



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In Opposition to:

Raised Bill No. 5752 An Act Concerning the Investigation of the Use of Deadly Force by Peace Officers

Joint Committee on Judiciary – March 3, 2008

The Division of Criminal Justice opposes H.B. No. 5752, AN ACT CONCERNING THE INVESTIGATION OF THE USE OF DEADLY PHYSICAL FORCE BY PEACE OFFICERS, and would respectfully recommend that the Committee reject this bill. We oppose this bill for a number of reasons. While recognizing the critical need for the thorough, fair and impartial investigations of these matters, we are convinced that the current statute and procedures accomplish that goal.

The current language of General Statutes §51-277a was adopted in 1998 when what is now sub-section (b) was added by Public Act 98-48. This amendment allowed the Chief State's Attorney to designate State's Attorney from a judicial district other than the judicial district in which the use of deadly force occurred to conduct the investigation. It also permits the appointment of a special prosecutor to conduct the investigation when appropriate.

In 1999 an extensive review of the investigation of police shooting investigations was conducted by the Governor's Law Enforcement Council. That council was chaired by then Chief State's Attorney the Honorable John M. Bailey and its membership included, among others, then Lieutenant Governor the Honorable M. Jodi Rell, the Attorney General, the Honorable Richard C. Blumenthal and then United State's Attorney the Honorable Stephen C. Robinson. The full membership list is reproduced as Attachment 1.

The Council met regularly over a seven month period and studied reports from review commissions elsewhere. Extensive public input was received, including testimony or written submissions from survivors of three individuals killed by police bullets. Three Working Groups were established and met extensively. One of these working groups was specifically tasked with reviewing

"Investigative Authority: Jurisdiction and Composition." Its report is attached as Attachment 2. The current Division of Criminal Justice procedure, which is referenced below and reproduced as Attachment 4 is the procedure recommended by that Working Group and adopted by the full Council.

Recommendations #15-17 of the Council's report related to the investigative process. They are reproduced as Attachment 2. In summary the recommendations were:

1. The adoption by the Division of Criminal Justice of a uniform written protocol. This was done on January 1, 2000 and is still in effect. It is reproduced as Attachment 4.
2. The legislature should enact legislation affording subpoena power to prosecutors conducting investigations pursuant to General Statutes §51-277a. This has not yet been accomplished.
3. Wider distribution should be made of the State's Attorney's final report of these investigations. The Division has gone even farther than the distribution recommended and now makes these reports available on the Division's web page. The reports are also routinely distributed to the news media, and members of the public can sign up to automatically receive these reports by e-mail through the "e-alert" feature of the state website, www.ct.gov

During the years since these recommendations were made there has been no reason to believe that the investigations have not been conducted professionally and impartially by the local State's Attorneys. They are familiar with their own communities and are the Chief Law Enforcement Officials within their jurisdictions. On two occasions during this time the local State's Attorney has asked, pursuant to the statute, and for reasons unique to the individual cases, for the appointment of a State's Attorney from another Judicial District to conduct the investigation. In each of those cases the request was granted and the appointment made.

Each of the thirteen State's Attorneys is sworn to do justice. When a conflict of interest, or the legitimate appearance of a conflict, exists they are quick to recognize it and act appropriately. In the absence of such a conflict they remain the best qualified to investigate the police use of deadly force within their Judicial districts.

For the foregoing reasons the **Division of Criminal Justice respectfully recommends the Committee reject this bill.** We stand ready to provide any additional information or to answer any questions the Committee might have. Thank you.

Attachment 1

MEMBERS, GOVERNOR'S LAW ENFORCEMENT COUNCIL

**Honorable John M. Bailey
Chief State's Attorney
Chairman**

**Honorable M. Jodi Rell
Lieutenant Governor**

**Honorable Richard C. Blumenthal
Attorney General**

**Honorable Robert C. Leuba
Chief Court Administrator, Judicial Department**

**Honorable John Armstrong
Commissioner, Department of Correction**

**Dr. Henry C. Lee
Commissioner, Department of Public Safety**

**Dr. H. Wayne Carver, II
Chief Medical Examiner**

**Honorable Stephen C. Robinson
United States Attorney, District of Connecticut**

**Chief Robert Kosienski
President, Connecticut Police Chiefs Association**

**Peter S. Carozza, Jr.
President, Uniformed Professional Fire Fighters of Connecticut**

**Deborah Barrows
Acting Chief, Hartford Police Department
Ad Hoc Member**

Attachment 2

**WORKING GROUP ON
INVESTIGATIVE AUTHORITY:
JURISDICTION AND COMPOSITION**

**REPORT TO THE GOVERNOR'S LAW
ENFORCEMENT COUNCIL
OCTOBER, 1999**

INTRODUCTION

The following report of the Working Group on Investigative Authority in police-involved shootings is the result of a collaborative effort on the part of many in the law enforcement community whose duties bring them into contact, in one form or other, with the investigation or prosecution of police shootings. The Working Group includes representatives of the Division of Criminal Justice, the Connecticut State Police, members of the Connecticut Police Chiefs' Association, the United States Attorney's Office, the Department of Correction, the Uniformed Professional Fire Fighters, the Office of the Chief Medical Examiner, the Attorney General's Office, the Office of the Lieutenant Governor, and the Deputy Chief Court Administrator from the Judicial Department. The views set forth in this report do not necessarily reflect the views of individual members on each point and it is fair to say that there was much discussion and some disagreement on certain points. However, the Report sets forth the majority view of the Working Group and, while not unanimous on every point, the Working Group endeavored to reach a consensus on many issues.

The Working Group began by setting forth in a written Protocol the current procedures in place in the State of Connecticut which occur when there is a police shooting. The Protocol covers investigative as well as prosecutive jurisdiction. The Report then suggests certain modifications to improve upon the current system. The Working Group considered and discussed at length a number of other alternative procedures, some of which are used in other jurisdictions, to determine whether they would bring improvements to the procedures in place in Connecticut. Those alternatives are discussed in Part III of this Report. The Working Group had additional recommendations for the consideration of the Council which are set forth in Section IV of this Report and the Conclusion is contained in Section V.

II. PROTOCOL

The Working Group has developed a written protocol for investigations conducted pursuant to General Statutes § 51-277a into the use of deadly physical force by a police officer which results in death. The protocol is based on a review of the relevant statutes, current practices, and extensive discussion by the group. It is the consensus of the Working Group that there should be a uniform, detailed, written procedure applicable to all State's Attorneys and law enforcement agencies that handle such investigations. Such protocol will help to ensure a thorough, fair and competent investigation is done and a final comprehensive report is prepared by the State's Attorney. The protocol incorporates the policy and practice for the selection of a lead investigative agency and the designation of a State's Attorney to oversee the investigation.

The protocol also details the suggested procedure commencing with the initial preservation of the scene and includes procedures for interviews with witnesses including the involved officer, the collection of evidence, scene reconstruction and the entire investigative process. Also, it requires prompt notification of the incident to the State's Attorney, the Medical Examiner, and the next of kin of the decedent.

Accordingly, consistent with the provisions of § 51-277a, the protocol provides for discretion by the State's Attorney in the designation of the lead investigative agency. It also provides for the coordination of the involved agencies.

The protocol provides criteria with respect to when a State's Attorney should seek to disqualify himself or herself when there may be the appearance of or actual bias. The protocol, in conjunction with the statute permits the Chief State's Attorney to "designate a prosecutorial official from a judicial district other than the judicial district in which the incident occurred" or to appoint a special prosecutor. This is intended to instill public confidence in the integrity of the investigative process.

The protocol further provides that the Office of the Chief State's Attorney shall be notified of the shooting as soon as possible, so that that office can monitor the investigation. Again, this should increase public confidence in the investigative process.

Pursuant to the statute, the State's Attorney must, upon completion of the investigation, submit to the Chief State's Attorney a report addressing: the

circumstances of the incident; whether the officer's use of deadly physical force was appropriate under General Statutes § 53a-22; and any further action to be taken by the Division of Criminal Justice. The written protocol requires that the report should be submitted as soon as is reasonably possible. A reasonable time constraint is necessary, without compromising the investigation, in order to promptly provide information to the decedent's family, the involved officer, the police department, and the public.

The written protocol also supplements the statutory requirements by providing that the Chief State's Attorney shall send a copy of the report to the Police Officer Training and Standards Council for the purpose of reviewing the certification of the involved officer and for training purposes.

After thoroughly discussing and reviewing various alternative investigative procedures, the Working Group believes that the written protocol, in conjunction with the requirements of General Statutes § 51-277a, will provide for the most thorough and fair investigation and determination whether the use of deadly physical force was legally justified. A draft of the written protocol is attached to this report as Appendix A.

III. INVESTIGATIVE SUBPOENA POWER

The Working Group recommends that the investigating State's Attorney or the special prosecutor, if one is appointed, should be afforded investigative subpoena power for investigations pursuant to General Statutes § 51-277a. Members of the Working Group all agreed that the ability of the prosecutor to issue subpoenas for documents and testimony would greatly assist in the investigation of police shootings. The ability to compel the sworn testimony of witnesses is critical in situations where witnesses might not otherwise cooperate in investigative interviews. The ability to question under oath is more likely to accomplish the goal of obtaining truthful statements as well. Where witnesses know that they can be prosecuted for committing perjury if they fail to tell the truth, they are simply more likely to be truthful. The Group discussed the mechanism by which such testimony could be taken, which would include requiring witnesses to appear before a Superior Court Judge to testify under oath upon questioning by State's Attorney or special prosecutor, if one is appointed. Further, subpoenas for documents would be returnable to the Superior Court.

Such authority, when exercised with judicial oversight, would enable the investigating prosecutor to secure all relevant documents and witness statements necessary to conduct a thorough inquiry. Safeguards for the subpoenaed party should be acknowledged and are included in the Working Group draft of proposed legislation for investigatory subpoena power, which is attached hereto as Appendix B. The Working Group recognizes that the implementation of this investigative tool in these cases may warrant further in-depth study as well.

IV. OTHER ALTERNATIVES CONSIDERED

The Working Group discussed a number of alternatives or possible modifications to the current protocol, some of which were raised at the Public Hearing held June 28, 1999 or were proposed by Council Members.

A. Private Investigator(s)

The concept of using a private investigative team was proposed at the Public Hearing held in Hartford at the Legislative Office Building on June 28, 1999. This proposal was discussed and rejected by the Working Group. The consensus of the Working Group was that there were several problems associated with this concept, including: (1) logistical difficulties in responding immediately to a shooting scene; (2) accountability and expertise of private investigators; (3) the public's reaction to and interaction with private investigators who might be seeking to interview witnesses and collect evidence; and (4) how private investigators would be trained and certified. For these reasons, this proposal was not considered feasible.

B. Statewide or Regional Multi-Jurisdictional Team

Some members of the Working Group proposed the possibility of establishing a Statewide or regional multi-jurisdictional team of investigators who could be called on to respond to police shootings and to conduct investigations in such cases. One of the benefits of such a team is that the team would consist of individuals experienced in these investigations. Some of the group members cited the Capitol Region Investigative Support Team ("CRIST") currently in place in the greater Hartford area as a model of what could be established statewide. Although in theory this idea has certain appeal, many members of the Working Group thought this was not a feasible alternative. Difficulties identified included the need for quick response time, and deciding who would make up such a team and who would direct the team.

C. Grand Jury

Another alternative we discussed was the possibility of using the State's "one-person" grand jury system to investigate police shootings. The current system is set forth in General Statutes § 54-47b, *et seq.* and essentially provides for appointment of a Judge of the Superior Court to act as an investigative grand

jury, to hear the testimony of witnesses and make a determination as to whether or not there is probable cause to believe that a crime or crimes have been committed. While State's Attorneys currently have the option of making an application for an investigative grand jury, this step has not been taken often in police shooting investigations to date. The written application must set forth, among other things, the applicant's reasonable belief that the investigation will lead to a finding of probable cause. See General Statutes § 54-47c. Typically, a grand jury is considered a useful investigative tool when witnesses are uncooperative or unwilling to submit to law enforcement interviews. In such instances, the ability to compel their testimony may be crucial to a determination of the facts and circumstances surrounding the shooting. Previously, in many of these matters, witnesses, including the officer involved, have been cooperative with authorities. There is no assurance, however, that there will be continued cooperation. Thus, the one-person grand jury may be requested more frequently in the future.

The one-person grand jury process has been criticized in the past in part because of the length of time these investigations can take. This Working Group, and the Governor's Law Enforcement Council as a whole, has discussed the need for these investigations to be handled as quickly as possible without sacrificing the thoroughness or quality of the investigation. This Working Group believes that this an area where better education and communication with the public is much needed. It appears that the public often does not understand why certain investigations can be lengthy if they are to be done right, and that it is more important to take the time to conduct the investigation properly and better understand what actually happened than to rush an investigation in order to reach a quick conclusion. The one-person grand jury further would not remove one of the key issues identified in this study, that is, the fact that the grand juror's conclusion is solely a finding of probable cause which the State's Attorney for the jurisdiction in which the shooting occurred would then implement by filing charges. The one-person grand jury process differs from the federal grand jury process (and that of many states) whereby the grand jury determines whether probable cause exists to bring the charges and then itself returns a true bill of indictment if probable cause is found. Clearly, however, having the ability to question witnesses under oath could add additional reliable information in these cases. The Working Group concluded that because this is an option currently available to State's Attorneys, it was not necessary or advisable to mandate the use of the one-person grand jury in police shooting investigations.

D. Role of the Chief State's Attorney

The Working Group also considered the role of the Chief State's Attorney in police shooting investigations and prosecutions. Currently, the Chief State's Attorney receives a copy of the report of the State's Attorney when the investigation is complete. The Working Group recommends that the Chief State's Attorney should receive prompt notification upon the occurrence of a police shooting so that an opportunity for discussion regarding prosecutive and investigative jurisdiction can take place in a timely manner. This notification is included in the proposed written investigative protocol. An expanded role of the Chief State's Attorney was discussed and rejected as not falling within the authority of the Chief State's Attorney. If the Council chooses, it could authorize further study to consider whether to recommend a statutory revision to permit a greater role for the Chief State's Attorney, including possible review of the State's Attorney's decision to handle a particular shooting in his or her judicial district.

The current statutory scheme permits "any person" to make a request to the Chief State's Attorney or the Criminal Justice Commission seeking to have the Chief State's Attorney designate a prosecutorial official from another judicial district to conduct the investigation. See General Statutes § 51-277a. Given the breadth of this scheme, the Working Group concluded that broadening that statute was not called for, but that undoubtedly, again, public education was needed to disseminate the information that a review can be requested by anyone, including any member of the public.

With respect to the issue of investigative jurisdiction, the written protocol sets forth that the Connecticut State Police may be called in to conduct forensic and other investigative work. Many years of practice have shown that the Connecticut State Police are appropriately brought in on these investigations on a regular basis. Currently, the State's Attorneys, upon discussion with the local police chief, request that assistance.

It was the consensus of the Working Group that it was not necessary to automatically divest the State's Attorney or local police department in whose jurisdiction the shooting occurred of jurisdiction over the matter. The members of the Working Group recognize the extreme importance of the analysis concerning whether the State's Attorney should be recused or whether the local police department should be recused. These decisions, however, are decisions that the State's Attorneys and police chiefs are called upon to make every day in every investigation, not just police shootings. In the absence of any indication that the State's Attorneys and police chiefs are not properly performing this analysis,

automatic recusal in these cases does not appear warranted without further study.

E. Role of the POST Council (Police Officer Standards and Training)

One matter that the Working Group considered at length was the role of the POST Council. It became clear to the Working Group that this was another area in which education was critically important. The general public appears to be largely unaware of the role of the POST Council in certifying individuals to serve as police officers and in reviewing and revoking that certification if appropriate. Specifically, General Statutes §7-294d(c)(2)(H) provides that the POST Council may revoke certification if "the holder has been found by a law enforcement unit, pursuant to procedures established by such unit, to have used a firearm in an improper manner which resulted in the death or serious physical injury of another person." The Working Group also thought the make up of the POST Council was significant in that it includes among its twenty members five members of the general public and several other appointed members who are not representatives of traditional law enforcement organizations. Additionally, the POST Council reviews and sets standards to meet the evolving needs for law enforcement training.

F. Review Board

A final alternative considered by the Working Group was the creation of a review board which would include various representatives from law enforcement as well as the lay persons. This idea was discussed and rejected as unnecessary in view of the function of the POST Council. The Working Group has added a requirement to the protocol that the final report of the State's Attorney be forwarded to the POST Council. It was also the view of many members that such a Review Board would unnecessarily delay a final determination.

IV. OTHER RECOMMENDATIONS

The Working Group discussed the possibility of making the nature and standards of police training more widely disseminated to the public. Another working group has made specific recommendations on this issue. The Group also discussed whether Correction Officers should be included in General Statutes §51-277a so that the written protocol would apply to investigations of correctional officers acting in the performance of their duties.

V. CONCLUSION

In conclusion, the Working Group would like to thank the Council for the opportunity to seriously consider and propose changes that could improve the current procedures. We believe that having a written protocol in place for such investigations and prosecutions is extremely important to furthering not only law enforcement's understanding and expectations in police shooting investigations, but also the public's understanding of the process. We recommend that the written protocol be regarded as a significant part of the public awareness efforts proposed by the other Working Groups.

Undoubtedly, the topic of investigative authority is one that may benefit from additional study. If the Council decides that further study is appropriate, it may want to consider adding non-law enforcement representatives to the group appointed to conduct that study.

INVESTIGATIVE AUTHORITY WORKING GROUP

AMENDMENT TO REPORT

As a result of its meeting on Friday, November 12, 1999, the working group amends its report to reflect the following:

The Establishment of a Statewide Investigative Review Board for Police Shootings

A final alternative considered and rejected by the Working Group was the creation of a statewide review board composed of either: (1) representatives of law enforcement and the general public; or (2) independent forensic experts and representatives of the community. After careful consideration, the Working Group does not recommend either alternative.

(1) The first type of statewide review board (law enforcement and lay individuals) is not recommended for the following reasons. While inclusion of lay persons at some point in the process is a salutary goal, the criminal investigation is not the appropriate point. Asking lay persons to assess evidence or findings, even in conjunction with forensic experts, will not enhance the criminal investigatory process. The putative contributions of lay persons unfamiliar with forensics cannot be expected to have an impact on the charging decision of the State's Attorney, so it would add nothing to the integrity of the process.

The Working Group believes that the role it recommends for the POST Council will involve lay persons and will provide an additional layer of review for the conduct of the individual officer and the police department. POST comprises representatives of law enforcement and the general public. See Section F in the group report. The Governor, who appoints the members of the POST Council, does so in accordance with General Statutes § 4-9b, which provides that the appointing authority make a good faith effort to ensure that members are qualified and reflect the gender and racial diversity of this state. The working group considered recommending an increase or reconfiguration of the lay membership of POST, but did not reach any resolution. The legislature may, however, want to devote further study to the issue.

(2) The Working Group is not aware of any existing model for a statewide review board composed of forensic experts and lay persons. Thus it appears to be a matter of first impression. The Working Group identified significant flaws inherent in this alternative which offset any potential positive impact.

(A) Assembling and retaining a panel of "independent" forensic experts is impractical because it will delay completion of the investigatory process. Delay in the process has already been recognized as a factor in the public misperception and lack of confidence in the investigation of police shootings.

(B) Utilizing outside forensic experts would not necessarily enhance the perception of fairness or the integrity of the investigation. We cannot assume that forensic experts around the country would be promptly available for participation in the investigatory process here in Connecticut. Instate laboratory or scene-reconstruction experts who are not associated with the state's forensic facilities are likely to be for-profit entities and/or not as skilled as state personnel. Moreover, there is no guarantee that such entities would perform a review without undue delay.

(C) It would be difficult to ensure that lay persons appointed to such a statewide review board are perceived as representing the relevant community. Members of a local community where a police shooting occurs may dispute whether they are actually represented by lay persons who are from elsewhere in the state. It is not feasible to appoint lay persons from each of the 169 cities and towns to any statewide board. Thus lay membership on such a statewide board would likely become a significant political issue.

The practical difficulty in trying to ensure that lay appointments are truly representative of the relevant community is illustrated by the fact that the six fatal police shootings in 1999 occurred in five separate and diverse communities: New Milford, Hartford(2), Meriden, North Branford, and New London.

Nor is it practical to appoint community members on an ad hoc basis from every town, as lay persons unfamiliar with forensics or the rigors of the investigatory process likely would not be able to contribute to the review of findings without instruction. Since on the average there are less than ten police-involved fatal shootings per year in Connecticut, the duty would be sporadic at best, and it would be difficult for lay persons to gain the experience to participate in a meaningful way.

(D) There is no feasible point at which a statewide forensic review board would join the criminal investigation process. Any review board that makes evidentiary findings after the issuance of the State's Attorney's final report would implicate the constitutional and statutory authority of the State's Attorney to conduct the criminal investigation of police-involved shootings. Moreover, it would have no impact on the charging decision of the State's Attorney. Finally, if a review board subsequently disagrees with the charging decision, it would invite criticism of the state's attorney's investigation, thereby further undermining public confidence in the process.

In order to have an impact on the charging decision, such a board would have to review the evidence before it is submitted to the State's Attorney for consideration of criminal charges. But a review board's participation at this point in the process is fraught with difficulties.

First, as noted, there is no precedent for the involvement of lay persons in a criminal investigation. Second, also as noted, requiring the submission of evidence for outside experts to review will likely cause further delay in the investigatory process, which is already a public concern.

Third, there is no support in the Working Group for a legislative mandate that our state's forensic entities, such as the medical examiner's office and the state police laboratory, must regularly submit to review by lay citizens and "outside" experts. Such a requirement would invite challenges to the integrity of our state's forensic facilities, creating difficulties in the prosecution of felony cases throughout the state.

Fourth, requiring outside experts to be called on in every police-involved shooting fatality would necessitate a substantial level of funding and logistical support in order to ensure that those experts can be immediately utilized. This seems costly and impractical. Significantly, such a requirement does not improve upon the present situation, where, if the State's Attorney determines that the forensic evidence warrants further study or that additional investigation must be done, he or she may call on additional consultants or direct that additional testing be done.

Attachment 3

Need for a uniform written investigatory protocol. While the Council finds that the foregoing statutory procedure is sufficient to ensure objectivity in the process, there needs to be a clear, definitive protocol by which the public can assess how the statute is implemented and the fairness of the process. State's Attorneys handling police shootings have generally followed a similar investigative format, but there is no uniform written protocol applicable to the investigation of all police shootings. The absence of a uniform protocol may have contributed to the public's general lack of understanding about how such investigations are conducted. Such a lack of understanding may have fostered speculation about bias or inequity in the process.

A uniform written protocol could not only reduce speculation, but it would allow interested persons and the media to make informed inquiries about the investigative process and whether the proper steps were taken. The adoption of a written protocol, especially if utilized in conjunction with the Public Information Officer recommended in Section IV of this Report, will provide a much-needed focus in the public forum during the State's Attorney's investigation. Members of the working group that studied this issue have drafted a written protocol for State's Attorneys, which is set forth in the Appendix to this Report.

RECOMMENDATION #15

The Division of Criminal Justice should adopt the uniform written protocol, attached hereto, which State's Attorneys shall follow in the investigation of all police shootings pursuant to § 51-277a.

Subpoena power to investigate police shootings. State's Attorneys in Connecticut do not have the power to subpoena testimony and documentary evidence. The Council finds that such subpoena power would assist the State's Attorneys in carrying out their legislative mandate to investigate police-involved shootings. The willing cooperation of a witness is sometimes lacking in these often controversial shooting incidents. The ability to compel the presence and testimony of such witnesses would ensure that the investigation is as thorough as possible.

The Council recognizes that the legislature has heretofore rejected investigatory subpoena power as a tool for prosecutors in criminal investigations. Prior proposals would have afforded the power to prosecutors in all criminal investigations and without judicial oversight. The Council proposes that the issue be reconsidered in the more limited version set forth in the attached draft legislation. The Council's proposal affords the subpoena power only to prosecutors conducting investigations pursuant to General Statutes § 51-277a (police shootings), and requires that a judge

of the Superior Court be present when a subpoenaed witness is questioned and/or subpoenaed documents are turned over to the prosecutor in the course of such investigation.

RECOMMENDATION #16

The legislature should enact legislation affording investigative subpoena power with judicial oversight to prosecutors conducting investigations pursuant to General Statutes § 51-277a. A draft for such legislation is set forth in the Appendix to this report.

Dissemination of the State's Attorney's report. At the conclusion of the investigation of a police shooting, the statute requires the State's Attorney to submit a final written report to the Chief State's Attorney, who then delivers it to city and state officials identified in the statute, including the Governor. This report describes the incident, the evidence, the determination whether or not the shooting was justifiable homicide, and the charging decision. Because the State's Attorney's primary duty is to determine whether or not the shooting constitutes a justifiable homicide, the report does not evaluate the police officer's conduct before and during the shooting in light of applicable departmental policies and procedures. The latter type of non-criminal evaluation is usually done internally by the police officer's department, and the results, as the Council has recommended elsewhere in this report, should be made public.

Community members may not be aware that the State's Attorney's written report containing the results of the investigation in every police shooting is a public record. State and municipal officials should make every effort to ensure that copies of the State's Attorney's report are made available and disseminated to the public.

The Council recommends that a non-criminal evaluation should also be done by the relevant training authority, which could determine whether applicable policies and procedures were followed by the officer who used deadly force, and by the officer's department. This additional layer of review of the conduct of our law enforcement personnel will engender confidence to the process and serve as a mechanism by which law enforcement and members of the community can learn constructively from each incident. In this vein, the affected community should be provided with a copy of the State's Attorney's report and the outcome of the training authority's review.

Attachment 4



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

STATE OF CONNECTICUT DIVISION OF CRIMINAL JUSTICE ADMINISTRATIVE POLICIES AND PROCEDURES OFFICE OF THE CHIEF STATE'S ATTORNEY		
POLICY SUBJECT: PROTOCOL AND PROCEDURE FOR INVESTIGATION OF THE USE OF DEADLY PHYSICAL FORCE PURSUANT TO GENERAL STATUTES § 51-277a	POLICY NUMBER: 00-01	EFFECTIVE DATE: 01/01/00
AUTHORIZED: John M. Bailey, Chief State's Attorney		DATE:

PURPOSE: The purpose of this policy is to set forth the protocol and procedure for the investigation of the use of deadly physical force by a peace officer pursuant to General Statutes §51-277a.

POLICY: The following protocol is promulgated by the Division of Criminal Justice pursuant to General Statutes §51-277a. Such section is captioned "Investigation of the use of deadly physical force by police officers" and reads, in part, as follows:

(a) Whenever a peace officer, in the performance of his duties, uses deadly physical force upon another person and such person dies as a result thereof, the division of criminal justice shall cause an investigation to be made and shall have the responsibility of determining whether the use of deadly physical force by the peace officer was appropriate under section 53a-22. The division shall request the appropriate law enforcement agency to provide such assistance as is necessary to determine the circumstances of the incident.

The appropriate State's Attorney is, pursuant to Division of Criminal Justice policy, charged with overseeing the investigation and making findings pursuant to legal guidelines contained in Section 53a-22. Such section is captioned "Use of physical force in making arrest or preventing escape." More particularly, subsection "c" provides that a peace officer or department of correction officer is:

justified in using deadly physical force upon another person . . . only when he reasonably believed that such is necessary to: (a) Defend himself or a third person from the use or imminent use of deadly physical force; or (2) effect the arrest or prevent the escape from custody of a person he reasonably believes has committed or attempted to commit a felony which involved the infliction or threatened infliction of serious physical injury, and, if, where feasible, he has given warning of his intent to use deadly physical force.

PROTOCOL

The following protocol is promulgated. It applies "Whenever a peace officer, in the performance of his duties, uses deadly physical force upon another person and such person dies as a result thereof, Such protocol should be utilized where death is likely, but has not occurred immediately.

1. The law enforcement agency having primary jurisdiction of the geographical area where the use of force occurred shall have immediate responsibility over controlling and securing the scene.
2. The scene shall be preserved without the removal or relocating of evidential material including motor vehicles, unless such would detract from the evidential value of the material. Medical needs of the victim, if alive, shall be accommodated.
3. The appropriate State's Attorney's Office shall be immediately notified and a member of such office shall promptly respond to the scene and/or police department.
4. Search and seizure issues shall be immediately addressed by involved agencies.
5. The Office of the Chief Medical Examiner shall be notified when death has occurred.
6. Other police agencies which have direct interest in the law enforcement officers involved in the use of force shall be notified.
7. The department having jurisdiction of the geographical area shall contemporaneous to securing the scene, freeze the scene and take names of potential witnesses, note vehicle registration numbers where appropriate and conduct interviews and perform other appropriate investigation activities to the extent that the passage of time would inhibit this function. Such investigative activities shall be under the direction of the State's Attorney's Office. Also, the officer(s) weapon used in the shooting, ammunition and clothing shall be secured without altering the condition of such weapon, unless such is required for the safety of the seizing officer.
8. The State's Attorney or his designee shall, after discussing the situation with the involved agency or agencies, determine which agency or agencies shall be responsible for processing the scene, analyzing evidence and if necessary, reconstructing the event and scene.

9. A ranking officer shall notify the next of kin of the death and the availability of resources and services for a decedent's family.
10. The involved officers should be interviewed separately, as soon as possible. The State's Attorney's representative shall be in charge of the interview process. The police department officer support unit should be notified as per departmental procedure.
11. The Office of the Chief State's Attorney shall be notified of the death as soon as reasonably possible.
12. The State's Attorney's Office shall, pursuant to statute, direct the investigation and request appropriate law enforcement agencies to provide such assistance as necessary to determine the circumstances of the incident.
13. In cases where concurrent investigations are done by more than one law enforcement agency, investigative activities shall be coordinated under the direction of the State's Attorney.
14. News releases by the agency having primary investigative jurisdiction shall be authorized by the State's Attorney.

The State's Attorney is required pursuant to General Statutes §51-277a to file a report with the Chief State's Attorney who shall submit a copy to the head of the police agency and the chief executive officer of the location wherein the death occurred, and thereafter to the Police Officer Standards and Training Council. Every effort will be made to prepare and submit the report as quickly as possible.

It is recognized that a police agency may wish to conduct an internal non-criminal investigation with respect to the circumstances surrounding the use of deadly physical force. Every effort will be made by the State's Attorney to accommodate the needs of the involved department; however, the primary objective is the statutory duty of the State's Attorney pursuant to General Statutes §51-277a.

**PROCEDURE FOR DESIGNATION OF STATE'S ATTORNEY TO CONDUCT
INVESTIGATION PURSUANT TO GENERAL STATUTES §51-277a**

General Statutes §51-277a (b) provides:

(b) In causing such an investigation to be made, the Chief State's Attorney may, as provided in section 51-281, designate a prosecutorial official from a judicial district other than the judicial district in which the incident occurred to conduct the investigation or may, as provided in subsection (a) of section 51-285, appoint a special assistant state's attorney or special deputy

assistant state's attorney to conduct the investigation. If the Chief State's Attorney designates a prosecutorial official from another judicial district or appoints a special prosecutor to conduct the investigation, the Chief State's Attorney shall, upon the request of such prosecutorial official or special prosecutor, appoint a special inspector or special inspectors to assist in such investigation. Any person may make a written request to the Chief State's Attorney or the Criminal Justice Commission requesting that the Chief State's Attorney so designate a prosecutorial official from another judicial district or appoint a special prosecutor to conduct the investigation.

- A. It is the policy of the Division of Criminal Justice that the State's Attorney for the Judicial District wherein the shooting takes place shall have the exclusive responsibility subject to the provisions of General Statutes §51-277a to oversee such investigation unless such official requests of the Chief State's Attorney as soon as reasonably possible that he or she be relieved of such responsibility. Reasons for such request include but are not limited to:
1. The appearance of a conflict of interest by the State's Attorney or staff due to a special relationship to the person believed to have committed the shooting, the victim or other immediately involved party, or the location of the shooting;
 2. A member of the State's Attorney's office is involved in the shooting;
 3. Other reasons for which there is good cause.
- B. The Office of the Chief State's Attorney will, when a State's Attorney seeks disqualification, designate a prosecutorial official from another judicial district or a special prosecutor to conduct the investigation and prepare and file a report as required by statute.
- C. In the event that good cause is demonstrated to the Chief State's Attorney that each and every State's Attorney should be disqualified, the Office of the Chief State's Attorney may assume responsibility for conducting the investigation and filing a report.