State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

Office of Chief Public Defender
55 Farmington Avenue, 8th Floor
Hartford, Connecticut 06105
(860) 509-6405 Telephone
(860) 509-6495 Fax

Christine Perra Rapillo
Chief Public Defender
Christine.Rapillo@jud.ct.gov

Deborah Del Prete Sullivan
Legal Counsel, Director
deborah.d.sullivan@jud.ct.gov

Testimony of Jennifer Bourn, Chief of Legal Services, Office of Chief Public Defender

Judiciary Committee – March 31, 2021

S. B. 1093 AN ACT CONCERNING CIVILIAN POLICE REVIEW BOARDS, SECURITY GUARDS, BODY-WORN RECORDING EQUIPMENT AND SEARCHES BY POLICE.

The Office of Chief Public Defender strongly opposes Sections 6 and 7 of ***Raised Bill 1093, An Act Concerning Civilian Police Review Boards, Security Guards, Body-Worn Recording Equipment and Searches by Police***, for two main reasons.

First, it is too early to mount any serious challenge to the sound approach and diligent work the legislature did on this very recently. Just last year, in response to the public groundswell of support for reform to address the longstanding problem of racial bias and discrimination in policing, this legislature passed, and Governor Lamont signed into law, H.B. 6004: An Act Concerning Police Accountability.

Among the provisions of the bill was a provision that consent to search was insufficient to justify a warrantless search unless there was probable cause for the search, and a provision prohibiting an officer from requesting consent to search during a stop "solely for a motor vehicle violation." *See*, General Statutes §§ 54-33b; 54-33o. These protections recognize and work to mitigate the inherent coerciveness of an interaction between a police officer and a person of color.

These provisions went into effect on October 1, 2020, and thus, have only been in effect for 5-6 months. There can be no good reason why, only 5 months in, we should revisit these issues and change course so dramatically. All of the reasons for adopting these provisions still apply. It's far too early to collect information and weigh any perceived negatives that would justify a change that threatens to undermine and frustrate the intent of the provisions.

Second, the earlier provisions were designed to protect people of color from dangerous and discriminatory policing, and the proposed changes replace those protections with woefully inadequate substitutes. Recent events brought to the fore a national conversation about what people of color – particularly Black and Latinx people – have known for generations: their interactions with police officers

are dangerous and may result in the loss of their life through no fault of their own. They are more likely to be stopped, searched, and suspected of criminal activity simply because of their skin color. During those interactions, they are also more likely to be the victim of the use of force – even, as we have seen all too often, deadly force.

With this dynamic in mind, it is unconscionable to put the person of color in the position of having to respond to an officer's request to search their person or vehicle and to have the audacity to claim that any acquiescence given is the result of a free and voluntary choice. Officers may capitalize on the situation and obtain consent under deeply coercive circumstances to justify and excuse their discriminatory and constitutionally problematic decision-making during the interaction up until that point. The proposed changes to newly-enacted General Statutes §§ 54-33b; 54-33o fail to account for that dynamic and eviscerate the necessary protections from it:

- The proposed change to General Statutes § 54-33b in Section 6 would eliminate the requirement that there must be probable cause to justify any search, even if purportedly consensual. Instead, the standard for purportedly consensual searches would be "reasonable and articulable suspicion" – a standard that is used to justify brief, investigatory detentions and that is not applicable to searches.

  It is also a standard that is problematic. Officers often use a person's nervousness as a marker of reasonable and articulable suspicion of criminal activity. During encounters between law enforcement and a person of color, a person's understandable, police-induced nervousness does not reliably suggest that criminal activity is afoot. The current probable cause standard would require far more than nervousness, as is appropriate.

  Moreover, since reasonable and articulable suspicion is constitutionally required in order to stop somebody to begin with, that standard serves as no prohibition at all to asking anyone stopped for consent to search. If the stop itself is justified, the request for consent and subsequent search will be justified as a matter of course. This really makes the whole provision ineffectual and fails to provide any meaningful protection against the unfair practice of asking for consent to search during coercive and fear-inducing stops.

  Worse still, the proposed language includes a second, even more watered-down option: "that the search is reasonably necessary to further an ongoing law enforcement investigation." It is difficult to imagine a scenario where that would not be true, as any level of suspicion of wrongdoing, including mere hunches, may give rise to an "ongoing law enforcement investigation." Such a standard has no current definition or understanding in the law.

- The proposed change to General Statutes § 54-33o in Section 7 would eliminate the prohibition of asking someone stopped "solely for a motor vehicle violation" for consent to search during that stop. Instead, as in Section 6, "reasonable and articulable suspicion" would justify asking for

consent to search. This change similarly guts any protection that was intended in the newly-enacted § 54-33o. We know that there is racial discrimination in motor vehicle stops, and we know that motor vehicle violations are used as a pretext for investigating other activity for which the officer has insufficient suspicion to justify a search or detention. The prohibition against asking for consent to search under such circumstances is a necessary and entirely appropriate policy to help mitigate the effects of discriminatory policing and to protect vulnerable residents from police abuse.

- The proposed change to General Statutes § 54-33o in Section 7 would also allow an officer to ask a person during a motor vehicle stop for documentation or identification beyond license, registration and insurance where the officer has only a reasonable and articulable suspicion (instead of probable cause) to believe that a felony or misdemeanor has been committed. As with the other proposed changes, this change enables and perpetuates racially discriminatory policing and leaves people of color, particularly Black and Latino people, vulnerable to abusive, harassing, and racially-biased policing.

The Office of Chief Public Defender opposes Sections 6 and 7 of ***Raised Bill 1093*** and urges that no action be taken. Instead this office urges the legislature to allow the recently enacted provisions of the Police Accountability Bill to remain in place for a long enough period of time to meaningfully and accurately gauge their effectiveness before addressing any perceived problems with them.