



Senate

General Assembly

File No. 69

February Session, 2022

Substitute Senate Bill No. 161

Senate, March 22, 2022

The Committee on Public Safety and Security reported through SEN. OSTEN of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE PROHIBITION AGAINST HIRING POLICE OFFICERS DISMISSED FOR MALFEASANCE OR WHO RESIGNED OR RETIRED WHILE UNDER INVESTIGATION.

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

1 Section 1. Section 7-291c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2022*):

3 (a) No law enforcement unit, as defined in section 7-294a, shall hire
4 any person as a police officer, as defined in said section, [7-294a,] who
5 was previously employed as a police officer by such unit or in any other
6 jurisdiction and who (1) was dismissed for malfeasance or other serious
7 misconduct calling into question such person's fitness to serve as a
8 police officer; or (2) resigned or retired from such officer's position while
9 under investigation for such malfeasance or other serious misconduct.

10 (b) Any law enforcement unit that has knowledge that any former
11 police officer of such unit who (1) (A) was dismissed for malfeasance or
12 other serious misconduct, or (B) resigned or retired from such officer's

13 position while under investigation for such malfeasance or other serious
14 misconduct; and (2) is an applicant for the position of police officer with
15 any other law enforcement unit, shall inform such other unit and the
16 Police Officer Standards and Training Council established under section
17 7-294b of such dismissal, resignation or retirement.

18 (c) The Police Officer Standards and Training Council shall not certify
19 any police officer who (1) was dismissed for malfeasance or other
20 serious misconduct calling into question such person's fitness to serve
21 as a police officer, or (2) resigned or retired from such officer's position
22 while under investigation for such malfeasance or other serious
23 misconduct.

24 [(c)] (d) The provisions of this section shall not apply to any police
25 officer who is exonerated of each allegation against such officer of such
26 malfeasance or other serious misconduct.

27 (e) The Police Officer Standards and Training Council may afford any
28 law enforcement unit prohibited from hiring a person as a police officer
29 pursuant to subsection (a) of this section and any police officer denied
30 certification pursuant to subsection (c) of this section an opportunity for
31 a hearing in accordance with the provisions of chapter 54 to determine
32 whether (1) the police officer was dismissed for such malfeasance or
33 other serious misconduct, (2) the police officer resigned or retired while
34 under investigation for such malfeasance or other serious misconduct,
35 (3) the police officer was exonerated of each allegation of such
36 malfeasance or other serious misconduct, or (4) the conduct at issue
37 constituted malfeasance or serious misconduct.

38 (f) Nothing in this section shall preclude the Police Officer Standards
39 and Training Council from suspending, cancelling or revoking the
40 certification of a police officer pursuant to subsection (c) of section 7-
41 294d.

42 [(d)] (g) For purposes of this section, (1) "malfeasance" means the
43 commonly approved usage of "malfeasance"; and (2) "serious
44 misconduct" means improper or illegal actions taken by a police officer

45 in connection with such officer's official duties that could result in a
46 miscarriage of justice, [or] discrimination or a gross deviation of the
47 generally accepted standards and behavior of a police officer, including,
48 but not limited to, (A) a conviction of a felony, (B) fabrication or
49 falsification of evidence, (C) [repeated] use of [excessive] physical force
50 in a manner found to not be justifiable after an investigation conducted
51 pursuant to section 51-277a, (D) acceptance of a bribe, [or] (E) the
52 commission of fraud, (F) failure to intervene or stop the use of force by
53 another police officer that was found to not be justifiable after an
54 investigation conducted pursuant to section 51-277a, or (G) intimidation
55 or harassment causing injury based upon actual or perceived protected
56 class membership, identity or expression.

57 Sec. 2. (NEW) (*Effective July 1, 2022*) (a) If a police officer, as defined
58 in section 7-294a of the general statutes, resigns or retires from
59 employment with a law enforcement unit, as defined in section 7-294a
60 of the general statutes, while such unit is conducting an investigation of
61 such police officer for malfeasance or other serious misconduct calling
62 into question such person's fitness to serve as a police officer, such unit
63 shall complete the investigation of such officer. Such unit shall attempt
64 to interview such officer as part of the investigation and, if such officer
65 does not respond or refuses to participate in the interview, such unit
66 shall document such nonresponse or refusal in the investigation file and
67 shall complete the investigation without interviewing such officer.

68 (b) A law enforcement unit that has conducted an investigation
69 described in subsection (a) of this section shall provide the investigation
70 file to the Police Officer Standards and Training Council, when
71 requested by the council for purposes of a hearing to be held pursuant
72 to subsection (e) of section 7-291c of the general statutes, as amended by
73 this act.

74 Sec. 3. Section 7-294e of the general statutes is repealed and the
75 following is substituted in lieu thereof (*Effective July 1, 2022*):

76 (a) Notwithstanding the provisions of any general statute or special
77 act or local law, ordinance or charter, [to the contrary,] each police

78 officer shall forfeit such officer's appointment and position unless
 79 recertified by the council according to procedures and within the time
 80 frame established by the council. Any sworn member of the Division of
 81 State Police within the Department of Emergency Services and Public
 82 Protection who is deemed certified under subsection (d) of section 7-
 83 294d is required to apply for recertification by the council within the
 84 time frame established by the council, unless such member retires from
 85 said division within such time frame.

86 (b) The Police Officer Standards and Training Council may
 87 recommend to the Commissioner of Emergency Services and Public
 88 Protection any regulations it deems necessary to carry out the
 89 provisions of section 7-291c, as amended by this act, 7-294a, subsection
 90 (a) of section 7-294b, sections 7-294c and 7-294d and this section, giving
 91 due consideration to the varying factors and special requirements of law
 92 enforcement units.

93 (c) The Commissioner of Emergency Services and Public Protection
 94 may adopt regulations, in accordance with the provisions of chapter 54,
 95 as are necessary to implement the provisions of section 7-291c, as
 96 amended by this act, 7-294a, subsection (a) of section 7-294b, sections 7-
 97 294c and 7-294d and this section. Such regulations shall be binding upon
 98 all law enforcement units.

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|---|--------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | July 1, 2022 | 7-291c |
| Sec. 2 | July 1, 2022 | New section |
| Sec. 3 | July 1, 2022 | 7-294e |

PS *Joint Favorable Subst.*

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: None

Municipal Impact: None

Explanation

The bill prohibits hiring police officers who were dismissed for malfeasance or resigned or retired while under investigation resulting in no fiscal impact to the state.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 161*****AN ACT CONCERNING THE PROHIBITION AGAINST HIRING POLICE OFFICERS DISMISSED FOR MALFEASANCE OR WHO RESIGNED OR RETIRED WHILE UNDER INVESTIGATION.*****SUMMARY**

Existing law prohibits a law enforcement unit from hiring a police officer who was previously employed by the unit or in another jurisdiction and (1) was dismissed for malfeasance or serious misconduct calling into question his or her fitness to serve as an officer or (2) resigned or retired during an investigation into such conduct. This bill:

1. expressly prohibits the Police Office Standards and Training Council (POST) from certifying these officers;
2. allows POST to hold hearings for units and officers to determine whether a specific hiring or certification denial is improper; and
3. expands the type of actions considered "serious misconduct," principally to include taking improper or illegal actions that could result in a gross deviation from generally accepted police officer standards and behavior.

Existing law requires a unit, if it knows that such an officer is applying to another unit, to inform POST and the other unit about the officer's dismissal, resignation, or retirement. By expanding the definition of "serious misconduct," the bill correspondingly expands when these units must report to POST and other units.

Under existing law and the bill, the hiring, certification, and reporting provisions do not apply to officers exonerated from malfeasance or serious misconduct allegations. Additionally, the bill does not preclude

POST from suspending, cancelling, or revoking an officer's certification based on its existing statutory authority.

Under the bill, if an officer resigns or retires while his or her unit is investigating whether he or she committed certain malfeasance or other serious misconduct, the unit must (1) complete its investigation, (2) attempt to interview the officer, and (3) provide its investigation file to POST upon request.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2022

POLICE OFFICER HIRING AND CERTIFICATION (§ 1)

Officer Certification

The bill explicitly prohibits POST from certifying any officer who (1) was dismissed for malfeasance or other serious misconduct, as defined below, or (2) resigned or retired during an investigation for such conduct. Under existing law, unchanged by the bill, "malfeasance" has its common meaning (i.e., a wrongful, unlawful, or dishonest act).

By law, POST enforces professional standards for certifying and decertifying police officers, among other duties. Existing law allows POST to cancel or revoke a police officer's certification for several actions included in the below definition of serious misconduct, such as fraud, document falsification, or felony convictions (CGS § 7-294d). Additionally, under existing POST policy, a finding by a law enforcement unit that a person was terminated, dismissed, resigned, or retired under the law regarding malfeasance and other serious misconduct (i.e., Section 1 of the bill) is also grounds for suspension or revocation. This policy also requires units to report those findings to POST (POST General Notice 20-09).

POST Hearings

The bill allows POST to hold a hearing, in accordance with the Uniform Administrative Procedure Act (UAPA), for any (1) law enforcement unit prohibited from hiring a person by the provisions

described above and (2) police officer denied certification by the bill. The hearing must be to determine whether the:

1. police officer was dismissed for malfeasance or other serious misconduct,
2. police officer resigned or retired while under investigation for malfeasance or other serious misconduct,
3. police officer was exonerated of each allegation of malfeasance or other serious misconduct, or
4. conduct at issue constituted malfeasance or serious misconduct.

Under existing law, unchanged by the bill, before cancelling or revoking an officer's certification, POST must (1) give the officer notice and an adequate opportunity for a hearing and (2) make a finding of the improper conduct by clear and convincing evidence. Any hearing to suspend, cancel, or revoke a certification must be conducted in accordance with the UAPA, and any certificate holder aggrieved by a POST decision may appeal to court under the UAPA (CGS § 7-294d).

Serious Misconduct

Under current law, "serious misconduct" means an officer's improper or illegal actions connected with official duties that could cause a miscarriage of justice or discrimination, such as a felony conviction, evidence fabrication, repeated use of excessive force, bribe acceptance, or fraud.

The bill expands the definition of "serious misconduct" to include an officer's improper or illegal actions connected with official duties that could cause a gross deviation from generally accepted police officer standards and behavior. It also expands the type of actions that explicitly constitute serious misconduct to include:

1. evidence falsification;
2. intimidation or harassment causing injury based upon actual or

perceived protected class membership, identity, or expression;
and

3. failure to intervene or stop the use of force by another officer found to be unjustifiable after a statutory investigation by the Office of the Inspector General (OIG).

Additionally, the bill changes when a police officer’s use of force rises to “serious misconduct.” Under current law, “serious misconduct” includes repeated use of excessive force. Under the bill, it instead includes the use of physical force found to be unjustifiable after a statutory investigation by OIG. (By law, these OIG investigations are limited to circumstances in which a person dies as a result of an officer’s use of force (CGS § 51-277a).)

UNIT INVESTIGATIONS INTO OFFICER CONDUCT (§ 2)

Under the bill, if an officer resigns or retires while his or her unit is investigating whether he or she committed malfeasance or other serious misconduct calling into question his or her fitness to serve as an officer, the unit must complete its investigation.

The bill also requires the unit to attempt to interview the officer as part of its investigation and, if the officer does not respond or refuses to be interviewed, the unit must document the officer’s nonresponse or refusal in its investigation file and complete the investigation without interviewing the officer.

Additionally, the bill requires the unit to provide its investigation file to POST when requested by the council for the purposes of the above hearing process.

COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable Substitute

Yea 18 Nay 5 (03/08/2022)