

Police Transparency and Accountability Task Force
Logistics Subcommittee
DRAFT Recommendations Pertaining to Police Internal Investigations
March 2, 2021

Recommendation #1

It is recommended the Office of the Attorney General be authorized to conduct investigations and, if warranted, file civil litigation to eliminate a pattern or practice of any conduct by municipal law enforcement agencies that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the State of Connecticut. Standing to initiate an investigation and to file civil litigation shall include but not limited to:

1. a violation of the state laws prohibiting acts of bigotry or bias¹;
2. trends identified by the state through the collection and analyses of municipal law enforcement data that a statistically significant disparity exists for a specific group of persons being the target of police actions based on bigotry or bias including but not limited to: traffic stops, deadly or excessive physical force, citizen complaints, false arrest, unreasonable searches or seizures, or Police Officer Standards and Training Council (POSTC) officer decertification, or
3. complaint filed with the Office of the Attorney General by citizens, advocates, attorneys, mandated reporter, police officers, and any person with standing.

It is recommended the Office of the Attorney General be authorized to issue subpoenas and written interrogatories when conducting civil rights and pattern and practice investigations and litigation.

It is further recommended any such violations, trends, or complaints involving a state law enforcement agency including, but not limited to the Department of Emergency Services and Public Protection (DESPP), state university and college police departments, Department of Correction (DOC), and Department of Mental Health and Addiction Services (DMHAS) shall be referred to the United State Department of Justice for investigation and, if warranted, civil litigation.

Rationale

The Office of the Attorney General (AG) supports this concept and has the expertise to conduct pattern and practice investigations and litigation within its available resources. In fact, Senate Bill 21-363 authorizes this concept and is pending before the state legislature; a similar bill passed the House but not the Senate during the 2019 legislative session.

¹ Intimidation based on bigotry or bias (CGS §§ 53a-181j, 53a-181k, 53a-181l) is defined as a person maliciously and with specific intent to intimidate or harass another person because of the actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity or expression of such other person that causes (1) physical injury, (2) physical contact or threatens to cause damages, destroys or defaces any real or person property, or (3) damages, destroys or defaces any real or person property, threatens by word or act or urges another person to cause physical injury or destroy real or personal property.

The AG is the state's chief civil legal officer. The Connecticut Constitution and state laws authorize the AG to represent the interests of the people of the state in all civil legal matters involving the state to protect the public interest, and to serve as legal counsel to all state agencies. Therefore, there is an inherent conflict of interest for the office to conduct pattern and practice investigation and to file civil litigation against a state law enforcement agency. The AG office advises a case involving a state law enforcement agency should be referred to the United States Department of Justice, pursuant to federal law 42 U.S.C. §14141, for investigation and, if warranted, civil litigation.

Upon review, it was determined that the Office of the Chief State's Attorney (CSA) has jurisdiction over criminal, not civil matters, and therefore does not have expertise to conduct civil rights and pattern and practice investigations. The CSA office reported it does not have existing available resources to establish the recommended civil rights division. Further, the CSA believes authorizing the newly created inspector general to conduct pattern and practice investigations would conflict with its authority to investigate police use of force that results in death or physical injury and the deaths of persons in police custody.

Internal investigation is a process of self-governance intended to ensure legal and ethical conduct by police officers and to build trust between the police and citizens. This process is generally confidential to protect complainants, the accused officers, the police department and to reduce or eliminate the municipality's civil liability.

Internal investigations most often focus on individual complaints against individual officers or specific incidents. While police chiefs and administrators are responsible for tracking and responding to patterns or trends of misconduct among officers, the internal investigation process typically investigates individual incidents or officers. A common criticism is that the process does not focus whether individual cases are symptomatic or evidence of systemic practices or culture within the department or are a result of poor training or failure of administration and supervision.

The internal investigation process, like almost all police processes, is governed by policy, state law, case law, and professional best practices. The Police Officer Standards and Training Council ensure standardization of best practices and policies through the state accreditation process and training police officers. Given that, however, there are difference among municipal police departments and some of the criticisms and problems of the internal investigation process do not exist or are better mitigated through effective management and supervision and training.

When a pattern or practice of police misconduct goes unchecked, it can undermine public trust and cooperation between law enforcement officers and the communities they serve. When public trust is lost that leaves police departments and the internal investigation process open to criticisms that police are apparently unable or unwilling to objectively investigation their peers with that same rigor or approach used in ordinary criminal investigations. In some cases, internal investigation outcomes were often viewed as biased, dishonest, and corrupt on the part of the police. These criticisms were frequently leveled by complainants, citizens, community advocates, elected officials, and journalists, as well as police officers.

The state collects and analyzes municipal police data to identify trends in police practices involving traffic stops, use of deadly force use of physical force, and use of electronic defense weapons (“Tasers”). The Police Transparency and Accountability Task Force (PTATF) is considering recommendations that the state collect additional data, including citizen complaints. However, there is no existing process or authority for the state to conduct a comprehensive pattern and practice investigation and, when warranted, to initiate corrective action. Systemic reforms are necessary to regain public trust in law enforcement.

Since the late 1990s, the United States Department of Justice has been conducting pattern and practice investigations of state, municipal, and county police departments to initiate reforms to policing practices and to restore public trust in the police. While the authority to conduct pattern and practice investigations has not been a panacea for police misconduct, it has helped to bridge the divide between law enforcement officers and the communities they serve, hold bad actors accountable, reduce crime, and help lay the groundwork for fair, evidence-driven policing throughout the United States.

Several states have authorized its attorneys general to conduct pattern and practice investigations of municipal or county police departments, including California, Illinois, Maine, New York, New Jersey, Rhode Island, and Maryland. Other states’ authority is implicit in the attorney generals’ responsibilities. In the summer of 2020 in the wake of the George Floyd and Breonna Taylor cases and because the Department of Justice had been limited in its authority to conduct such investigations, 18 state attorney generals wrote to Congress requesting it grant explicit authority to conduct pattern and practice investigations; the letter was signed by attorneys general in Illinois, California, New York, Delaware, Hawaii, Maryland, Nevada, New Mexico, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia.

Federal Pattern and Practice Investigations. As part of the 1994 crime bill, the United States Congress authorized the Attorney General to investigate and litigate cases involving a pattern or practice of conduct by police officers that violates Constitutional or federal rights (42 U.S.C. §14141). Pattern or practice investigations are civil, not criminal, investigations conducted by the Special Litigation Section of the Civil Rights Division of the Department of Justice. They allow the federal government to sue any law enforcement entity that engages in “a pattern or practice of conduct ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.” Cases are not brought for a single bad act. An investigation must show systemic misconduct.

Complaints and referrals come from a wide variety of sources: individuals, organizations, advocacy groups, attorneys and parties in civil litigation involving police departments, police officers, prosecutors, defense attorneys, judges, academics, review panels, journalists, etc. The pattern or practice investigations examine the culture, practices, and accountability systems within a police department. To identify entrenched problems, the investigators examine use of force, stops and searches, suppression of free speech, arrest reports, citizen complaints, and departmental policies and training materials. Investigators also, interview officers and residents and conduct community forums. The investigations are extensive and intensive and are intended to determine whether there is a pattern of unconstitutional conduct and identify the sources of systemic misconduct. Investigation findings are released publicly in a detailed report.

The federal government cannot sue for money damages or fines, but it can sue for equitable and declaratory relief, which is an order from a judge that police agencies must enact specific reforms. Since 1994, most cases have not gone to trial, but have resulted in negotiated consent decrees. These negotiated agreements typically include some common elements, including stricter rules on when police can use force, policies to prevent discrimination, better training and data collection, fairer hiring and promotion processes, stronger accountability systems for misconduct, mechanisms for community influences over department policy, and to restore trust between the police and community.

The federal court has the continuing authority to monitor implementation and compliance with the consent decree. If a police department and municipality do not comply, they can be held in contempt and sanctioned through fines or additional requirements.

Engagement with a wide variety of stakeholders, including community members, people who have been victims of police misconduct, people who live in the neighborhoods most impacted by police misconduct, police leadership, rank and file officers, police labor organizations, and local elected officials, is emphasized throughout all phases of a pattern or practice case, from investigation to resolution.

Recommendation #2

It is recommended the Police Office Standards and Training Council establish pre-service and in-service training courses for police officers conducting and supervising internal investigations. The core course curriculum shall include but not be limited to:

- Intake, acceptance, and review of complaints;
- Notification of officer, complainant, and witnesses;
- Administrative versus criminal complaint procedure;
- Investigation steps and timeframes and use of other investigators;
- Use of *Miranda* and *Garrity* warnings and use of union representation or legal representation;
- Statutory and constitutional legal issues pertaining to investigation of governmental employees;
- Advanced interview and interrogation technique and management;
- Collection of evidence and exculpatory material;
- Identification of bias against persons or groups;
- Labor agreements;
- Dispositions and disciplinary outcomes;
- Report writing and summaries; and
- Objectivity and accountability issues.

All police officers of any rank assigned to conduct or supervise internal investigations shall be required to successfully complete the POSTC pre-service internal investigator training program and complete in-service training in internal investigations during active assignment to conduct or supervise internal investigations. POSTC shall determine the content, curriculum, and credit hours of the pre- and in-service training modules.

Rationale

Training of officers and accreditation of police departments are methods to ensure standardization and accountability in practice. The training requirements are designed to orient police officers to the unique investigative and legal aspects of conducting internal investigations, both administrative and criminal.

POSTC is responsible for providing guidance and administering a state accreditation program for police departments. PTATF recommended state and municipal law enforcement units to obtain and maintain the POSTC Tier 1 state accreditation by 2022, Tier II accreditation by 2023, and Tier III accreditation by 2025. This recommendation is intended to ensure standards and policies, including policies governing internal investigations processes, are more uniform across departments in Connecticut. Given the scope of the POSTC accreditation standards and the robust nature of the accreditation process, no recommendations are made pertaining to the internal investigation policies of state or municipal police departments.