



765 Asylum Avenue, 2nd Floor  
Hartford, CT 06105  
860-523-9146  
[www.acluct.org](http://www.acluct.org)

**Written Testimony Opposing Senate Bill 305, An Act Revising Statutes  
Governing Actions By the Police, Proactive Policing and Enhancing  
Recruitment Efforts**

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein, and distinguished members of the Judiciary Committee:

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am here to testify in opposition to Senate Bill 305, An Act Revising Statutes Governing Actions By the Police, Proactive Policing and Enhancing Recruitment Efforts.

The ACLU-CT is committed to ending police violence and racism in policing in all forms. In addition to accountability measures, Connecticut must also divest from policing and reinvest in programs that build strong and safe communities. To build an equitable future for all people in Connecticut, policymakers must reduce policing's responsibilities, scale, and tools.

**Police Recruitment Programs**

Sections 1 and 2 establish police recruitment programs in institutions of higher education as well as in high schools. The ACLU-CT does not support initiatives that increase the role of policing in our society, and instead supports the reinvestment of funds from policing into programs that support community strength and health as the means to truly move Connecticut in the right direction. Additionally, there is scant data demonstrating any measurable benefit to the community resulting from police explorer programs. The ACLU-CT, therefore, opposes Sections 1 and 2.

## **Data-Driven Intelligence**

As an organization that fights to protect the privacy rights of all people, the ACLU-CT opposes the proliferation and advancement of surveillance technology used by public safety agencies across the nation and in our own state. The unchecked use of surveillance technology can make our streets less safe, violate people's privacy, chill protestors' rights, and disproportionately hurt people of color, immigrants, and low-income people. Connecticut residents deserve meaningful democratic control over law enforcement surveillance, particularly at a time when the rights of people of color, immigrants, LGBTQ+ people, political activists, religious minorities, and others have been violated by government surveillance nationwide. Rather than expand the use of artificial intelligence in surveillance, legislative safeguards must be put in place to ensure that law enforcement agencies do not violate the constitutional rights of Connecticut residents. The surveillance of social media by law enforcement disproportionately impacts youth of color and raises significant constitutional concerns.<sup>1</sup> Social media surveillance can have a chilling effect on protected First Amendment rights, with particular attention to political speech.<sup>2</sup> In the Fourth Amendment context, when police monitor people without suspicion, it threatens people's privacy and allows for invasive and persistent tracking by police.<sup>3</sup>

## **Stop Sticks**

The ACLU-CT opposes Section 4 of Senate Bill 305, which seeks to unjustifiably expand the use of stop sticks and other tire deflation devices such that a law enforcement officer would no longer need to obtain prior authorization before their use. Police are typically restricted from using stop sticks unless they have received permission from their supervisor or commander.<sup>4</sup> The vague language of Section 4

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<sup>1</sup> Rachel Levinson-Waldman, *Government Monitoring of Social Media: Legal and Policy Challenges*, BRENNAN CTR. JUST. (Aug. 27, 2018), <https://www.brennancenter.org/our-work/research-reports/government-monitoring-social-media-legal-and-policy-challenges>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See *Administration and Operations Manual: Vehicle Pursuits*, DEP'T EMERGENCY SERV. & PUB. PROTECTION (Sept. 6, 2019), available at <https://portal.ct.gov/-/media/DESPP/CSP/files/Transparency/130701-Vehicle-Pursuits.pdf>.

widens the scope of reasons why an officer could use stop sticks without prior authorization to “prevent a crime or reckless driving,” which would conceivably encompass most driving infractions.

### **Qualified Immunity**

Qualified immunity is a significant barrier to holding police civilly liable when they violate people’s constitutional rights. Eliminating qualified immunity entirely can provide a powerful check to police violence and misconduct through civil courts. Police are rarely held criminally liable for uses of force and are similarly protected in civil suits. Section 5 of this bill does the opposite: it attempts to expand Connecticut’s governmental immunity by only permitting instances when an officer acted in a manner evincing of extreme indifference to human life.

A better model for this Committee when it comes to qualified immunity can be found in the New Mexico Civil Rights Act, which eliminates qualified immunity and provides New Mexicans with the ability to recover actual or equitable damages from the state when their rights, privileges, or immunities under the New Mexican Constitution are deprived.<sup>5</sup> At the same time, the New Mexico Civil Rights Act incentivizes government entities to proactively embrace training, oversight, and accountability policies. Rather than expand qualified immunity, this Committee should seek to limit it in favor of measures like those in New Mexico, which permit those deprived of their constitutional rights to hold the government accountable in court.

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<sup>5</sup> See *New Mexico Governor Signs Historic Legislation to End Qualified Immunity*, INNOCENCE PROJECT (2021), available at <https://innocenceproject.org/new-mexico-historic-legislation-to-end-qualified-immunity/>; *New Mexico House Bill (HB) 4, the New Mexico Civil Rights Act*, NAT’L POLICE ACCOUNTABILITY PROJECT (last accessed Mar. 7, 2022), available at <https://www.nlg-npap.org/nm-hb4/#:~:text=Qualified%20immunity%20is%20a%20judicial,when%20they%20break%20the%20law.>

## Consent Searches

The restrictions on consent searches that were put in place two years ago by Public Act 20-1 are being substantially undermined by Section 6 of Senate Bill 305. During the public hearing of the police accountability bill that became Public Act 20-1, the ACLU-CT praised its changes to consent searches as a way to make significant inroads to reducing the harm that police can perpetuate. As we noted at the time, data shows that when police in Connecticut stop cars, they more often search Black and Latinx drivers relative to white drivers, even though they are less likely to find contraband in searches of drivers of color.<sup>6</sup> In addition, stop-and-frisk searches are not only racist, but enable police violence, with police harming people physically in almost 25 percent of these kinds of stops in some states.<sup>7</sup>

Although Sections 21 and 22 of Public Act 20-1 went into effect under two years ago, they are already being undermined by police and politicians unhappy with the changes to increase police accountability. Reports have indicated that police, police unions, and politicians were unhappy about the changes to consent searches immediately before and after the effective date of these sections,<sup>8</sup> but the ACLU-CT has been unable to find any reports after the effective date of specific problems encountered by police in implementing the changes or in negative impacts on public safety. It is clear that police disliked the limits on consent searches from the day

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<sup>6</sup> See Ken Barone, James Fazzalano, Jesse Kalinowski & Matthew B. Ross, *State of Connecticut Traffic Stop Data Analysis and Findings, 2018* (May 2020), at xii, available at <http://www.ctrp3.org/wp-content/uploads/2020/05/2018-Connecticut-Racial-Profilng-Report.pdf>.

<sup>7</sup> Rose Lenehan, *What “Stop-and-Frisk” Really Means: Discrimination and Use of Force*, PRISON POL’Y INITIATIVE (Aug. 17, 2017), available at <https://www.prisonpolicy.org/reports/stopandfrisk.html>.

<sup>8</sup> See, e.g., Kim Healy, *Concerned About the Consequences of the New Police Accountability Law*, CT MIRROR (Sept. 25, 2020), available at <https://ctmirror.org/category/ct-viewpoints/concerned-about-the-consequences-of-thenew-police-accountability-law/>; Fasano Demands Lawmakers Fix Police Accountability Bill in September Special Session, Press Release (Sept. 14, 2020), available at <https://ctsenaterepublicans.com/2020/09/fasano-demandslawmakers-fix-police-accountability-bill-in-september-special-session/>; Jodi Latina, *CT Lawmakers Putting Police Accountability Law Under the Microscope*, WTNH NEWS CHANNEL 8 (Sept. 14, 2020), available at <https://www.wtnh.com/news/politics/ct-lawmakers-putting-police-accountability-law-under-microscope/>; Kimberly Fiorello, *Opinion: CT House Candidate Kimberly Fiorello Points to Consequences of the Police Bill*, STAMFORD ADVOCATE (Sept. 11, 2020), available at <https://www.stamfordadvocate.com/opinion/article/Opinion-CTHouse-candidate-Kimberly-Fiorello-15559340.php>; Josh LaBella, *Fraternal Order of Police Endorses Fairfield Republicans Following Controversial Police Bill*, FAIRFIELD CITIZEN (Oct. 23, 2020), available at <https://www.fairfieldcitizenonline.com/news/article/Fraternal-Order-of-Police-endorses-Fairfield-15669642.php>.

Public Act 20-1 was signed into law and have sought to reverse those changes regardless of the actual impact of the provisions after implementation.

This Committee should not be so quick to undo the changes it put into place in July 2020. The police accountability bill passed by the General Assembly was significant, but not radical. Indeed, it was less far-ranging than one passed in Massachusetts months later and signed into law by that state's Republican governor.<sup>9</sup> Significant work went into the drafting of Public Act 20-1 to ensure that bipartisan viewpoints were considered and included.<sup>10</sup> The changes proposed in Senate Bill 305, though, are a complete gutting of the consent search changes, a blunt instrument rather than a surgical scalpel. In the absence of compelling evidence demonstrating the clear need to revoke all the progress made on consent searches in 2020, this Committee should reject Senate Bill 305.

### **Use of Force**

The ACLU-CT is committed to ensuring that no people ever die at the hands of the police. One step towards eradicating police killings is to make the law clear that police are authorized to use deadly force only in narrow situations, rather than giving the police wide latitude to shoot, beat, Tase, or otherwise injure or kill people. In Connecticut, an improper use of force is one that an officer knows or should know is either unreasonable, excessive, or illegal. This standard is vitally important for both holding police accountable and for setting societal expectations for police conduct. Section 7 of Senate Bill 305 would strip this standard down to only prohibit uses of force that are outright illegal, while permitting unreasonable and excessive uses of force. This will have the unacceptable effect of shielding many police officers for liability for failing to intervene when force is objectively unreasonable or excessive.

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<sup>9</sup> See, e.g., Press Release, *Governor Baker Signs Police Reform Legislation*, (Dec. 31, 2020), available at <https://www.mass.gov/news/governor-baker-signs-police-reform-legislation>.

<sup>10</sup> See Mark Pazniokas, "Zooming" Their Way to a Special Session on Police Reforms, CT MIRROR (July 6, 2020), available at <https://ctmirror.org/2020/07/06/zooming-their-way-to-a-special-session-on-police-reforms/>.

## **Conclusion**

Senate Bill 305 rolls back too many needed accountability provisions and re-expands opportunities for police searches not even two years after the police accountability bill was enacted. Accordingly, the ACLU-CT strongly opposes Senate Bill 305, and urges this Committee to oppose it as well.