



House of Representatives

General Assembly

File No. 221

January Session, 2017

House Bill No. 6663

House of Representatives, March 27, 2017

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING POLICE MISCONDUCT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2017*) No collective bargaining
2 agreement entered into on or after July 1, 2017, shall contain any
3 provision that limits the application of the provisions of section 51-
4 277a of the general statutes, as amended by this act, to any peace
5 officer, as defined in section 53a-3 of the general statutes.

6 Sec. 2. Section 51-277a of the general statutes is repealed and the
7 following is substituted in lieu thereof (*Effective July 1, 2017*):

8 (a) Whenever a peace officer, in the performance of such officer's
9 duties, uses physical force upon another person, [and such person dies
10 as a result thereof,] the Division of Criminal Justice shall cause an
11 investigation to be [made] completed not later than five business days
12 after such use of physical force and shall have the responsibility of
13 determining, based upon a preponderance of the evidence, whether
14 the use of physical force by the peace officer was appropriate under

15 section 53a-22. The division shall request (1) the [appropriate]
16 employing law enforcement agency to provide all information in its
17 possession relevant to such use of physical force, and (2) such
18 assistance as is necessary from any appropriate law enforcement
19 agency, other than the employing law enforcement agency, to
20 determine the circumstances of the incident.

21 (b) In causing such an investigation to be made, the Chief State's
22 Attorney shall, (1) as provided in section 51-281, designate a
23 prosecutorial official from a judicial district other than the judicial
24 district in which the incident occurred to conduct the investigation, or
25 (2) as provided in subsection (a) of section 51-285, appoint a special
26 assistant state's attorney or special deputy assistant state's attorney to
27 conduct the investigation. The Chief State's Attorney [shall] may, upon
28 the request of such prosecutorial official or special prosecutor, appoint
29 a special inspector or special inspectors to assist in such investigation.

30 (c) Upon the conclusion of the investigation of the incident, the
31 division shall file a report with the Chief State's Attorney which shall
32 contain the following: (1) The circumstances of the incident, (2) a
33 determination of whether the use of physical force by the peace officer
34 was appropriate under section 53a-22, and (3) any future action to be
35 taken by the Division of Criminal Justice as a result of the incident. The
36 Chief State's Attorney shall provide a copy of the report to the chief
37 executive officer of the municipality in which the incident occurred
38 and to the Commissioner of Emergency Services and Public Protection
39 or the chief of police of such municipality, as the case may be, and shall
40 contemporaneously make such report available to the public.

41 (d) If the division determines that the use of physical force was not
42 appropriate under section 53a-22, the peace officer shall be
43 immediately suspended without pay by the appropriate law
44 enforcement agency until the conclusion of any further proceedings
45 involving such incident.

46 (e) Notwithstanding any provision of the general statutes, on or
47 after July 1, 2017, if any peace officer is convicted of or pleads guilty or

48 nolo contendere to any (1) inappropriate use of physical force in
49 violation of section 53a-22, or (2) crime of violence involving the
50 unlawful use or threatened use of physical force under any other
51 provision of the general statutes related to such peace officer's
52 employment, the appropriate law enforcement agency shall
53 immediately terminate such peace officer's employment.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2017</i>	New section
Sec. 2	<i>July 1, 2017</i>	51-277a

LAB *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Criminal Justice, Div.	GF - Cost	4.3 million	4.3 million
State Comptroller - Fringe Benefits ¹	GF - Cost	1.3 million	1.3 million
Criminal Justice, Div.; Judicial Dept.; Dept. of Administrative Services; Correction, Dept.; Department of Energy and Environmental Protection; Department of Emergency Services and Public Protection	GF - Potential Savings	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 18 \$	FY 19 \$
Municipal Police Departments	Potential Savings	See Below	See Below

Explanation

The bill requires that the Division of Criminal Justice investigate all cases where a peace officer uses physical force and results in a cost of approximately \$5.6 million. It is estimated that the bill will result in at least 1,000² additional investigations annually. As the bill requires all investigations to be done within five business days, the Division of

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.08% of payroll in FY 18 and FY 19.

² These cases involve the use of TASERS, nightsticks, pepper spray, manual restraint, guns, etc.

Criminal Justice would require 49 additional staff to conduct the investigations at a cost of \$3.4 million (additional fringe benefits of \$1.3 million) for salary and \$835,000 in Other Expenses. Each of the judicial district would require a prosecutor to supervise the investigations while the five largest JDs would each require four additional inspectors and the eight smaller JDs would require two additional inspectors.

To the extent that a state or municipal employee is suspended without pay under the investigation requirements, the bill results in potential savings as it is current practice to suspend such employees with pay. In addition, the bill requires the termination of employment if the employee is convicted or pleads guilty or nolo contendere, and results in potential savings.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 6663*****AN ACT CONCERNING POLICE MISCONDUCT.*****SUMMARY**

Under current law, whenever a peace officer, in performing the officer's duties, uses physical force that results in another person's death, the Division of Criminal Justice must investigate and determine whether the officer's use of force was appropriate under the law that allows the use of physical force when making an arrest or preventing escape. This bill expands the investigation requirement to include any incident where an officer uses physical force, regardless of whether it resulted in a death.

If the division determines the use of force was not appropriate under the law, the bill requires the officer to be immediately suspended without pay until any further proceedings involving the incident conclude. The bill requires the officer's employment to be terminated if the officer is convicted of, or pleads guilty or nolo contendere (no contest) to, any (1) inappropriate use of physical force or (2) violent crime involving the unlawful use or threatened use of physical force under any state law related to the officer's employment.

The bill also makes several changes to the investigation process, such as establishing a five-day deadline for investigations to be completed and requiring the division's report on the incident to be made publicly available.

Lastly, the bill prohibits any collective bargaining agreement entered into on or after July 1, 2017 from limiting the bill's provisions to any peace officer.

(To the extent that the bill's requirements for a suspension without

pay or termination conflict with pre-existing collective bargaining agreements, it could be subject to claims that it violates the Constitution's contracts clause (art. 1, § 10), which prohibits the states from passing laws that impair the obligation of contracts.)

EFFECTIVE DATE: July 1, 2017

INVESTIGATION PROCESS

The bill requires investigations, for both lethal and non-lethal uses of physical force, to be completed within five business days after the incident. It also requires the division's determination to be based on a preponderance of the evidence.

Current law requires the division to ask the appropriate law enforcement agency to provide the assistance needed to determine the incident's circumstances. The bill instead requires the division to ask (1) the employing law enforcement agency to provide all information in its possession relevant to the incident and (2) for assistance from any other appropriate law enforcement agency needed to determine the incident's circumstances. It also allows, rather than requires, the Chief State's Attorney, upon request from the prosecutor conducting the investigation, to request special inspectors to assist with the investigation.

The bill requires the Chief State's Attorney to make the report on the incident publicly available when, as required by law, he provides it to the chief executive officer of the municipality where the incident occurred and the municipality's police chief, or the Commissioner of Emergency Services and Public Protection, as applicable.

PEACE OFFICERS

Under the bill, "peace officers" include the following:

1. members of the State Police;
2. members of an organized local police department;
3. chief inspectors or inspectors in the Division of Criminal Justice;

4. state marshals exercising authority granted under any provision of the general statutes;
5. judicial marshals performing their duties;
6. conservation officers or special conservation officers;
7. constables performing criminal law enforcement duties;
8. special police officers appointed for (a) state buildings or lands, (b) investigating public assistance fraud, or (c) utility and transportation companies;
9. adult probation officers;
10. Department of Correction officials authorized to make arrests in a correctional institution or facility;
11. investigators in the investigations unit of the office of the State Treasurer;
12. U.S. marshals or deputy marshals;
13. special agents of the federal government authorized to enforce federal food and drug laws; and
14. members of a law enforcement unit of the Mashantucket Pequot Tribe or the Mohegan Tribe of Indians of Connecticut.

(Because federal employees and members of the Indian tribes' law enforcement units are covered by federal, not by state, collective bargaining laws, the bill's provisions regarding their collective bargaining agreements would presumably be preempted by federal law. Additionally, the state presumably cannot require federal employees or members of the Indian Tribes' law enforcement units to be suspended without pay or terminated, as required under the bill.)

BACKGROUND

Related Bill

HB 6662, favorably reported by the Labor and Public Employees Committee, allows a state court to revoke or reduce a peace officer's pension if the officer is convicted of, or pleads guilty or no contest to, any crime related to the officer's inappropriate use of physical force that violates the law specifying when officers can use physical force and deadly physical force. It also requires a peace officer to be immediately suspended without pay whenever the Division of Criminal Justice investigates the officer's use of deadly physical force.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 7 Nay 6 (03/09/2017)