



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

Proposed S.B. No. 652 AN ACT CONCERNING THE INVESTIGATION OF THE USE OF DEADLY FORCE BY A PEACE OFFICER THAT RESULTS IN THE DEATH OF A PERSON

S.B. No. 1109 (RAISED) AN ACT CONCERNING EXCESSIVE USE OF FORCE

JOINT COMMITTEE ON JUDICIARY
March 20, 2015

The Division of Criminal Justice is acutely aware of the concerns that have arisen concerning the use of deadly force by police officers. Pursuant to Section 51-277a of the General Statutes, it is the Division of Criminal Justice that is ultimately responsible for the investigation of any incident of deadly force by a police officer that results in the death of an individual. This responsibility ultimately finds its origin in the constitutional obligation imposed by Article XXIII of the Amendments to the Constitution of the State of Connecticut establishing the primacy of the Division of Criminal Justice in the investigation and prosecution of all criminal matters. Much of the investigative work is undertaken by the police, most often the Connecticut State Police, but the final determination of whether the use of force is justified rests with the Division of Criminal Justice, generally the State's Attorney for the Judicial District where the use of deadly force occurs.

The State's Attorneys take this responsibility very seriously. They have conducted painstaking investigations of all incidents of the use of deadly force resulting in the loss of human life. These investigations are documented in thorough reports, which the Division distributes to public via the news media and also makes available on our website (www.ct.gov/csao). Per Section 51-277a, the reports are also delivered directly to the agency employing the officer or officers involved in the use of deadly force and to the chief executive officer of the community where such use of force occurred. Our website currently includes reports on virtually all investigations completed in the past decade. We would invite the Committee (and the public) to review these reports to become better acquainted with the nature of the incidents involved and the subsequent investigation and findings.

The State's Attorney must not only make a finding as to the circumstances of the incident, but also must make "a determination of whether the use of such deadly physical force by the police officer was appropriate (reasonable)" under Section 53a-22 of the General Statutes, and a determination as to "any future action to be taken by the Division of Criminal Justice as a result

of the incident." Section 53a-22(c) permits a police officer to use deadly physical force upon another person when the officer reasonably believes such to be necessary to defend himself/herself or a third person from the use or imminent use of deadly physical force.

The test to determine reasonableness is both subjective and objective. First, the officer must believe that the use of deadly force is necessary to defend himself/herself or another from the imminent use of deadly physical force. Second, that belief must be objectively reasonable. See *State v. Smith*, 73 Conn. App. 173, cert. den. 262 Conn. 923 (2002). The test is not whether it was in fact necessary for the officer to use deadly physical force in order to defend against the imminent use of deadly physical force. The test is whether the officer believed it was necessary to use deadly physical force and whether such belief was objectively reasonable, based on the facts and circumstances known to the police officer at the time the decision to use deadly force was made. See *State v. Silveira*, 198 Conn. 454 (1986), *State v. Adams*, 52 Conn. App. 643 (1999).

The United States Supreme Court has explained this test in a civil rights case: "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance of the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving---about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386 (1989).

Some months ago the Division initiated its own review of the policies and procedures governing these investigations. As a result of this review, the State's Attorneys have unanimously endorsed the adoption of a formal policy for the Division of Criminal Justice regarding the investigation of the use of deadly force by peace officers and the reporting of the deaths of any individual while in police custody. The policy is as follows:

It is the policy of the Division of Criminal Justice that police departments shall immediately notify the State's Attorney of the judicial district in which any death that occurs to a person in police custody or that appears to have resulted from the actions of a police officer.

It is further the policy of the Division of Criminal Justice that the Division will investigate any death that is determined to have been caused by a police officer's use of force. In such cases, the State's Attorney's Office in the judicial district in which the death occurred may respond to the scene and may provide immediate assistance to the investigating agency. Within a reasonable time thereafter, however, the Chief State's Attorney shall assign a State's Attorney from a judicial district other than the one in which the death occurred to supervise the investigation and to determine whether criminal charges shall be pursued.

It is our belief that while the current system is sufficient in terms of assuring complete and impartial investigations, we must eliminate even the perception of the possibility of a conflict of interest. It is for this reason that the Division has adopted the policy requiring that the

investigation be conducted by a State's Attorney from a Judicial District other than that where the incident occurred. Although the current statute already gives the Chief State's Attorney the authority to effect such a transfer or to appoint a special prosecutor, this has rarely occurred. To the best of our knowledge, in all cases where an investigation has been transferred, it has been at the request of the State's Attorney for the Judicial District where the incident occurred. In most cases responsibility for these investigations has remained with the State's Attorney for the Judicial District where the incident occurred, who is most familiar with the district and readily available to respond with the immediacy required for a crime scene investigation. Again, however, the State's Attorneys in having reviewed this system have unanimously concluded that these investigations should be conducted by another State's Attorney to avoid even the appearance of the potential for a conflict of interest.

The policy adopted by the State's Attorneys for the Division of Criminal Justice is consistent with the purpose of Proposed S.B. No. 652, An Act Concerning the Investigation of the Use of Deadly Force by a Peace Officer that Results in the Death of a Person. Accordingly the Division would respectfully recommend the Committee take NO ACTION on S.B. No. 652 as the concept of the bill is already the official state policy.

With regard to S.B. No. 1109, An Act Concerning the Excessive Use of Force, the Division strongly supports those sections of the bill providing for additional training for police officers and to promote the recruitment and retention of minority police officers. Training is the single most important action that can be taken to better prepare law enforcement officers to respond to incidents in which their lives and the lives of others are put in danger. Anecdotal evidence would include that many incidents involving the use of deadly force (and less than deadly force) involve individuals who have mental health issues. Some progress has been made in providing training to officers to "de-escalate" such situations but more is needed. We would call your attention to the work of the Crisis Intervention Team in this area. If there is one single area that would best contribute to reducing incidents involving the use of deadly physical force it is training.

With regard to Section 2 of the bill, the Division would recommend the Committee to proceed with caution in this area. While requiring the use of "body cameras" by all police officers certainly could have some advantages, it also raises several concerns beyond the obvious fiscal impact of requiring police agencies to obtain such recording equipment and the capacity to store the voluminous amount of recorded material that would be produced in the course of even a routine day's business. The universal use of body cameras by all law enforcement officers also raises significant privacy concerns with regard to who and what has been recorded in the course of a police officer's work, i.e., the victim or victims of a crime, their homes or other surroundings and witnesses or innocent bystanders who have no involvement in the incident. While many questions arise, no answers are provided in S.B. No. 1109.

The Division also would respectfully oppose Section 4 of the bill, which would expand the requirement for a mandatory investigation of all uses of physical force resulting in the death of an individual. The Division believes this is unnecessary since the State's Attorneys already review such incidents and determine when further more-detailed investigation is warranted. For example, State's Attorneys have produced detailed reports in incidents where deaths have

occurred following the use by police of electronic defense weapons (i.e., “stun guns”), even though such devices are not by statutory definition a dangerous weapon. Further, as noted previously, Division policy requires police to report to the State’s Attorney the death of any individual while in custody. This requirement will facilitate the appropriate review and determination of whether further investigation is warranted. The Division would further note that additional study is already under way with regard to “stun guns” as a result of the enactment of Public Act 14-149, which requires the Connecticut State Police and municipal police departments to adopt policies on the use of electronic defense weapons and to report annually on the use of such devices.

The Division also must respectfully oppose the provision of Section 4 to require the appointment of a special assistant state’s attorney or special deputy assistant state’s attorney (i.e., a “special prosecutor”) to conduct the investigation into any use of physical force, deadly or otherwise, that results in death. Again, we would note that the Chief State’s Attorney has long had such authority (by statute, since at least 1998) but to our knowledge has never found reason to exercise it. To require a special prosecutor in all cases raises practical problems, such as who would respond to the immediate crime scene and address immediate needs, such as producing necessary search warrant applications and the like. By the provisions of the bill itself the State’s Attorney would conceivably be prohibited from such involvement. It is also inconceivable that a special prosecutor would be appointed with the immediacy needed at the scene of the incident, which must be treated and processed as a crime scene. As a result, the net impact of this change would seriously hinder law enforcement efforts during the crucial, initial stages of these investigations and constitute a major step backward for Connecticut.

It also must be noted that as is the case with many facets of life, oftentimes the correct decision is the most difficult decision. The bill is unclear as to with whom the responsibility for prosecution would rest if a special prosecutor were to find probable cause for an arrest. As the Committee knows well, a finding of probable cause to bring a charge is by no means a guarantee of guilt beyond a reasonable doubt or the ability to prove that charge beyond a reasonable doubt. Each incident must be examined on its merit and decisions made without regard to possible political considerations or public clamor. The reality is that the decision not to prosecute is quite often the more difficult decision to make since, quite frankly, it is easy to say that you are just going “to leave it up to a jury.” The State’s Attorneys – and all other prosecutors – are sworn officers who take an oath to defend the Constitution and enforce the law. The State’s Attorneys have shown no reluctance to prosecute police officers for criminal violations when the facts justify prosecution. The Constitution and statutes places the responsibility to make the right decision with the prosecutor, and we accept that responsibility when we take our oath. Accordingly, the Division would respectfully recommend the Committee at a minimum deletes Section 4 of the bill should the Committee decide to move forward with the provisions promoting better training of police officers and retention and recruitment of minority officers.

In conclusion, the Division of Criminal Justice wishes to express its appreciation to the Committee for affording this opportunity to provide input on this important issue. We would be happy to provide any additional information the Committee might require or to answer any questions that you might have.