

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

Draft Recommendation # 9: Minimum Standards for Civilian Review Boards

The CBAPTF recommends that municipalities consider the following minimum standards when creating a CRB pursuant to Section 17(a).

Background:

In June 2020, the CBAPTF Oversight subcommittee was tasked with providing best practices for creating and implementing a civilian police review board (CRB). Soon thereafter, the Connecticut legislature passed HB 6004/PA-20-1 (An Act Concerning Police Accountability), which became law on July 31, 2020. Section 17 of the law permits municipalities to establish a CRB by ordinance. Section 17(a) requires that ordinances establishing CRBs shall, at a minimum, set forth the following:

1. The scope of authority of the CRBs
2. The number of members of the CRBs
3. The process for the selection of board members, whether elected or appointed
4. The term of office for board members
5. The procedure for filling any vacancy of the membership of the CRBs

The Oversight subcommittee surveyed and drafted a summary of 24 different CRBs from across the nation (see attached). While the subcommittee’s survey was not exhaustive, the CRBs that were reviewed varied in size, scope, composition, and authority. The survey included CRBs from municipalities and counties with populations ranging from 37,000 in Amherst Town, MA, to nine million in Los Angeles County. The subcommittee also reviewed and considered the U.S. Department of Justice publication, *Citizen Review of Police*. Based on the subcommittee’s survey and analysis, the CBAPTF recommends the following for municipalities in Connecticut to consider:

Rationale:

Although Section 17(a) outlines the minimum requirements for a CRB ordinance, the legislation does not offer specific guidance for establishing a CRB. This is understandable in light of the different needs of the communities that CRBs might serve. The following recommendations, therefore, provide guidance for the municipal ordinance and the creation of CRBs.

Sec. 17. (a) The legislative body of a town may, by ordinance, establish a civilian police review board. The ordinance shall, at a minimum, prescribe:

(a) The scope of authority of the civilian police review board

The CBAPTF recommends that the following factors be considered when deciding between an investigatory-based or review-based CRB.

- Does the police department have a history of being open and transparent with the community?
- Is the police department currently under a consent decree/federal oversight, or does it have a history of being under a consent decree/federal oversight?
- Does the municipality have the funding and resources needed to finance an investigative CRB (including office equipment, computers, video equipment)?
- What are the implications for failure to comply with subpoenas?
- What enforcement measures are available to compel subpoena compliance?

These questions will assist a municipality in deciding what type of CRB to choose. A community with a police department that has a demonstrated track record of being open and transparent with the community may chose a review-based CRB. Conversely, an investigative-based CRB is more appropriate for a police department that is currently, or was previously, under a federal consent decree and/or is working to create stronger trust with the community.

An investigative-based CRB will be labor-intensive and require members to have an investigative background and training. The CRB will require subpoena power to compel witnesses and/or the production of documents. The CRB will conduct administrative internal affairs investigations that are not intended to be a substitute for, or to interfere with, any related criminal investigation. As provided in Section 17, the Inspector General will have the authority to stay a CRB investigation to prevent interference with an ongoing criminal investigation. An investigative-based CRB is also likely to have significant collective bargaining implications.

A review-based CRB, by contrast, will evaluate a department's own internal affairs investigation to assess whether it was objective, factual, and thorough. The CRB will sustain or reject the findings and make recommendations to the Chief of Police or other individuals who have the authority to discipline officers.

(b) The number of members of the civilian police review board

The subcommittee recommends that a CRB contains at least five members and not more than eleven members.

The attached CRB survey identifies boards ranging from five to eleven members. To avoid votes ending in a tie, boards should be composed of an odd number of members. Using 60% of members in attendance as the basis for a quorum, a board consisting of five members would need only three members in attendance to conduct business. The subcommittee does not believe it would be adequate for a CRB to have less than three

persons deciding the issues coming before a CRB. On the other hand, a CRB with too many members may present difficulties in attaining a quorum. Also, too many people on a CRB may lead to unproductive lengthy debates and discussions of differing opinions, thereby slowing the review process.

(c) The process for the selection of board members, whether elected or appointed

CRBs are charged with assessing interactions between police officers and civilians, sometimes based upon conflicting accounts and evidence. To ensure that their factual findings and proposed recommendations are respected by all parties involved, members of CRBs must be viewed as objective and impartial. Accordingly, the selection of CRB members must be approached with thoughtfulness and care.

The CRB selection process should yield a diverse CRB with members of different genders, races/ethnicities, professional backgrounds, experiences, and worldviews. The process of selecting CRB members, whether elected or appointed, should include a background check. The background check should not be used unfairly to preclude any individual's participation, but rather to elicit a diverse collection of lived knowledge and identify possible implicit biases. Prospective board members should also be required to participate in training, including citizen's academy, scenario training, ride-a-long, and confidentiality training. CRB members should also be required to sign a confidentiality agreement prior to their appointment.

(d) The term of office for board members

We recommend that CRB members' terms be staggered, thus reducing the likelihood of an entire CRB turning over at the same time. Terms should be for a minimum of two years and generally for a maximum of five years. There should also be a maximum number of terms that a CRB member can serve before a break in service. Members must recognize the civic commitment attached to the role, and absent hardships and personal emergencies, members should serve their full term. CRBs require consistency of membership to garner adequate collective knowledge in order to perform their mission effectively.

(e) The procedure for filling any vacancy in the membership of the civilian police review board.

Depending on the amount of time remaining in the vacated term and the amount of training required for new board members, it may be in the CRB's best interest not to fill a vacancy. Should the CRB choose to fill the vacancy, however, the process should take into account the perspective of the initial selection committee and the existing CRB's opinions. The selection committee or the CRB should fill vacancies either by vote or appointment.

There should also be a process to address the removal of a board member. The following factors should be considered as a basis for removal: breach of confidentiality; breach of ethics (*i.e.*, using one's position of power to coerce another, falsifying information, nepotism, and not disclosing conflicts of interest); a pattern of poor attendance; or other

conduct unbecoming of a board member. It is essential to recognize that accountability, trust, and integrity are just as integral for CRB members as they are for police officers.

Draft Recommendation # 10: Establishment of Civilian Review Boards

The CBAPTF recommends that Section 17 be amended to require all communities with police departments, or under the jurisdiction of the Connecticut State Police Resident Trooper Program, establish a CRB (if one does not already exist). For the purpose of this recommendation, communities that have an active police commission with oversight of the police department shall be considered to have satisfied the requirement of having a CRB.

Rationale:

This recommendation will further the goals of the Police Accountability Act because it will bring standards, oversight, and consistency to all of our Connecticut communities regardless of police jurisdiction. A fundamental purpose of the Act is to provide standards for, and oversight of, the police officers and departments tasked with keeping communities safe. CRBs are a proven accountability mechanism that provide an independent review of police departments. In carrying out this function, CRBs serve as a check and balance on the exercise of police authority, which, in turn, fosters civilian trust, police transparency, and community engagement.

Draft Recommendation # 11: Deadly Use-of-Force Database

The CBAPTF recommends that the Inspector General (“IG”) create and maintain a public database of pertinent information derived from completed investigative reports issued by the IG concerning police use of deadly force.

Rationale:

The DCJ must investigate and determine whether the use of physical force by a police officer(s) violates state law. From 2001 to the present, in accordance with the applicable statute, *see* CGS Section 51-277a(c), Reports on the Deadly Use of Force by Police Officers (“Reports”) were authored by Connecticut State’s Attorneys. Section 33(a) of the Act provides that the IG must now conduct such investigations and issue public investigative Reports.

To promote transparency with the public and to facilitate detection of any trends or patterns of problematic behavior, a public database that captures relevant information from each incident is necessary. The public database should, at a minimum, include the following information:

- Basic Incident Information: Date, time, location, weather conditions, officer initiated, or officer dispatched.
- Subject Information: name, gender, race, ethnicity, age, town of residence
- Indicate whether death occurred because of police use of force, and while in police custody or in a medical facility

- Nature of initial interaction and underlying alleged offense
- Activity that lead to incident (based on CT use of force form)
- Subject’s resistance resulting in application of force (based on CT use of force form)
- Control methods used (based on CT use of force form)
- Officer Information: unique officer ID, assignment at time of incident, race, ethnicity, gender, age, years of service, prior involvement in other deadly use of force incidents, number of complaints on record at the time of the incident, prior relevant discipline
- Investigative Information: camera footage available and type (body cam, dash cam), charges filed, officer discipline imposed

Draft Recommendation # 12: Early Warning System Pilot Program

The CBAPTF recommends that certain police departments develop and implement an early intervention system (“EIS”) pilot program to detect and prevent adverse incidents. Those departments whose officers are involved in the greatest number of deadly force incidents would most benefit from such a program. The CBAPTF recommends an EIS program that would identify police officers most at risk of adverse incidents through a data-driven approach based on the model developed by the Center for Data Science and Public Policy at the University of Chicago (“UC”).

Rationale:

Most Connecticut police departments do not have an EIS. Those departments that do have such systems use a threshold-based model which, for example, “flags” officers who have a threshold number of citizen complaints within a designated time period. Although these programs attempt to identify officers with patterns of problematic performance or signs of stress in order to prevent adverse incidents, they tend to have a high rate of false flags. This can overload departments and undermine the efficacy and legitimacy of the EIS.

The UC-based EIS model has been deployed by departments across the country and been shown to be more accurate and effective than the threshold-based model. The UC model is based on a broader set of data, including officer demographics, training, days off, secondary jobs to detailed police activities (traffic stops, dispatches, arrests, use of force, vehicle pursuits) and civilian compliments, complaints, and civil lawsuits. Using machine learning to detect patterns that precede adverse incidents, the model analyzes thousands of variable combinations (stops, arrests, use of force incidents, dispatches) over time to determine which factors best identify officers at risk. The model then generates risk scores that the department can use to identify officers for whom intervention may be appropriate.

The EIS system would be developed in collaboration with the department, including the definition of what constitutes an “adverse incident” (for which an Internal Affairs investigation leads to a finding) and what kind of intervention (training, counseling, disciplinary action) is most appropriate for particular findings.

As communities discuss the potential reallocation of police resources, an investment in the development and use of a UC-based EIS that is data-driven would be beneficial. Piloting this program in a small number of departments would be a worthwhile first step.

Draft Recommendation # 13: Factual Observations derived from Data regarding Deadly Force Incidents in Connecticut

The CBAPTF reviewed in detail the investigative reports relating to the 89 incidents involving police use of deadly force in Connecticut from 2001 to the present (“the Reports”). The Task Force’s final public report will include a detailed analysis of these incidents. In the interim, we highlight meaningful factual observations derived from the data that inform our recommendations.

First, almost half of the incidents involved people struggling with mental health conditions. Police responding to these incidents report that 46% of the incidents involved people who were emotionally disturbed/in mental distress and/or deemed suicidal. This data calls out for municipalities and law enforcement to seriously consider the role that mobile crisis units or other social services can be used to support responses to police calls.

Second, half of the subjects/victims of deadly force incidents were either Black or Hispanic. In 30% of the incidents, the subject/victim was Black; and in 20% of the incidents, the subject/victim was Hispanic. While there are factors that might begin to explain this racial disparity – including the racial composition of neighborhoods where some of these incidents occur – the hard truth is that half of the subjects/victims of deadly force incidents are persons of color. In this same vein, of the 89 deadly force incidents we have reviewed, 18 individuals were unarmed. Of those 18 individuals, 39% were Black and 28% were Hispanic.

Third, six police departments were involved in 55% of all deadly force incidents; and the same six departments were each involved in more than three such incidents. These departments would most benefit from the implementation of robust early warning systems.

Fourth, in 26% of the incidents, a vehicle was involved, usually as part of a pursuit. On November 14, 2019, POSTC adopted an updated Model Pursuit Policy in accordance with Public Act 19-90, Section 5. Recognizing that pursuits of fleeing motor vehicles present a danger to the lives of the public, police officers, and those inside the vehicles, the policy serves as the minimum standard for all police pursuits. The policy is robust and detailed. At its core, the policy permits pursuits only when an officer reasonably believes that the driver or occupant has committed, or is attempting to commit, a crime of violence or there are exigent circumstances that warrant the timely apprehension of a suspect because of potential harm to the public. Officers are prohibited from discharging their firearms at a vehicle or its occupants unless the occupants are using or threatening the use of deadly physical force against the officer or another person by means other than the vehicle. This pursuit policy, which was borne out of the type of data analysis being conducted in many areas of policing, is a meaningful development in minimizing the occasion of deadly force incidents engendered by police car pursuits.

Fifth, most of the incidents occurred on the second shift (3:00 p.m. – 11:00 p.m.), and the vast majority of officers who fired their weapons were between 26-35 years old and relatively new to policing, having under ten (and in many cases, under five) years of experience. The Reports do not always make clear whether supervisory personnel were dispatched and on scene prior to the use of force. The presence of experienced supervisory personnel on scene, particularly when incidents may involve significant threat to the safety of officers and others, may help to facilitate safer outcomes. We recommend reinforcement of, and adherence to, model guidelines issued by CALEA and POSTC, which include directives requiring, whenever possible, to have supervisors and/or veteran officers respond to the scene of serious incidents, including all shooting calls (other than calls concerning hunters), verified robbery calls, burglaries in progress, serious assaults, hostage or barricaded suspect calls, officer-needs-assistance calls, kidnapping, incidents involving large groups, strikers or protesters, and incidents involving individuals experiencing mental health or suicide related issues.