On July 24th the House of Representatives passed HB 6004, An Act Concerning Police Accountability. The proposal has been modified from earlier versions, especially in regards to government immunity. The bill has 45 sections with approximately 27 varying proposals that address police officer training, oversight, actions in the field, equipment and liability.

This document (1) provides an overview of some of the important sections that are relatable to municipalities, and (2) a series of answers to frequently asked questions regarding the bill.

**HB 6004 Summary:**

- **Sections 1-4, and 15:** Modifies the POST Council membership, authority and requires them to enact new policies (ex. implicit bias training, managing crowds, mental health assessment policies, etc.). The additional changes associated with POST include:
  - Requires police officers to pass a drug test as a condition of renewing their certification (which must be done every three years). This would include testing for anabolic steroids.
  - Allowing the Council to cancel or revoke an officer’s certification for conduct undermining public confidence in law enforcement, including (1) discriminatory conduct, (2) falsifying reports, (3) racial profiling in violation of state law, or (4) used excessive force or physical force found to be unjustified after investigation. *(Current law already allows revocation of certification for improper use of a firearm that result in death or serious bodily injury)*
  - Permits POST to suspend an officer’s certification for up to 45 days and censure the officer upon any of the grounds that could lead to cancellation or revocation.
  - Modifies the membership of POST to include additional members.

- **Sections 10 and 11:** Requires each law enforcement agency in a municipality that serves a “relatively high concentration of minority residents” to develop a report regarding efforts to recruit, retain and promote minority police officers.

- **Sections 3, 15-16:** Requires police officers to undergo mental health assessments every five years:
  - The assessments must be conducted by a board-certified psychiatrist or a licensed psychologist that has experience diagnosing and treating PTSD.
  - Allows law enforcement administration to stagger the scheduling of police officer assessments of an entire department to ensure at least 25% are conducted each year over a five-year period.
  - Allows law enforcement administration, for good cause and in writing, to require additional mental health assessments of an officer. The officer would need to comply within 30 days.
The results of any assessment would be provided to both the law enforcement administration and police officer.

Requires POST and DESPP to create policies which will examine, among other things, the fiscal implications of such assessments as well as permissible personnel actions, if any, that law enforcement units may take based on the assessments’ results, all while considering the officers’ due process rights. *(The full list can be found in the FAQ section)*.

**Section 17:** Allows the creation of a police civilian review board within a municipality and provides them with specific authority.

**Section 18:** Requires each municipal police department to evaluate the feasibility and impact of using social workers for the purpose of remotely responding to particular calls, or accompanying officers on certain calls where their assistance may be needed.

**Sections 19-20 and 45:** By July 1, 2020 bill requires all police officers and agencies to deploy and use body and vehicle dash cameras. Specifically, the bill:

- Extends policies and provisions regarding body camera usage and footage to dashboard cameras.
- Requires POST and DESPP to create policies regarding the usage of body cameras for sensitive law enforcement work, such as detective and undercover activities.
- Prohibits policies and guidelines on retaining body and dashboard camera data in storage for longer than a year except, in cases where units know the data is pertinent to any ongoing civil, criminal, or administrative matter.
- Requires OPM to administer a grant program for FY21 and FY22 to fund up to 50% for distressed municipalities and 30% for other municipalities, the cost of purchases of equipment, devices and/or one-year of digital data storage services for municipalities. The State would utilize $4 million in general obligation bonds to fund the program.

**Section 29:** Modifies the law regarding excessive use of force by narrowing the circumstances which an officer is justified in using deadly physical force. In particular, establishes two new factors to consider when evaluating whether an officer’s use of deadly physical force was “objectively reasonable” to include whether:

- The person upon whom deadly physical force was used possessed or appeared to possess a deadly weapon (current law);
- (New) The officer engaged in reasonable de-escalation measures before using deadly physical force; and
- (New) Any of the officer’s conduct led to an increased risk of the situation that led up to the use of such force.

The two new requirements - de-escalation measures and provocation - would be new elements that a police officer in a deadly force case would need to prove (it is unclear which party would have the burden of proof on these issues). It should be noted that the provocation doctrine, was explicitly rejected by the United States Supreme Court, *City and County of Los Angeles v. Mendez*, 137 S.Ct. 1539 (2017).
- **Section 30 and 43**: Requires a police officer that witnesses another officer use “unreasonable or illegal use of force” to intervene and attempt to stop the excessive force. In addition, requires particular reporting requirements for the witnessing officer.

- **Sections 21-22**: Prohibits consent searches of individuals and limits searches of motor vehicles stopped solely for motor vehicle violations.

- **Sections 33-35 and 46**: Creates a new Office of the Inspector General within the Division of Criminal Justice specifically to investigate and prosecute deadly police use-of-force incidents.

- **Section 40**: Prohibits state and local police from obtaining surplus military equipment *(the specific types of equipment are prescribed in the bill and referenced in the FAQ section)*. In addition, allows the Governor’s office or DESPP to require a municipality to sell, transfer or dispose of any prohibited equipment.

- **Section 41**: Establishes a new civil cause of action in state court against police officers who deprive an individual of equal protection or privileges and immunities of state law. By creating a cause of action against police officers in statute, the bill, in certain circumstances, eliminates the possibility of claiming governmental immunity. In particular, governmental immunity is not a defense (1) for actions solely seeking equitable relief and (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. As this is a new which mirrors federal doctrine regarding qualified immunity, federal case law regarding qualified immunity will likely be used on this instructive on this issue - even though not binding.

- **Section 44**: Requires law enforcement units to obtain accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA) by 2025.

**Frequently Asked Questions**
Below are some FAQ regarding provisions of HB 6004. Some expand upon the details that are outlined in the summary above.

- **Do police officers or municipalities need to purchase individual liability insurance for officers?**

No. The bill only requires the Police Accountability and Transparency Task Force to, among other things, *study* “the merits and feasibility of requiring a municipality to maintain professional liability insurance on behalf of its police officers”. The Task Force will need review these and other proposals and report to the Judiciary Committee their recommendations by January 2021. Once complete, the Judiciary would need to consider them for possible legislative action.
How does Section 41 affect the relationship between Resident State Troopers and their host municipalities?

Based on the recent contracts between the State and host municipalities for Resident State Trooper services, towns are generally removed from liability for any action of a state police officer within their jurisdiction.

How is “military equipment” defined:

The banned military style equipment includes:
- A controlled firearm, ammunition, bayonet, grenade launcher, grenade, including stun and flash-bang, or an explosive;
- A controlled vehicle, highly mobile multi-wheeled vehicle, mine resistant ambush-protected vehicle, truck, truck dump, truck utility, or truck carryall;
- An armored or weaponized drone;
- A controlled aircraft that is combat configured or combat coded or has no established commercial flight application;
- A silencer;
- Along-range acoustic device; or
- An item in the federal supply class of banned items.

What is the process for treatment for an officer after a mental health evaluation? What process will be established for their return to work? What will occur if an officer is not able to return to work?

The bill remains silent on several of the questions raised regarding the outcome of such assessments. Rather, the bill relies on POST to develop and implement written policies by January 1, 2021 on the outcome of the behavioral health assessments. At a minimum, these policies must address:
- Confidentiality of assessments, including compliance with the federal Health Insurance Portability and Accountability Act (HIPAA);
- Good faith reasons that law enforcement administrative leaders may rely upon when requesting that an officer undergo an additional assessment beyond those that are required;
- Availability of behavioral health treatment services for any police officers;
- The ability of an officer’s ability to review and contest their assessments’ results;
- Permissible personnel actions, if any, that law enforcement units may take based on the assessments’ results, while considering the officers’ due process rights; and
- Financial considerations that law enforcement units or police officers may incur due to the assessments.
What will happen if a municipality fails to obtain accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA)?

While the bill does not impose direct penalties or consequences for failure to obtain accreditation, failure to do so would place the law enforcement agencies in non-compliance which could expose them to legal liability, as well may make them ineligible to obtain outside services or grants. Currently, there are 16 municipal police departments that are CALEA accredited.

Will towns or police departments be required to release personnel files of officers, including mental health records, upon a FOIA request?

There are no changes in regards to the current law and practice regarding municipal police departments reporting of personnel files through an FOIA request.

The bill requires only state police disciplinary records be subject to FOIA. This is done by prohibiting any collective bargaining agreement, either enacted or in the future, from including a provision that would prevent any disciplinary action contained in a sworn member's personnel file from being discussed under FOIA.

How does the bill address labor issues, specifically how does it address an officer that has been decertified or loses their certification?

Based on current law, an individual is prohibited from serving as a police officer if their certification has been canceled or revoked. The bill makes changes and expands the reasons for which an officer’s certification may be revoked or suspended. As referenced above, these include (1) discriminatory conduct, (2) falsifying reports, (3) racial profiling in violation of state law, or (4) used excessive force or physical force found to be unjustified after investigation. (Current law already allows revocation of certification for improper use of a firearm that result in death or serious bodily injury).

The bill also allows POST to develop and issue written guidance to law enforcement units on grounds for certification suspension, cancellation, or revocation. The guidance may include, among other things, (1) reporting procedures that must be followed concerning these actions; (2) examples of discriminatory conduct and conduct that undermines public confidence in law enforcement; and (3) examples of misconduct while off-duty.

This bill does not address precedent that has been established by the State Labor Board or through arbitration.