehensive set of facts to ensure public confidence in the investigative process. In addition to the facts germane to each incident and the legal analysis as to whether the use of physical force was permissible under the law, all reports should include:

1. A timeline of significant events relevant to the incident, including whether mental health considerations may have contributed to the incident.
2. Standard information relating to Officers involved in the incident, including but not limited to:
 - a. Officer demographics (race, ethnicity, gender, age).
 - b. Years of Service (including years with other police agencies).
 - c. Officer Rank and Assignment at the time of the incident (ex. Patrol, any Specialized Unit).
 - d. Whether the Officer has been involved in any other deadly use of force incidents and his role in such incidents.
 - e. Whether the Officer has been involved in any use of force incidents where physical injury was caused or may have been caused within three years of the incident.
 - f. A review of the Officer's relevant disciplinary file and related records, including any relevant findings of misconduct and any relevant discipline or remedial action imposed.
 - g. The number of relevant citizen complaints filed against the Officer; the general nature of the allegations; any relevant findings confirming misconduct by the Officer; and any relevant disciplinary or other action taken as a result of those findings.
 - h. A review and summary of the Officer's training records.
3. Standard Information relating to the victim/subject of the incident, including but not limited to:
 - a. Demographic information (race, ethnicity, gender, age).
 - b. Town of residence.
 - c. Any evidence indicating that the officers involved in the incident were aware at the time of the incident that the victim/subject previously had been arrested or convicted of a

violent offense, involved in use of force incident with police officers or possesses a firearm.

4. The identification of any police departmental procedures, policies or protocols that were violated during the course of the incident.

5. Recommendations for future actions to be taken. (See, e.g., Report of the State's Attorney Concerning the Death of Edward R. Gendron, Jr.).

Rationale:

The CBAPTF has reviewed the deadly use of force investigative reports published by the Connecticut State Division of Criminal Justice since 2001. These incidents were investigated by 23 different State's Attorneys. Individual State's Attorney each have his or her own reporting process for determining what information is relevant to include in their reports. In order to ensure all relevant facts are available to the public and to enable meaningful analysis of these incidents over time, the above-described information should be consistently reported. This recommendation highlights information that was largely missing from those use of force investigative reports issued over the last 20 years.

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.

Draft Recommendation # 5 (Statute of Limitations in Section 41(g) of the Act):

The CBAPTF recommends that the one-year statute of limitations for bringing an action pursuant to Section 41 of the Act be extended to three years.

Rationale:

Section 41(g) of the Act provides: “A civil action brought pursuant to this section shall be commenced not later than one year after the date on which the cause of action accrues.”

Three reasons support extending the statute of limitations to three years.

First, the rationale for the one-year limitations period is tied to the period of time police departments are required by statute to keep body camera video. At first blush, this seems logical. However, our research shows that as a matter of custom and policy, police departments retain body camera video that involves an incident involving the use of force for up to four years. Moreover, an aggrieved citizen contemplating a lawsuit can put the department on notice and request that the department retain its body camera footage beyond the one-year statutory floor.

Second, the one-year statute is very short. On the one hand, the quick time limit could act as a premature bar for legitimate cases and, on the other hand, it could force plaintiff’s counsel to file lawsuits prematurely to avoid exceeding the limitations period.

Third, the limitations period established in Section 41(g) will likely become the limitations period followed by the federal district court in civil rights suits brought pursuant to 42 U.S.C. § 1983. Currently, plaintiffs have three years to file a federal civil rights claim in the District of Connecticut. “Since Congress did not enact a statute of limitations governing actions brought under § 1983, the courts must borrow a state statute of limitations.” *Lounsbury v. Jeffries*, 25 F.3d 131, 133 (2d Cir. 1994). “In Connecticut, the three-year limitations period set forth in Conn. Gen. Stat. § 52–577 is applicable to claims asserted under section 1983.” *Harnage v. Shari*, No. 3:16CV1576 (AWT), 2020 WL 5300913, at *3 (D. Conn. Sept. 4, 2020).

Draft Recommendation # 6 (Accreditation Standards):

The CBAPTF recommends that the accreditation standards for law enforcement agencies be revised to allow Chiefs the option of selecting compliance with the Connecticut Police Officer Standards and Training Council (“POSTC”) Tier III standards or the national Commission on Accreditation for Law Enforcement Agencies (“CALEA”) Accreditation Standards. Those opting to achieve Tier III accreditation by 2025 should reach Tier I accreditation by 2021 and Tier II accreditation by 2023.

Rationale:

An Act Concerning Police Accountability, Bill 6004, requires that all departments satisfy the CALEA standards. Currently, only 24 of 92 departments in Connecticut are CALEA certified. The Tier III standards are very similar to the CALEA standards. However, Tier III includes additional state-specific standards that CALEA does not. CALEA also has a facility update requirement that differs from the facility component required by the state accreditation process, including certain requirements relating to detention centers and the location of evidence storage.

Under the current CALEA on-site process, assessors from outside of the state spend a minimal amount of time at each agency (2-3 days) reviewing policies, practices and facilities, as well as conducting staff interviews. Most of the standard files are reviewed remotely by assessors unfamiliar with Connecticut law or regulations. In contrast, the Connecticut Tiered Accreditation Program involves a POSTC assessor who brings a local crew of 3-4 assessors to the agency; the directives, policies and agency activities are reviewed by practitioners who are familiar with Connecticut laws and practice.

For many districts, adoption of the Tier III standards would result in significant cost savings. CALEA requires departments to recertify every five years at significant cost. Associated costs for CALEA typically reach \$15,000 over the course of the assessment period. Tier III requires recertification every four years. However, in contrast, the Connecticut Tiered Accreditation Program is much more cost-effective. Although Bill 6004 provides some funding (via issuance of bonds), the costs of CALEA accreditation are expected to be a major challenge for many departments.

Draft Recommendation #7 (Citizen Complaints):

The CBAPTF recommends that the Connecticut Police Officer Standards and Training Council (“POSTC”) be tasked with updating the current model form and developing a standardized, statewide reporting form and process for reporting citizen complaints. The complaint form should make clear that those reporting can do so anonymously, do not need to have the form notarized and the form should ask for information about the race, ethnicity and gender of the officer and complainant among other categories. The complaint form must be easy to find, be available electronically, but hard copies should be maintained at the police station and at other municipal buildings, including the library in the town or city, with versions in languages that reflect the needs of the local population.

The data from the complaints must then promptly be submitted by each police department to a database maintained by the Office and Policy Management (“OPM”) without the names or other identifying information of complainants or officers but tracked through a number system so that it is possible to determine whether the same officer or complainant are being reported against or reporting. POSTC should determine which categories of complaints must be submitted by all departments (to include racial profiling, discourteous behavior and excessive force), but should not permit police departments to wait and submit only those complaints, which are investigated and determined to be substantiated. POSTC must also develop an auditing policy to ensure that each police department is making the complaint form widely available and regularly and correctly submitting the data. The OPM would maintain the database (which could be outsourced to a university) and, on a bi-annual basis, a report of the complaints received would be made public. This system would provide transparency to the public and would more easily permit problems and patterns of behavior to be identified or provide assurance that such problems are not being reported.

Rationale:

An Act Concerning Police Accountability, Bill 6004, does not cover citizen complaints. Currently, there is no standardized practice across the state for reporting all complaints and no central repository for collecting complaints, database for analyzing them, or method of reporting data. The model complaint form developed by POSTC in 2015 has certain problems, including not making clear that the form is anonymous, and it needs to be updated so that more information is regularly collected. For at least certain categories of citizen complaints, to include excessive force, any complaints of racial profiling or discourteous behavior, this lack of standardized, fulsome reporting and collection of data is particularly problematic.

POSTC has developed certain minimum standards for the reporting of complaints and police departments are required to make hard copies available at the town hall or other municipal building and to make electronic copies available on their websites. However, a detailed form for gathering all the data is not uniform across the state and it is easier to find for some police departments than for others. If POSTC creates a standardized form (with specific information that would be useful for assessing patterns), the data collected should be submitted to a centralized data collection center without names or any identifying information of either complainants or officers. The analysis of the data could be outsourced to a university, but should be reported on a bi-annual basis and should be maintained in a database that is easily searchable and publicly accessible.