Connecticut Debate Association
December 12, 2020
Online Tournament

Resolved: Police officers should face civil liability for their actions.

(Note: While Connecticut's recent police reform bill contains some limits on police immunity from lawsuits, "qualified immunity" generally applies nationwide, and should be considered the status quo.)

Qualified immunity

From Wikipedia, the free encyclopedia

In the United States, qualified immunity is a legal principle that grants government officials performing discretionary functions immunity from civil suits unless the plaintiff shows that the official violated "clearly established statutory or constitutional rights of which a reasonable person would have known".[1] It is a form of sovereign immunity less strict than absolute immunity that is intended to protect officials who "make reasonable but mistaken judgments about open legal questions",[2] extending to "all [officials] but the plainly incompetent or those who knowingly violate the law".[3] Qualified immunity applies only to government officials in civil litigation, and does not protect the government itself from suits arising from officials' actions.[4]

The U.S. Supreme Court first introduced the qualified immunity doctrine in Pierson v. Ray (1967), enacted during the height of the civil rights movement, it is stated to have been originally enacted with the rationale of protecting law enforcement officials from frivolous lawsuits and financial liability in cases where they acted in good faith in unclear legal situations.[5][6] Starting around 2005, courts increasingly applied the doctrine to cases involving the use of excessive or deadly force by police, leading to widespread criticism that it, as summarized in a 2020 Reuters report, "has become a nearly failsafe tool to let police brutality go unpunished and deny victims their constitutional rights".[7]

Good cops have nothing to fear from police accountability bill

Hartford Courant, By MIKE BRODINSKY, AUG 07, 2020

On May 25, 2020, police in Minneapolis killed George Floyd. The nation has shuddered in the aftermath, and people from every state in the nation are asking how society should change to keep another similar tragedy from happening.

In Connecticut, we asked if our state laws regarding the use of force, police training and accountability should be re-set so that what happened to Floyd could not happen here. Most Connecticut lawmakers answered "yes" and passed "An Act Concerning Police Accountability."

The new law is complicated and not well understood by the public. That leaves an opening to misrepresent the legislation, and predictably, some legislators and advocates have not been fair with their explanations. Some have made irresponsible predictions about the consequences of the legislation to stir an emotional response. By doing that, however, they have not served the public well.

One of the most controversial sections of the act is Section 41, which deals with "qualified immunity." It provides that police officers who act with an "objectively good faith belief" that they are not breaking the law are immune from liability when sued because of an alleged violation of a person's rights under the state's Constitution.

So even if police hurt or kill someone who is completely innocent, these officers are not legally accountable if they acted with this "objectively good faith belief." They are immune from legal liability, even though an innocent victim may be dead or permanently injured. That's in the new law.

Opponents of the law claim that requiring police to act with this "objectively good faith belief" is asking too much. What's really scary, though, is a police officer who agrees that such good faith is too much. Fortunately, most don't.

What does "objectively good faith belief" mean? Judges will flesh this out over time, as a variety of scenarios come before them. But based upon the text, it means, for example, that if a police officer kills someone and claims self-defense, they can't use some unbelievable story as a justification for immunity. It also means that the reasonableness of conduct must be based upon the facts the officer knew or should have known, rather than on a state of panic or imagined danger.

But in a case of panic, imagined danger, or where an officer without malice misconstrues the law or misjudges the situation in spite of knowing the actual circumstances and kills someone who shouldn't have been killed, the bill says that even in this situation, the officer will not have to personally pay compensation for the death.

The new legislation preserves the existing rule that although the officer may be liable, their municipal employer, or its insurance carrier, will compensate the victim of this tragedy. That's a fair and just result, and that's in the law.

On the other hand, if a cop goes rogue, there's no immunity. If he or she willfully follows a personal code of behavior contrary to what the law requires, and conducts his or herself in a willful, wanton and malicious manner and hurts someone, that police officer will have to pay out of their own pocket. That's always been the law; it's also in the new act.

The notion, therefore, that police officers are risking their financial security just by doing their jobs is false. And the claim that qualified immunity is being stripped away by this legislation is also simply not true.

Communities need good cops to serve them, and we are grateful for them. So good police officers, including those who make mistakes, have nothing to fear from this bill. But, unfortunately, those who oppose this legislation just because of Section 41 have a different sense of justice. And they are favoring the rogues over the best interests of their communities.

Mike Brodinsky is a retired attorney and a former member of the Wallingford Town Council.

7 myths about the CT police accountability bill

The Stamford Advocate, Len Fasano, AUGUST 6, 2020

On Friday, Gov. Ned. Lamont signed into law HB 6004, An Act Concerning Police Accountability.

Since the bill's passage, Democrats have shared misinformation about what the bill does. Many Democrats who promised to eventually revise the bill in the same breath they voted "yes" are now scrambling to spread these myths to rationalize their votes and deflect criticism.

Myth No. 1: Good police officers have nothing to fear.

The Facts: Democrats have now allowed officers, even when doing nothing wrong, to be personally sued in state court under state law for the first time in Connecticut's history. The bill deliberately removes the ability to have frivolous lawsuits dismissed early. Every frivolous case will move forward with no protections, putting good officers personally at risk and taxpayers financially at risk for legal fees and forced settlements for even baseless claims.

Myth No. 2: This bill was crafted with everyone's input.

The Facts: While there were conversations between lawmakers, Republicans never endorsed the bill and were always clear about what should be changed, but our voices were ignored on the larger issues. Also ignored were Connecticut's police officers. New Haven Police Chief Otoniel Reyes explains: "The passing of this bill was done in haste. … The elected officials that were a driving force behind this bill, particularly those that represent the New Haven community, crafted this bill without input from me as the chief of police in New Haven. They were in such a rush to pass legislation, that they gave little to no consideration to the negative impact it could have on good police officers."

Myth No. 3: The bill doesn't eliminate qualified immunity for police; only towns will be liable and only if someone commits a crime.

The Facts: Qualified immunity for good police officers is effectively gone. Police officers can be personally sued if a court determines they acted in a "willful, wanton or reckless manner." The definition of "willful" is completely open to interpretation by the court, putting officers at risk for lawsuits with no ability to dismiss frivolous claims early. Even if an officer is found to have not acted willfully, wantonly or recklessly, the municipality — and therefore taxpayers — will still be held liable. Faced with large legal fees even in frivolous cases, municipalities will be economically forced to settle many cases, leaving blemishes on good officers' records without ever giving them the chance to prove no wrongdoing.

Myth No. 4: The bill won't hurt officer recruitment or increase retirements.

The Facts: It already has. We began hearing accounts of young officers giving up their careers and older officers rushing to retire when the legislation was only a proposal. Now that it's law, police departments are worried about understaffing and longer response times. Connecticut is already facing recruitment issues. This year New Haven saw fewer than 300 new police applicants. Waterbury, which saw 1,000 applicants last year, had only 400 this year after extending their deadline. This bill worsens the situation.

Myth No. 5: The bill won't impact good policing.

The Facts: Police will be forced to stop proactive policing. Protective policing will be a significant liability, therefore Democrats are forcing police to only be reactionary. This bill's deadly force standards will unfairly limit officers' ability to save the public and themselves, in complete conflict with the long-established rules by the U.S. Supreme Court. These new standards will chill police officers' ability to save lives and will put lives at risk.

Myth No. 6: The bill won't defund police.

The Facts: The bill doesn't directly defund the police, but its severe financial impact on cities and police departments achieves the same result. Increased costs for things such as insurance and legal fees coupled with a crippled economy will push municipalities to cut back on policing. The Democrats' plan of choice.

Myth No. 7: It will make bad cops accountable.

The Facts: This bill does nothing to make it easier to fire bad actors or hold them accountable. Eliminating qualified immunity doesn't make it easier to hold officers criminally accountable, because qualified immunity doesn't protect officers when they commit a crime. The bill does contain a new decertification component, but it does nothing to change the collective bargaining arbitration process that can supersede other laws and continue to block the firing of bad officers.

State Sen. Len Fasano serves as the Connecticut Senate Republican Leader. He represents the 34th Senate District, including Durham, East Haven, North Haven and Wallingford.

A Step Toward Accountability in Policing

The Wall Street Journal, By Scott Michelman and David Cole, Sept. 10, 2020

Reformers are taking aim at the doctrine of 'qualified immunity,' which protects government officials from liability for violating the rights of citizens.

As the nation roils over police abuse and racial injustice, Democrats and Republicans often disagree about how best to respond. But on one matter there is significant agreement: The judge-made doctrine of "qualified immunity" is part of the problem. That rule provides that victims whose constitutional rights were violated can't sue police officers or other government officials for damages, unless the actions were so egregious that no reasonable officer would believe them lawful. In practice, it means that countless violations go entirely unremedied.

The rule has come under broad attack. Supreme Court Justices Clarence Thomas and Sonia Sotomayor don't agree about much, but they have both questioned qualified immunity. The ACLU (where we work), the NAACP Legal Defense Fund and the libertarian Cato Institute and Institute for Justice are all working together to reform it. More than police accountability is at stake: The rule of law cannot be squared with impunity for constitutional violations.

As an example of how strictly the doctrine of qualified immunity has been applied, consider the case of Alexander Baxter, whom we represented in a case that the Supreme Court recently declined to review. In early 2014, Mr. Baxter was bitten by a police dog that was unleashed on him while he was sitting with his hands in the air, having surrendered to Nashville, Tenn., police. The bite was deep enough that he required emergency medical treatment.

Claiming that he was the victim of excessive force, Mr. Baxter sought compensation in a suit against the two officers responsible for the attack. But a federal court of appeals ruled that even if the use of force was unconstitutional, the officers were immune, because in that court's most similar legal precedent, police attacked a man who surrendered by lying down, not by sitting down with his hands up.

Mr. Baxter's case isn't unusual. Countless government officials have been granted immunity for egregious violations, including school officials who ordered a strip search of a middle-school student in violation of her Fourth Amendment privacy rights; a community college president who fired an employee for testifying truthfully in court, in violation of his First Amendment rights; Nixon administration officials who conspired to retaliate against a whistleblower in violation of the First Amendment; and President Nixon's attorney general John Mitchell, who authorized wiretaps without the warrant required by the Fourth Amendment.

The upshot is that qualified immunity makes unaccountability the norm and accountability the hard-won exception. Injunctions prohibiting future violations are unavailable, the Supreme Court has ruled, unless you can show that a particular violation is likely to happen to you personally in the future. And criminal prosecutions of police officers or any other government officials for constitutional violations are exceedingly rare. Few constitutional violations are crimes, and even for actions like police shootings that might violate both the Constitution and criminal laws, the standard for proving a crime is much more demanding than for civil liability. Many prosecutors are reluctant to press charges, in part because they regularly rely on police officers' testimony to support their cases. The criminal charges against the Minneapolis police officer who killed George Floyd are the exception, not the rule.

Accordingly, for most constitutional wrongs, the only realistic avenue for redress is a suit for civil damages. But because of qualified immunity, that route is all too often a dead end. Our legal system holds criminal defendants, usually people untrained in the law, to the maxim that "ignorance of the law is no excuse." Why do we tolerate a lower standard for government officials like police officers, who ostensibly receive training in the law and take an oath to uphold the Constitution?

The history of qualified immunity offers no principled answer. The Supreme Court created the doctrine in the 1967 case Pierson v. Ray, in which a group of clergymen were arrested for attempting to integrate a segregated coffee shop at a

Mississippi bus terminal. They sued the arresting officers under a provision of the 1871 Ku Klux Klan Act that authorized lawsuits seeking compensation for constitutional violations. The Court held that the officers who arrested the clergymen should escape liability if they acted in good faith, thus introducing the rule that would become known as qualified immunity. Although, as the Court has since acknowledged, the 1871 statute "on its face admits of no immunities," in Pierson the Court reasoned that the law was enacted against a historical "background" protecting officials from claims for damages if they acted in good faith, and thus Congress must have meant to incorporate that defense without saying so.

As Justice Thomas recently opined, 'there likely is no basis' in historical practice for the rule. The Supreme Court just made it up.

However, as William Baude, a University of Chicago law professor and Federalist Society awardee, has shown, the historical common law recognized no such immunity. On the contrary, the "strict rule of personal official liability…was a fixture of the founding era." Some of the nation's most influential jurists, including Chief Justice John Marshall and Justice Oliver Wendell Holmes, Jr., rejected similar immunity rules. As Justice Thomas recently opined, "there likely is no basis" in historical practice for the rule. The Court just made it up. Especially for justices who advocate strict adherence to the text of statutes and the Constitution, the doctrine has no legitimate foundation.

The Court's policy justifications for the rule fare no better. Police unions warn, and the Court itself has speculated, that if officers faced large judgments when they violate rights, few people would join police departments, and those that do would be overly deterred from exercising their authority. If police officers risk losing their homes if they search someone illegally, they might decide it's better not to search at all.

But in fact, officers don't pay such judgments personally. A comprehensive 2014 study by Joanna Schwartz of UCLA Law School showed that in more than 99% of cases, the government "indemnifies" the officer—that is, it pays the judgment itself, often through insurance policies. So immunity effectively allows governments, not individual officers, to escape liability for constitutional violations; and that in turn reduces their incentive to ensure respect for constitutional rights.

The Supreme Court has also surmised that having to defend lawsuits might "distract" police from their duties. But nearly all the work in these cases is done by government lawyers, not the officers themselves. In any event, having to answer for constitutional violations isn't a "distraction" but a fundamental feature of the rule of law.

The costs of qualified immunity to the legal system are considerable. The doctrine stultifies the development of constitutional law, because rather than ruling on a constitutional claim, the courts can simply conclude that the constitutional right in question wasn't "clearly established" with enough specificity at the time of the violation and dismiss the claim. This leaves unclear what the Constitution demands for future cases and sets the stage for yet more grants of immunity in similar situations. As one federal appellate judge recently bemoaned, a hodgepodge of contradictory decisions "leaves the 'clearly established' standard neither clear nor established."

Qualified immunity weakens respect for the rule of law by ensuring that many constitutional violations go unredressed.

Most fundamentally, qualified immunity weakens respect for the rule of law by ensuring that many constitutional violations go unredressed. As Justice Sotomayor has noted, that "sends an alarming signal to law enforcement officers and the public": that officers "can shoot first and think later."

The Supreme Court regrettably passed up the opportunity to reconsider the doctrine of qualified immunity in Mr. Baxter's case this June, over a powerful dissent from Justice Thomas. But it did so only after waiting more than a year, suggesting that it was taking the issue seriously, and may take it up in the future. The fact that at least one conservative justice objects strenuously to the rule means that if the liberal justices agree, judicial reform is possible.

The Court may have denied review because, in the wake of the killing of George Floyd, bills to reform or abolish qualified immunity have been introduced on Capitol Hill, with bipartisan support, and the justices may be waiting to see what Congress does. The major policing bill in the House would reform qualified immunity, but only for police officers, not for the many other government officials who have been let off the hook. Other bills offer more comprehensive reform.

State courts and legislatures can also be part of the solution. In legislation enacted this summer, Colorado provided a right to sue its officials under state law for constitutional violations and specifically rejected the defense of qualified immunity. Although states cannot change federal law, nothing prevents them from following Colorado's example. Indeed, Virginia has the chance to do so now, if its Senate and governor approve the qualified immunity reform bill passed by the House of Delegates earlier this month.

The recent unrest sparked by police abuse calls for widespread reform. One place to start is with a judge-made doctrine that finds no foundation in history, statute or the Constitution and that has been roundly criticized by conservatives and liberals alike. Police officers and other government officials are bound by the Constitution; they should not be shielded

from accountability when they violate basic constitutional rights.

—Mr. Michelman is the legal director of ACLU of the District of Columbia, and Mr. Cole is the national legal director of the ACLU.

Police Immunity: The Empty Promise of CT's 'Police Accountability' Bill

CT Examiner, BY NORMAN PATTIS, JULY 27, 2020

Connecticut lawmakers undoubtedly thought they did something significant the other day, when, after pulling an all-nighter, they rushed through an "emergency" piece of legislation on police accountability. When it comes to making it possible to sue police officers who engage in misconduct, the law is stillborn. It changes nothing. It does not even address the issue most lawmakers probably thought they were tackling, to wit: qualified immunity.

Such are the perils of acting in haste, and placing a premium on feeling good, rather than doing something productive.

The bill does not eliminate a police officer's immunity for suit for official misconduct in any meaningful way. The legislation does not attempt to address the doctrine of qualified immunity, which has been much in the news this summer, because no state legislature can address the issue: it is a matter of federal law, and beyond the reach of state lawmakers.

What is an immunity?

Consider life as a boardgame. The rules of the game – in life, the rule of law – determine what moves the pieces can make on life's grand board. An immunity effectively takes the piece off the board: the general rules of the game don't apply.

There are two types of immunity: absolute and qualified. An absolute immunity means you can never touch piece enjoying the immunity. Thus, no lawmakers can be sued for defamation over what is said on the house floor; no witness can be sued for defamation over what they say on the witness stand.

Qualified immunity is something a judge can grant depending on the circumstances. In federal law, police officers enjoy qualified immunity for their acts and omissions. Unless their conduct violates "clearly established law," they are immune. It's a judge-made doctrine with no foundation in the text or structure of the United States Constitution.

Section 41 of Connecticut's new law, which does not take effect until July 2021, "creates" a right to sue for a violation of state constitutional rights. I put "creates" in quotation marks because there already was such a right to sue. This new legislation added little, if anything to existing law, merely clearing up the sometimes murky question about whether a private right of action existed, in other words, whether a suit can be brought by a private party.

But never mind, let's play along: Any such action must be brought within one year of the alleged violation. The bill cloaks an officer in immunity if the officer "had an objectively good faith belief that such officer's conduct did not violate the law." If the officer lacked such a belief, he can be sued for money damages, but his employer must pay for his damages, and his attorney, unless the officer's conduct was "malicious, wanton or willful" – legal speak for saying pretty darn bad.

Newsflash: Did no one tell legislators that this is already what the law provides?

Police officers sued in state and federal court are routinely covered by insurance policies. Typically, the policies provide coverage subject to what is called a "reservation of right." The insurer waits until a jury verdict to decide whether to stand by the officer: If a jury finds the officer to have engaged in "malicious, willful and wanton" misconduct, the insurer walks away from the officer, leaving the officer to bear the costs and judgment.

In particularly egregious cases, an officer might be terminated and denied coverage at the outset. Those cases are rare.

This new law changes virtually nothing in what has been the routine manner of handling police misconduct claims. The law remains what it was: Police offices are indemnified for the costs of defense and most judgments by their employers. I don't know why the police unions cried to the heavens for relief from the provision.

What about the immunity?

In many cases, a judge will decide whether the officer's "objective good faith" before a jury ever sees the case. That's the point of calling it"objective." What an officer was actually – subjectively — thinking is only a small part of the equation: The variable with the most weight is the judicial determination of what a reasonable police officer would do.

This provision of the bill guts the law of any real power.

I made a living as a young lawyer suing police officers in federal court. The federal judiciary was swamped with cases of police misconduct, and it wasn't happy about it. So judges created the legal doctrine known as qualified immunity. This doctrine gives judges, not juries, the right to decide whether a police officer should enjoy immunity. In recent years, thousands of decisions have been rendered on qualified immunity, each decision a written decision.

Where do you think state court judges will go to determine what constitutes "objective good faith"? Yep, the federal decisions on qualified immunity.

And why didn't Connecticut's leglislature try to address qualified immunity? Because it can't. This federal judicial doctrine is part of the armature of federal law. Under the federal Constitution's "supremacy clause," it is the supreme law of the land. A lawyer walking trying to use the state statute to prevent a judge from applying qualified immunity to an unreasonable force claim brought under federal law would be laughed out of court. You want to eliminate qualified immunity? Go to Congress.

If you read a newspaper headline saying this legislation addressed qualified immunity, call the editor of the newspaper and demand a correction.

The courageous thing to do would have been to require all police excessive force cases to be heard by a jury. An officer has a right to use force, even lethal force, in the name of the community. Let the community decide what is and is not reasonable. Isn't that the implicit message of the so-called "defund the police" movement?

I've read and re-read the bill and see nothing new, nothing that changes the manner in which police misconduct cases will be litigated in Connecticut. It's sound and fury signifying nothing.

Section 41 of the bill wasn't worth the all-nighter.

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After violent weekend in Hartford, police union leader blames recent spike in shootings on new Connecticut police reform law

Hartford Courant, By ZACH MURDOCK and JESSE LEAVENWORTH, OCT 12, 2020

After another wave of gun violence swept the capital city over the weekend, killing one and injuring a half-dozen more, Hartford police union officials blame a recent spike in shootings on officers "taking a step back" from proactive patrols following new police reforms signed into state law this summer.

Hartford police responded to five separate shootings with reported injuries in just over 48 hours from Friday night to early Monday morning, including two double shootings that left 40-year-old Victor Garcia dead and three others injured.

The violent weekend further extends a surge in gunshot victims since the beginning of September — a period that has seen nearly triple the number of shootings with injuries over any of the previous three years, police data show.

Hartford Police Chief Jason Thody and Mayor Luke Bronin have suggested the increase may follow the impacts of the COVID-19 pandemic, including some curtailed court services, but Hartford Police Union President Anthony Rinaldi wrote in a letter published Monday that it is actually because officers are not "proactively patrolling" after the reforms passed.

"Our Elected Officials can blame the health pandemic and related matters to this wave of violence," Rinaldi wrote. "Sadly, the truth is that police officers are taking a step back and not proactively patrolling their communities due to the uncertainty and vagueness of the Police Accountability Act."

Bronin fired back Monday afternoon, dismissing the assertion that the spike in violence is tied to any lack of officers' effort. He noted that police are on track to make about as many auto theft arrests this year as last and have made 31 arrests in connection with 2020 and 2019 homicides, compared to about 18 homicide arrests at this time last year. The city's 19 homicides recorded so far this year also is slightly less than the number of murders at this time last year.

"That data does not show a picture of a police department that is standing down on their responsibilities and I think to suggest that the violence we're seeing is because the men and women of the Hartford Police Department aren't doing their job does a disservice to the men and women who are out there working really hard every day," Bronin said.

Connecticut lawmakers passed police reform this summer in the wake of nationwide protests after George Floyd's death under the knee of a Minneapolis police officer. The new bill included significant changes to policing, such as mandating officer-worn body cameras, banning most chokeholds and creating an independent inspector general to investigate officers' use of deadly force.

But the new bill has sparked enormous backlash from police unions and officers across the state who argued it would leave officers uncertain about their actions in the field and hamstrung by more regulations.

Rinaldi points to those concerns, not the impact of COVID-19 restrictions, as the driving force behind the recent spike in gun violence in Hartford. He contends the "vagueness" of the new accountability bill actually made officers less willing to patrol neighborhoods and that has made them more susceptible to the shootings that have followed.

"If police officers are not supported and given the tools needed by the government for which they are employed, crime will continue to rise," Rinaldi wrote. "Criminals are becoming more brazen due to the lack of proactive policing that is a vital part of keeping our communities safe."

Police union leaders argued fervently against the bill over the summer, sometimes arguing crime would rise after its passing, and leaders from surrounding police department unions echoed Rinaldi's commentary Monday. Gov. Ned Lamont's office declined to respond to a request for comment.

"I think it's obvious to anyone just looking at the numbers, car break ins and thefts are out of control, and nobody is doing anything about it," said Frank Iacono, president of the East Hartford Police Officers Association. "The bars and nightclubs being closed due to COVID is probably actually helping the violent crime numbers stay down, if those were open I bet shootings would be off the charts. Just look at what's happened with the few unsanctioned large gatherings we had this summer, they almost all ended in violence."

Although Hartford specifically has seen a large spike in shootings with injuries since the beginning of September, most other communities have not seen corresponding increases in violence since the police accountability bill was signed into law on July 31. Meriden police have reported a string of shootings and several murders since August, but police have indicated at least some of those incidents may be tied to gang activity in both Meriden and New Haven.

Hartford has now recorded more than 40 separate shootings with injuries since the beginning of September, including 10 double shootings and three gun homicides.

Garcia was shot and killed in the most recent double shooting Friday night and another man shot that night remains in serious but stable condition Monday, police said. On back to back days in September, 24-year-old basketball standout Jaqhawn Walters and 21-year-old Alexis Ortiz were shot and killed in broad daylight on opposite ends of the city.

Hartford investigators do not believe the increase in shootings is connected to more organized drug networks or gang activity and instead attribute it to personal disputes among young people, many of whom have been arrested recently but not processed by a court system whose capacity is limited by COVID-19 restrictions, Thody and Bronin said last week.

State Rep. Steve Stafstrom, a Bridgeport Democrat who helped write the police accountability bill as the co-chairman of the legislature's judiciary committee, said lawmakers are listening to police unions concerns about the new law but dismissed their concerns Monday that the bill is behind the recent violence in Hartford.

"This statement sounds like more election season posturing and fearmongering," Stafstrom said. "It is hard to believe that most honorable police officers are intentionally refusing to do their job because of this bill."

But police union leaders who point the finger at the new legislation argue it is actually leaders who blame COVID who are politicizing the issue.

"Bronin and Thody are politicizing the uptick in violent crime, blaming it on COVID. What a bunch of [expletive]," said Detective Sgt. Jeff Lampson, vice president of the Windsor Locks police union.

"If you want to make a sound, correlating argument to explain the uptick in violent crime, look no further than the police accountability bill," he continued. "Connecticut's feckless lawmakers have created a dangerous chasm with this bill. It's loaded with double standards, ambiguity, and has placed society (and police) as a whole in a more precarious situation than ever before."

Hartford police regularly shift patrols or conduct targeted operations across the city in response to crime trends, but police have not indicated publicly whether they have created a specific response after the recent spate of shootings. State police descended on Bridgeport this summer to increase visible foot patrols after a spike in violence and responded last summer to support Bridgeport, New Haven and Hartford officers after spikes in summer shootings in June and July 2019, but officials have not indicated whether that is being considered for Hartford this fall.

"As I've talked about many times over the past few days, there are many causes and many complex causes for the spike in gun violence," Bronin said. "But what I see again particularly when it comes to violent crime, to gun arrests, to auto theft, which is often associated with gun violence; I see our officers working their hearts out."

Amid Calls to 'Defund,' How to Rethink Policing

The Wall Street Journal, By Barry Friedman, June 13, 2020

Cops shouldn't be sent to deal with social problems—substance abuse, mental illness, homelessness—they aren't trained to handle

Over just a few weeks, the phrase "defund the police" has entered the debate about local law enforcement in cities across the U.S., and some public officials have begun to embrace the slogan. In Minneapolis, for instance, the City Council pledged this week to revamp or replace the department whose officers were charged with the death of George Floyd. Many Americans, however, have been startled by the defunding notion, to say nothing of the calls that also have

been heard in the recent protests to “abolish the police.”

The idea of defunding the police is hardly revolutionary, though, at least as it’s understood in the broader context of criminal justice reform. It ought to make good sense to anyone who cares about effective governance. The problem, simply put, is this: We send police officers to deal with too many social problems—substance abuse, mental illness, homelessness, domestic disputes, even civil unrest—for which they are grossly unprepared.

This mismatch has a range of negative consequences. Not only do the underlying social issues not get addressed, but the police overuse enforcement, including arrests, in dealing with them. This results too often in force and violence against black people, which is what launched the defund movement in the first place. The mismatch also hurts the police, fraying their relationship with the communities they are supposed to serve. Many police would be the first to say they are being asked to do things for which they are not trained.

It doesn’t have to be this way. With some reimagining, we can find ways to address our most pressing social ills instead of trying to enforce our way out of them.

Many Americans now calling to defund or abolish the police live in neighborhoods plagued by crime, violence and the array of social problems born of poverty and social and economic isolation. They profoundly wish for peace and safety in their neighborhoods and understand how essential those conditions are for economic development and the education of their children. Their call to start over with policing is a function of how badly the police have failed them.

A major reason for today’s crisis is the development of policing strategy since the 1980s, from the “broken windows” approach aimed at aggressive action against any signs of disorder, to “zero tolerance” of minor crimes, to “proactive policing” to deter crime through a show of relentless enforcement. To the communities most affected by these tactics, it came to seem that police work consisted primarily of stopping, frisking and arresting people of color in large and growing numbers. This led not only to a massive increase in prison populations but to widespread anger with the police in much of urban America.

The policing strategies of the past 40 years sprang from the tendency of American policy makers and public officials to address society’s deepest problems by sending an armed person. We deploy the police as though they are all-purpose social workers. People without a place to sleep? Send the cops. Someone suffering from mental illness? Send the cops. Trouble with drugs? Send the cops. And it goes well beyond that, to how we deal with loose dogs, loud neighbors and young people just hanging out in public, especially if they’re black or brown.

Every societal failure, we put it off on cops to solve….Policing was never meant to solve all these problems.— Then-Dallas police chief David Brown (now Chicago’s police superintendent), in 2016

Indeed, it’s important to understand how much of the daily work of police officers no longer concerns crime fighting. In the aftermath of the urban rioting of the late 1960s, the political scientist James Q. Wilson wrote, “The patrolman’s job is defined more by his responsibility for maintaining order than his responsibility for enforcing the law.” That remains true today, which is why we’re awash in arrests for marijuana possession, disorderly conduct and failing to pay fines and fees for things like traffic tickets—all of which primarily affect poorer minority populations. Meanwhile, the national rate for bringing charges in murder cases has sunk to 59.4%, its lowest since the FBI began tracking the figure.

In short, though increasing specialization has long been the trend in most other difficult fields of work, we have for decades adhered to a one-size-fits-all approach to policing. The problems we call upon police to address today require a wide range of skills. Mediation is foremost among them—helping people grapple with situations that could lead to violence. Social work is another—the ability to diagnose substance abuse or mental illness or a dysfunctional relationship. Often EMT training is required, as is the ability to direct a range of municipal social services where they are needed.

Compare this list of responsibilities, however, to how police typically are prepared for their work. Aside from basics like report-writing and using the radio, the bulk of their training in most departments is taken up by learning what the law is and how to use force. It’s no accident that police walk around with cuffs, a pistol and a baton, as well as a citation book. This mismatch between training and the real demands of the job has had predictable results, with many interventions prompted by 911 calls ending badly in one way or another. As the old saying goes, if all you have is a hammer, everything looks like a nail.

Because their involvement so seldom resolves underlying problems, police are called to return again and again to deal with the same issues. One study found that in Los Angeles in 2004, 67 people with mental illness accounted for 536 calls for service over eight months. Another from Denver in 2016 found that just 250 homeless people accounted for 1,500 arrests and 14,000 days in jail. At best the police in these cases are temporary Band-Aids.

So what’s to be done? A good start would be to rethink how we respond to calls to 911, which is how the police get involved in cases some 50% of the time. We need a whole new concept of first responders, on the model of emergency room doctors, with generalist professionals, trained to diagnose, stabilize and resolve situations as best they can but to

call in specialists if needed. They would have a range of skills, and their oath, as for doctors, would be: First, do no harm.

This would begin with a whole new training regime. Imagine first responders with multidisciplinary training in mediation, social work, knowledge of social services, EMT skills, etc. Being a first responder would require a serious degree program—if not four years, then at least two.

Some jurisdictions have already taken steps in this direction. Memphis developed a model of "Critical Incident Training," in which specially trained officers are dispatched to respond to mental health crises. They divert people with mental illnesses away from jail and into treatment. In 2010, Houston created what it calls the "Crisis Call Diversion Program," which is essentially a revamped 911 system in which crisis counselors, rather than patrol officers, are dispatched to mental health calls. Community groups have also led the way. Since 2017, community members in Washington, D.C., have acted as "Violence Interrupters" to help stem a spiral of violent gang responses, an approach also used in several other cities. This past Thursday, San Francisco's mayor announced that the city would start sending unarmed professionals rather than police to respond to calls that don't involve crimes. These initiatives not only address the underlying problems head on but also help to lighten the footprint of police departments in their communities.

None of this is to deny the need for traditional policing. There are, obviously, serious violent and property crimes, and real threats to individual safety, that require the application of the familiar tools of law enforcement. But as the killing of George Floyd and similar incidents in recent years have so tragically reminded us, how police officers use force is also in desperate need of reform. In Camden, N.J., the police department has gotten a lot of recent attention for its new use-of-force policy, developed with the help of a program that I direct at New York University. Camden's approach, created in conjunction with the community, now stresses de-escalation, and the attitude behind it led protesters and police to join hands this past week, avoiding any need for arrests.

Most important, a new system would need an entirely new reward structure. We don't reward emergency room doctors for admitting patients; we expect them to diagnose and solve problems or call in specialists. Instead of rewarding cops for enforcement actions like arrests, we should encourage them to perform triage, stabilize situations and know when to call in other social services to help.

The ray of hope in today's crisis is that it's not just the policed communities that are unhappy with the current approach; the police think it's broken too. The International Chiefs of Police, in responding recently to the "defund the police" movement, noted that the defunding of mental health services by state and local governments over the decades has meant "that the police are often the only ones left to call when a social worker or mental health professional would have been more appropriate and safer for all involved." In 2016, when Chicago's new police superintendent David Brown was the chief in Dallas, he said, "We are asking cops to do too much in this country. We are. Every societal failure, we put it off on cops to solve…. Policing was never meant to solve all these problems."

Given these points of agreement, we ought to be able to find common ground. It's time to rethink policing as it exists today, to replace a system that relies on a few harsh tools with one that offers a range of alternative approaches to the actual problems that police are called to address, and that distinguishes serious crime from social problems. In this way, we can—with justice—bring peace and safety for all.

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The Problem With Police Unions

The Wall Street Journal, By The Editorial Board, June 10, 2020

Collective bargaining protects too many bad cops from discipline.

Remember the furor in 2011 when Republican governors tried to reform collective bargaining for government workers? Well, what do you know, suddenly Democrats say public-union labor agreements are frustrating police reform. We're delighted to hear it—if they're serious.

Minneapolis Mayor Jacob Frey on Sunday said police collective bargaining and arbitration have prevented the city from holding officers accountable for misconduct. Derek Chauvin, the officer charged with killing George Floyd, had at least 17 misconduct complaints against him in 18 years. His personnel file provides little detail about how these complaints were handled. But it appears he was disciplined only once—after a woman said he pulled her from a car and frisked her for exceeding the speed limit by 10 miles per hour. He received a letter of reprimand.

Minneapolis's Office of Police Conduct Review has received 2,600 misconduct complaints since 2012. Only 12 have resulted in discipline, and the most severe punishment was a 40-hour suspension. "Unless we are willing to tackle the elephant in the room—which is the police union—there won't be a culture shift in the department," Mr. Frey said.

Jason Van Dyke, the Chicago officer convicted of murdering 17-year-old Laquan McDonald in 2014, had been the

subject of 20 complaints—ranking in the top 4% of Chicago's police department—including 10 that alleged excessive use of force.

A jury awarded a man $350,000 after finding Mr. Van Dyke employed excessive force during a traffic stop. Yet Mr. Van Dyke was never disciplined. A task force on police reform after the McDonald murder found that "collective bargaining agreements create unnecessary barriers to identifying and addressing police misconduct" and "essentially turned the code of silence into official policy."

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Police have a point that complaints against them are often dubious and they need an advocate to defend them. But collective-bargaining agreements go beyond due process and insulate officers from accountability for egregious and serial misconduct.

Some 40 states require or permit collective bargaining for police. A Duke Law Journal study in 2017 that analyzed 178 police union contracts concluded that a "lack of corrective action in cases of systemic officer misconduct is, in part, a consequence of public-employee labor law" that in most states permits unions "'to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment.'"

The authors found that about half of cities had collective-bargaining agreements that required the removal of police disciplinary records after a certain period of time. Cleveland's contract mandated expunging disciplinary records from department databases after two years. This makes it difficult for supervisors to assess whether officer misconduct is habitual.

About two-thirds of police union contracts also allow or require the use of arbitration in disciplinary cases. Private employers often use arbitration to resolve complaints by and against employees, but cities such as Chicago, Detroit and Minneapolis allow police unions essentially to select the arbitrator.

A University of Pennsylvania Law Review paper last year found that about half of all union contracts give officers or unions "significant power to select the identity of the arbitrator" as well as "provide this arbitrator with significant power to override earlier factual or legal decisions" and "make the arbitrator's decision final and binding on the police department."

The average police department, the paper notes, offers officers up to four layers of appellate review. A quarter of officers fired for misconduct between 2006 and 2017 were reinstated, usually by arbitrators. An Oakland police officer shot and killed two unarmed men within the span of six months, one of whom was fleeing. Oakland paid $650,000 to one of the deceased's family and fired the officer, but an arbitrator ordered him reinstated a few years later with back pay.

This lack of accountability is endemic to government collective bargaining. The AFL-CIO's legendary chief George Meany once said "it is impossible to bargain collectively with the government." Collective bargaining in business is adversarial. But public unions sit on both sides of the bargaining table since they help elect the politicians with whom they negotiate.

Democratic lawmakers in particular depend on public unions for political support, and disciplinary protections are easy to give away in contract talks. Teachers unions are the most powerful example, as collective bargaining frustrates school reform and protects lousy teachers, relegating low-income and minority kids to failing schools.

If big-city Democrats really want to change police incentives, rather than merely pass reform gestures, they'll have to address collective bargaining. Let's see if their social-justice convictions overcome their desire for political backing from public unions.