

Revised Questions for CIRMA
Nov. 24, 2020

Pursuant to Public Act No. 20-1 (the “*Act*”) passed by the State of Connecticut (“*Connecticut*”) General Assembly, the Police Accountability Task Force (“*Task Force*”) studying police transparency and accountability, established by Public Act 19-90, Section 6, has been expressly tasked with examining:

- (i) the merits and feasibility of requiring police officers to procure and maintain professional liability insurance (“*PL Insurance*”) as a condition of employment;
- (ii) the merits and feasibility of requiring a municipality to maintain PL Insurance on behalf of its police officers; and
- (iii) the impact that Section 41 of the Act (which modifies the scope of the “qualified immunity” defense available to a police officer if that police officer has been accused in a civil lawsuit of violating a person’s constitutional rights) will have on the ability of a police officer or municipality to obtain PL Insurance.

We are writing to you with the hope that you can provide us with some information relating to the above topics. Kindly answer the questions below so that we can compile this data for the Task Force for its consideration.

Policy Forms

1. Does CIRMA use one standard law enforcement liability form or endorsement or multiple? For example, is the “Law Enforcement Liability” coverage found in Coverage Section G (19/20 edition) the form CIRMA uses in all Liability–Auto–Property (LAP) policies?
2. Please provide a specimen copy of each type of Law Enforcement Liability form that CIRMA currently uses and the estimated percentage in premium volume each form represents in CIRMA’s liability book of business, as of the most recent year this data is available.
3. Are the Law Enforcement Liability limits always identical to the General Liability and Excess Liability limits? If not, what is the average percentage difference between a sublimit for Law Enforcement Liability and the Each Occurrence/Annual Aggregate limits for General and Excess Liability?

Potential Impact of Section 41 of the Act

1. If Section 41 takes effect as written, do you expect that CIRMA will modify its current law enforcement liability coverages in any significant manner over the next three years? if CIRMA can more accurately answer this question under a different time frame (e.g., two years), please indicate.
2. Consider two possible scenarios if Section 41 is not amended:
 - a. Under one assessment, Section 41 makes only modest changes in liability exposure for municipalities and individual police officers. Section 41 expands the state's common law with respect to a law enforcement officer's exposure to liability, but the bill does not eliminate qualified immunity. Instead, Section 41(d) defines governmental immunity as an officer's "objectively good faith belief that his conduct did not violate the law." Under this scenario the practical effect of Section 41(d) would be to make the standard for whatever immunity is available under state law facially indistinguishable from the federal standard. Assuming that the law will have these consequences, how would that affect the pricing and availability of insurance for municipalities? Would coverage for individual officers, currently covered as employees, be altered?
 - b. In the second scenario, Section 41 is viewed as establishing a new cause of action in state courts against police officers who deprive an individual of equal protection or privileges and immunities of state law. The new governmental immunity under this provision will not be a defense (1) for actions solely seeking equitable relief or (2) in actions seeking damages, unless at the time of the conduct, the officer had an "objectively good faith belief that their conduct did not violate the law." This new cause of action could lead to greater liability for municipalities than assumed under scenario one. Assuming that the law will have these consequences, how would that affect the pricing and availability of insurance for municipalities? Would coverage for individual officers, currently covered as employees, be altered?

Note that municipal and individual liability under federal law remains the same under either scenario. However, for Section 1983 actions the statute of limitations would be shortened to one year.

- c. Would CIRMA likely alter its underwriting standards under either of these two scenarios? For example, would CIRMA substantially revise the various Law Enforcement Risk Management Resources it provides at <https://cirma.ccm-ct.org/cirma-home/policedepartmentresources.htm>?

Claim information under current law

To assist the Task Force in its assessment of the effects of Section 41, please provide the following information.

1. Total premiums collected for liability coverage (all sections, including excess coverage) over the last ten years.¹
2. The total dollar amount of claims paid under any of the liability coverage sections over the last ten years. If possible, please also provide the number of claims paid.
3. The total dollar amount of claims paid under these policies for “Law Enforcement Liability” coverage, or similar liability coverages specific to police (mis)conduct over the last ten years. If possible, please provide the number of claims paid under these sections.

¹ Note: If possible, we would prefer these data broken out for only those entities that have any police liability coverage. To the extent that CIRMA provides coverage for entities such as water districts or others that do not have or need police liability coverage, we would like to have those excluded.

For reference, below are the previous questions submitted to CIRMA.

Procurement of Police Officer PL Insurance

General

1. Do you think it will be possible for insurers to provide PL Insurance directly to police officers?
2. What should the scope of such PL Insurance be, as you envision it?
3. Do you think such coverage can be provided by an insurer *without* the need for additional financial backing/support from a municipality or Connecticut?
4. Do you think such insurance could be provided to police officers through a duly constituted police officer's union?

Underwriting

1. What criteria do you think insurers should use to use to determine if a police officer qualifies for such insurance?
2. What impact should the prior disciplinary history of a police officer have on an insurer's ability to provide PL Insurance to that officer, if any?
3. Are there any specific situations in which an insurer should automatically deny PL Insurance coverage to a particular police officer?
4. What types of matters specifically involving the police officer (e.g., civil or criminal lawsuits, administrative proceedings, formal grievance filings, press reports) should an insurer consider with respect to underwriting that police officer's PL Insurance policy?
5. What types of matters involving the jurisdiction in which the police officer works (e.g., civil or criminal lawsuits, administrative proceedings, formal grievance filings, press reports involving the government, police department or other officers in the police department) should an insurer consider with respect to underwriting that police officer's PL Insurance policy?

Premium Payable

1. What factors should increase the premium payable by a police officer for PL Insurance? By how much?
2. Should the individual credit of a police officer be relevant in determining the premium payable by such police officer for a PL Insurance policy?
3. What impact should claims under the policy have on premium payments going forward?
4. If a claim were made, when should increases in premium, if applicable, come into effect?
5. Should increases in premium depend on the underlying merits on which the claim is based, or should increases in premium be tied solely to the number of claims made under the policy?

6. What factors should reduce the premium payable by a police officer in connection with such a policy?

Claims

1. What are the reasons for which an insurer should deny a claim made by a police officer under an individual PL Insurance policy?
2. Should an insurer fund the police officer immediately upon making a claim, so that funds would be available for legal defense costs?
3. What documentation should an insurer require from the police officer and/or the employer of the police officer with respect to making such a claim?
4. When should such a claim be filed?
5. At what point should an insurer stop funding a claim made by a police officer, assuming it has been made and the insurer has started funding the claim.
6. Under what circumstances should an insurer claw back amounts from a police officer for amounts funded in respect of a claim.

Exclusions and Endorsements

1. What acts of a police officer should expressly not be covered by an insurer's PL Insurance policy?
2. What other exclusions to coverage should an insurer have in such a policy?
3. What standard endorsements should an insurer include in such a policy?
4. Under what circumstances should an individual police officer's PL Insurance policy lapse?

Impact of Section 41 of the Act

1. As noted above, Section 41 of the Act modifies the scope of the "qualified immunity" defense available to a police officer if that police officer has been accused in a civil lawsuit of violating a person's constitutional rights. Should/does that modification have any impact on an insurer's ability to provide PL Insurance directly to a police officer?
2. How, specifically, should a PL Insurance policy change with respect to a particular police officer to account for adoption of Section 41 of the Act (e.g., reduction in coverage, increase in premium, other)?

Procurement of Municipal PL Insurance for its Police Officers

General

1. Do you think it will be possible for insurers to provide PL Insurance to municipalities for its police officers?
2. What should the scope of such PL Insurance be, as you envision it?

3. Do you think such coverage can be provided by an insurer *without* the need for financial backing/support from Connecticut?

Underwriting

1. What criteria should an insurer use to determine if a municipality qualifies for PL Insurance?
2. What impact should the prior disciplinary history of one or more police officers have on an insurer's ability to provide PL Insurance to a municipality on behalf of its police officers generally, if any?
3. Are there any specific situations in which an insurer should automatically deny PL Insurance coverage to a municipality?
4. What types of matters involving the municipality or its police officers (e.g., civil or criminal lawsuits, administrative proceedings, formal grievance filings, press reports involving the government, the police department or police officers in the police department) should an insurer consider with respect to underwriting the municipality's PL Insurance policy for its police officers?

Premium Payable

1. What factors should increase the premium payable by the municipality? By how much?
2. Should the credit of a municipality be relevant in determining the premium payable by such municipality for such a policy?
3. What impact should claims under the policy have in respect of premium payments going forward?
4. If a claim were made, when should increases in premium, if applicable, come into effect?
5. Should increases in premium depend on the underlying merits on which the claim is based, or should increases in premium be tied solely to claims made under the policy?
6. What factors should reduce the premium payable by a municipality in connection with such a policy?

Claims

1. What are the reasons for which an insurer should deny a claim made by a municipality under such a policy?
2. Should an insurer provide funds to the municipality immediately upon making a claim, so that funds would be available for legal defense costs?
3. What documentation should an insurer require from the municipality with respect to making such a claim?
4. When should such a claim be filed?
6. At what point should an insurer stop funding a claim made by a municipality, assuming it has been made and the insurer has started funding the claim.

7. Under what circumstances should an insurer claw back amounts from a municipality for amounts funded in respect of a claim.

Exclusions and Endorsements

1. What acts of the municipality or its police officers should expressly not be covered by a PL Insurance policy of the municipality for its police officers?
2. What other exclusions to coverage should an insurer have in such a policy?
3. What standard endorsements should an insurer include in such a policy?
4. Under what circumstances should a municipality's PL Insurance policy for its police officers lapse?

Impact of Section 41 of the Act

1. Section 41 of the Act modifies the scope of the "qualified immunity" defense available to a police officer if that police officer has been accused in a civil lawsuit of violating a person's constitutional rights. Should/does that modification have any impact on an insurer's ability to provide PL Insurance to a municipality?
2. How, specifically, should a PL Insurance policy change with respect to a municipality to account for adoption of Section 41 of the Act (e.g., reduction in coverage, increase in premium, other)?