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**Written Testimony Opposing House Bill 5341, An Act Revising Various Police Accreditation, Certification, Training, Immunity, Use of Military Grade Equipment and Search and Pursuit Statutes, and Concerning the State Police Shooting Range**

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 House Bill 5341, An Act Revising Various Police Accreditation, Certification, Training, Immunity, Use of Military Grade Equipment and Search and Pursuit Statutes, and Concerning the State Police Shooting Range.

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. Policymakers must reduce policing's responsibilities, scale, and tools to build an equitable future for all people in Connecticut. The ACLU-CT supports initiatives to increase access to destigmatized mental health care and regular behavioral health evaluations for law enforcement officers. No person should face discrimination or penalties for seeking mental health care. Similarly, the ACLU-CT supports explicit calls for training around mental and physical disabilities, but more training is only one small measure that will not prevent police violence alone. Additionally, there are several aspects of the bill that we oppose, outlined below.

## **Malfeasance**

Police employees who resign while under investigation should not be certified by the POST Council, nor should they be hired by any law enforcement unit except upon a hearing that demonstrates that the employee either did not resign during an investigation or was exonerated of the malfeasance. We caution that exonerations based on internal investigations are not widely perceived by the public as being reliable or free from bias, and we encourage the Committee to spell out what, precisely, constitutes an exoneration for purposes of certification. We also note that Section 1(g)(2)(C) contains too narrow of a definition of excessive physical force. Almost no investigations into deadly force conducted pursuant to section 51-277a result in a finding that a police employee's use of deadly force was unjustified. Changing this subparagraph to include either the existing language of "repeated use of excessive force" along with the proposed language of "use of physical force in a manner found not to be justifiable after an investigation conducted to section 51-277a" would capture more of the kinds of police violence that formed the entire impetus for Public Act 20-1.

## **Militarized Policing**

The ACLU-CT believes that highly militarized policing should be defunded in favor of investing those funds into the programs, resources, and services that truly create stable, healthy, and safe communities. Highly militarized police units, like SWAT teams, turn communities into war zones. Neighborhoods are not battlegrounds and no arm of the government should be treating Connecticut residents like wartime enemy combatants. Despite that, militarized units have proliferated across Connecticut<sup>1</sup> and they are now inappropriately deployed frequently.<sup>2</sup> Connecticut

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<sup>1</sup> Radley Balko, *Small-Town SWAT Teams Proliferate in Western Massachusetts*, WASH. POST (Nov. 13, 2017), available at <https://www.washingtonpost.com/news/the-watch/wp/2017/11/13/small-town-swat-teams-proliferate-in-western-massachusetts/>.

<sup>2</sup> Rob Ryser, *Local Police Well-Armed with Surplus Military Equipment*, STAMFORD ADVOCATE (Aug. 30, 2014), available at <https://www.stamfordadvocate.com/local/article/Local-police-well-armed-with-surplus-military-5724525.php>; see also MariAn Gail Brown, *A Costly SWAT Raid Gone Wrong*, CT POST (Feb. 23, 2013), available at <https://www.ctpost.com/local/article/A-costly-SWAT-raid-gone-wrong-4303215.php>.

must divest from this type of policing rather than encouraging it. Militarized police harms communities and people. They should be defunded, not prioritized through sweetheart immunity deals for collaborators. Section 8 of this bill does just that. Accordingly, the ACLU-CT opposes it and urges this Committee to oppose it as well.

### **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 action when there has been a violation of the protections, privileges, and immunities guaranteed under article first of the Connecticut Constitution.

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>3</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>3</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 (HIB) 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.>

## **Stop Sticks**

The ACLU-CT opposes Section 10 of House Bill 5351, 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. Stop sticks are typically restricted to use after permission is granted from the supervisor or commander.<sup>4</sup> The vague language of Section 4 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.

## **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 11 of House Bill 5351. 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 Connecticut vehicular stops results in many more searches of Black and Latinx drivers relative to white drivers, even though searches of drivers of color are much less likely to find criminal activity or contraband.<sup>5</sup> In addition, stop-and-frisk searches are not only racist, but also result in police abuses, with physical force used in almost 25 percent of stops in some states.<sup>6</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

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<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>.

<sup>5</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-Profiling-Report.pdf>.

<sup>6</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>.

unions, and politicians were unhappy about the changes to consent searches immediately before and after the effective date of these sections,<sup>7</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 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 the Republican governor of Massachusetts.<sup>8</sup> Significant work went into the drafting of Public Act 20-1 to ensure that bipartisan viewpoints were considered and included.<sup>9</sup> The changes proposed in House Bill 5351, 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 House Bill 5351.

## **Use of Force**

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<sup>7</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-the-new-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-demands-lawmakers-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>.

<sup>8</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>9</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/>.

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 is the 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 12 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.

### **Conclusion**

House Bill 5351 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 House Bill 5351 and urges this Committee to oppose it as well.