

Police Transparency and Accountability Task Force Logistics Subcommittee- Endorsed Recommendations

Recommendation in response to Section 12(a) (11) of P.A. 20-1: “whether any of the grounds for revocation or cancellation of a police officer certification under section 7-294d of the general statutes should result in mandatory revocation by the Police Officer Standards and Training Council, as opposed to discretionary revocation”

It is recommended a conviction for a felony or drug possession violation pursuant to Connecticut General Statute §21a-279, while employed as a police officer, shall be grounds for automatic decertification by the Police Officer Standards and Training Council (POSTC).

A chief of any law enforcement unit or commissioner of the Department of Emergency Services and Public Protection (DESPP) shall notify POSTC in writing within 48 hours of becoming aware that any certified police officer currently employed by that unit has been convicted of a felony or drug possession violation, and provide such documentation as required by POSTC. Upon notification, POSTC shall immediately revoke the certification of the officer.

If an officer resigns or is terminated from a law enforcement unit or DESPP before a conviction, he or she shall immediately surrender certification to POSTC and may not be hired by another law enforcement unit until a final disposition of not guilty or dismissal of those charges by the court.

An automatic decertification may only be appealed to POSTC by the certificate holder if (1) the conviction is overturned or vacated by the court, (2) the certificate holder is employed by or has a valid offer of employment from a law enforcement unit or DESPP, and (3) the chief of the employing law enforcement unit or DESPP commissioner provides written documentation in support of reinstatement of the holder’s certificate. The certification holder shall apply for reinstatement, in a process proscribed by POSTC, including providing the official court transcript of the appeal and any other documentation required by the council. The POSTC executive director has discretion to accept or deny the application for review in a manner to be determined by the council.

POSTC may approve or deny reinstatement of certification and shall articulate in writing its decision. If POSTC reinstates certification, it shall impose any training or other requirements that shall be completed by the certificate holder prior to full reinstatement of the police officer certification and remove the officer’s name from Connecticut Decertification Database and the National Decertification Index.

Rationale

As a result of high-profile incidents of police use of deadly force and perceived or actual failure to properly address wrongful actions, police throughout the country are facing a crisis of confidence and legitimacy within the communities they serve. Police must share a common set of values with the communities they serve and be held accountable for the outcomes of their services.

There are various ways to improve public confidence and trust in police and enhance transparency and accountability. It is critical to ensure that department policies are followed and enforced, and

officers do not break the law. Because Connecticut relies upon police officers to enforce criminal law, an officer convicted of a felony or drug possession violation is fundamentally unsuitable and unfit to continue to police a community. A criminal conviction is incompatible with the goals and standards of policing. It further erodes and undermines the public's confidence in law enforcement.

Police officers charged with a crime, like all defendants, are afforded certain due process rights and procedural protections whether at trial or as a result of a negotiated plea. A defendant convicted at trial has the right to appeal a conviction under the protections of due process rights; defendants who accept a negotiated plea waive the right to appeal the conviction and sentence.

Therefore, an officer convicted of a felony or drug possession violation and subjected to automatic decertification has had sufficient opportunity to avail him or herself of all due process rights and procedural protections that criminal procedures provide to all defendants. An information hearing or full administrative hearing would not offer the certificate holder any further fact-finding or due process rights. A criminal conviction imposed by the court is a reliable basis for POSTC automatic decertification.

Recommendation: POSTC report to OPM Non-Compliance with Mandatory Decertification Reporting

If a municipal police department, the Department of Emergency Services and Public Protection or any other department fails to comply with the Police Officer Standards and Training Council mandated reporting policy related to decertification as outlined in their general orders, the POSTC shall recommend and the Secretary of the Office of Policy and Management may order an appropriate penalty in the form of the withholding of state funds from such municipal police department, the Department of Emergency Services and Public Protection or other departments.

POSTC shall adopt standards for compliance with the mandatory reporting requirement in the Connecticut Law Enforcement Standards Policies and Practices (CLESP). Failure to comply shall result in loss of accreditation in one or more CLESPP tiers.

Rationale

Pursuant to a new POSTC general order, all police chiefs and the DESPP commission are mandated to report and provide documentation of certain violations to the council for review. The violations committed by any certified police officer of any rank include: (1) the unreasonable, excessive, or illegal use of force that caused or would reasonably cause death or serious physical injury to another person, (2) the duty to intervene to stop the unreasonable, excessive or illegal use of force or to fail to notify a supervisor, (3) the intentional intimidation or harassment of a member of a protected class, and (4) the prohibition against hiring police officer dismissed for misconduct or who resigned or retired while under investigation.

Under this policy, POSTC has no consequence to impose on a department or DESPP that fails to comply with the mandated reporting and submission of documentation requirements. The general order states failure to supply all required documentation shall result in delays or refusal to bring a request to the POST Council Certification Committee for review.

POSTC should have recourse and an appropriate recourse exists under the current state racial profiling law (CGS §54-11m, *Alvin W. Penn Racial Profiling Prohibition Act*). Under this law, municipal police departments and DESPP are required to submit specific traffic stop data to OPM. OPM is authorized to withhold state funds from departments that fail to comply.

Recommendation: Government Immunity Statute of Limitations

The one-year statute of limitations for bringing an action pursuant to Section 41 be extended to three years.

Rationale:

Section 41(g) provides: “A civil action brought pursuant to this section shall be commenced not later than one year after the date on which the cause of action accrues.”

Three reasons support extending the statute of limitations to three years.

First, the rationale for the one-year limitations period is tied to the period of time police departments are required by statute to keep body camera video. At first blush this seems logical. However, our research shows that as a matter of custom and policy, police departments retain body camera video that involves an incident involving the use of force for up to four years. Moreover, an aggrieved citizen contemplating a lawsuit can put the department on notice and request that the department retain its body camera footage beyond the one-year statutory floor.

Second, the one-year statute is very short. On the one hand, the quick time limit could act as a premature bar for legitimate cases and, on the other hand, it could force plaintiff’s counsel to file lawsuits prematurely to avoid exceeding the limitations period.

Third, the limitations period established in Section 41(g) will likely become the limitations period followed by the federal district court in civil rights suits brought pursuant to 42 U.S.C. § 1983. Currently, plaintiffs have three years to file a federal civil right claim in the District of Connecticut. “Since Congress did not enact a statute of limitations governing actions brought under § 1983, the courts must borrow a state statute of limitations.” *Lounsbury v. Jeffries*, 25 F.3d 131, 133 (2d Cir. 1994). “In Connecticut, the three-year limitations period set forth in Conn. Gen. Stat. § 52-577 is applicable to claims asserted under section 1983.” *Harnage v. Shari*, No. 3:16CV1576 (AWT), 2020 WL 5300913, at *3 (D. Conn. Sept. 4, 2020).