



UNDERSTANDING PERSONAL FINANCIAL RISK

For Connecticut Police Officers

The Police Accountability Act has increased the anxiety of police and raised concerns about personal liability. This memo addresses those concerns and offers realistic analysis regarding potential means to protect assets.

IS THERE NOW A GREATER RISK OF PERSONAL LIABILITY?

There is no question that officers are now at greater risk of personal liability than ever before. Realistically, relatively few officers will be subject to the increased risk. On the other hand, at any time, even the best officer may unexpectedly be involved in an encounter and make what they believe is a correct decision, but based on facts learned *after* the incident, the resulting harm, adverse interest groups, and media attention, the officer may be one of the relatively few to suffer serious personal financial consequences.

STATUTORY INDEMNIFICATION & IMMUNITIES

7-101a & 7-465 (Municipal Police); 29-8a (State, Capitol and certain Special Police); 10a-156b (University Police) provide protections for officers from the costs of litigation and damages **as long as the act in question was within the scope of the officer's duties and was not willful, wanton or malicious** (reckless under 29-8a & 10a-156b).

Most cases are settled with no financial consequences for officers except in rare cases when officers are asked and choose to contribute to settlements. Government entities cover the cost of litigation and judgment for cases that are fully litigated not resulting in an award of punitive damages.

Officers are entitled to qualified immunity in federal actions for warrantless actions and discretionary immunity for state claims.

The true risk of negative financial consequences is in the award of punitive damages. The Second Circuit ruled that municipalities do not have to pay either punitive or compensatory damages when there is an award of punitive damages. Given the language of the Court in Hartford v. Edwards and the other indemnification statutes, this would seem to apply to all officers. While proponents of this Act may believe that it will only impact bad officers who commit egregious brutality, that is simply not true. Good officers may also be held personally liable for what they thought was a good decision at the time.

INCREASED RISK

There is an increased risk of punitive damages because:

- The legislature **has created a new state cause of action** similar to a 1983 action under Article 1 of our State Constitution giving plaintiffs a chance to prevail under state law yet to be developed when such action may not be successful in federal court.
- There is no **color of law** requirement; therefore, the chances of being sued for a state civil rights claim may be greater in off duty situations.

- **Eliminating the right to appeal** adverse dispositive motions will subject more officers to Russian roulette before a jury.
- Juries are more likely to be swayed by the false negative narrative against police as evidenced in the lowest findings regarding respect for police in the 27-year history of Gallup polling.
- Judges in state courts with less knowledge and experience than federal judges might allow more warrantless cases to proceed.
- Municipal leaders are less likely to support officers at risk of financial loss.

In conclusion, most officers will not be subjected to personal financial harm when being sued. However, of those officers sued, more are likely to be held liable for punitive damages and be required to pay punitive and compensatory damages. Hopefully the number of such officers will be low and the awards will not be too high.

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WHAT CAN HAPPEN IF A JUDGMENT IS ENTERED AGAINST YOU

Once a creditor obtains a judgment, there are various collection options available to force a turnover of money to satisfy the debt.

- 1. Real Estate Attachment:** One way that a creditor enforces a judgment is by filing a real estate attachment (i.e., judgment lien) on the judgment debtor's home. If the judgment debtor resides in the home, but is not on the deed/title, the judgment creditor cannot touch the real estate. Therefore, one way to protect your home from a judgment creditor is to place it in your spouse's name, a Domestic Asset Protection Trust (to be discussed in further detail later), or in the name of a legal business entity, such as limited liability company, regardless of whether the real estate is a primary residence or an investment property. Even if your home is in your name however, the Connecticut Homestead Exemption law permits a judgment debtor to exclude/exempt their home (primary residence only) from the execution of a judgment up to a value of \$75,000, or \$150,000, if the property is owned jointly with a spouse. Therefore, it is most advantageous to not own any real estate by yourself (i.e., in your name alone). It is important to note that the judgment debtor cannot transfer their real estate to protect it from creditors once the claim arises. Otherwise, the transfer is considered fraudulent and can be set aside. As such, it is imperative to meet with an attorney to ensure that your assets are protected as soon as possible, before a claim arises.
- 2. Wage Garnishment:** Another way that a creditor can collect on a judgment is through a wage garnishment, if the judgment debtor is employed. A wage garnishment requires the judgment debtor's employer to pay the wages to the creditor directly. The amount of the garnishment is a statutory percentage of the judgment debtor's pay. The money is paid to the creditor each time the judgment debtor receives their paycheck. The employer is required to pay the judgment creditor or it can be liable for damages. If a garnishment is put in place, it is best to try to work out a negotiated settlement to prevent or eliminate the garnishment, which can be embarrassing. The garnishment will remain in place until there is a settlement or the debt is fully paid. If the judgment creditor does not know where the judgment debtor is working or if the judgment debtor is self-employed, it is very difficult to successfully issue a wage execution. This would only pertain if you have a secondary job, *outside* of the police department.
- 3. Bank Execution:** The third and most common way a creditor enforces a judgment is through a bank execution. This is a form of legal process by which the creditor is able to seize the judgment debtor's money out of their bank account, as long as there is at least \$1,000. The first \$1,000 is exempt and not subject to collection. The judgment creditor is only permitted to issue bank garnishments to banks in the state in which the judgment entered. If you have an out of state bank, the creditor would have to first locate the bank, which is difficult, and then transfer the judgment to that state to obtain the funds. This makes it more time-consuming and burdensome on the creditor to enforce the judgment.

There are several forms of income that are statutorily protected from creditors, which are as follows:

- a. Social Security benefits (C.G.S. §52-352b(g))
- b. Unemployment benefits (C.G.S. §52-352b(g))
- c. Workers' Compensation benefits (C.G.S. §52-352b(g))
- d. Veteran's benefits (C.G.S. § 52-352b(g))
- e. Public Assistance payments (C.G.S. §52-352b(d))
- f. Private pension, trust, retirement, or medical savings
- g. Health or disability insurance payments (C.G.S. §52-352b(e))

- h. An amount in the bank not to exceed \$1000 (C.G.S. §52-352b(r))
- i. Wages earned by a public assistance recipient under an incentive earnings or similar program
- j. Court-ordered child support payments (C.G.S. §52-352b(h))
- k. Alimony and support other than child support¹ (C.G.S. § 52-352b(n))

4. Property Executions: In addition to real estate, judgment creditors may seize your personal assets to sell in order to satisfy the debt. Some common items that are seized include expensive cars, trucks, watches, jet skis, boats, snow mobiles, ATV's and artwork. There are however, several forms of personal property that are statutorily protected from creditors, some of which are as follows:

- a. Necessary apparel, bedding, foodstuffs, household furniture and appliances
- b. Tools, books, instruments, farm animals and livestock feed, which are necessary to the exemptioner in the course of his or her occupation, profession, farming operation or farming partnership
- c. Arms and military equipment, uniforms or musical instruments owned by any member of the militia or armed forces of the United States
- d. One motor vehicle to the value of \$3,500 provided such value shall be determined as the fair market value of the motor vehicle less the amount of all liens and security interests which encumber it²,
- e. Wedding and engagement rings
- f. Residential utility deposits for one residence and one residential security deposit

5. Discharge of Judgment in Bankruptcy: If a creditor obtains a judgment against you for a nondischargeable obligation, filing for bankruptcy will not discharge that judgment. Some of the most common types of nondischargeable judgments include those related to or arising out of:

- domestic support obligations such as child support and alimony
- criminal penalties, fines, and restitution
- certain taxes
- student loans
- debts acquired by fraud, misrepresentation, or false pretenses
- **willful and malicious injury caused by the debtor**, and
- death or injury caused by the debtor's drunk driving

A judgment involving the violation of a person's civil rights may NOT be dischargeable to the extent it is considered "willful" misconduct. Each situation is examined on a case-by-case basis, depending on the claims supporting the judgment.

¹ The amount of wages and alimony that may be subject to levy or other withholding for payment of a judgment is the lesser of (1) twenty-five per cent of the individual's disposable earnings for that week, or (2) the amount by which the individual's disposable earnings for that week exceed forty times the higher of (A) the federal minimum hourly wage under Section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. tit. 29, Section 206(a)(1), or (B), the state minimum hourly wage under subsection (i) of Section 31-58, in effect at the time the earnings are payable. Section 52-350a(4) of the Connecticut General Statutes defines "disposable earnings" as that part of the earnings of an individual remaining after the deduction from those earnings of amounts required to be withheld for payment of federal income and employment taxes, normal retirement contributions, union dues and initiation fees, group life insurance premiums, health insurance premiums and federal tax levies.

² For example, if you bought a car worth \$20,000, but owe the dealership/lender \$17,000 on it, you have \$3,000 of equity in the car and can protect it under either the Connecticut or federal exemption laws and it cannot be sold. If the motor vehicle has more than \$3,500 of equity, it may be sold to pay a creditor.

It is imperative that you speak with an attorney immediately upon receiving notice of a judgment to have the best chances of protecting your assets and potentially avoiding real estate attachments, wage executions, bank executions, and property executions.

For more information, contact:

 A professional headshot of Jared M. Alfin, Esq., a man with short brown hair, wearing a dark suit, white shirt, and patterned tie, smiling slightly against a dark blue background.	<p>Jared M. Alfin, Esq. Hassett & George, P.C.</p> <p>Email: jalfin@hgesq.com Phone: 860.651.1333</p>
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ASSET PROTECTION FOR THE REST OF US

You may have heard about how ultra-rich people set up offshore trusts to shield their assets from creditors. Well, now Connecticut allows you to create a Domestic Asset Protection Trust (DAPT) for yourself. As of January 2020, you can now transfer your assets to a special Connecticut asset protection trust and shield your assets from your own creditors. Of course, there are conditions and exceptions, but if you are worried about potential liability down the road, a Connecticut asset protection trust may let you sleep better at night, knowing the fruits of your hard work protecting and serving the citizens of Connecticut will be, well... PROTECTED.

To set up a Connecticut DAPT, your attorney will prepare a written trust agreement in which you appoint a "qualified trustee," which is either an individual Connecticut resident or an entity authorized by Connecticut law to act as a trustee. The Qualified trustee must:

- Maintain or arrange for the custody of the property in the trust;
- Maintain records of the trust;
- Prepare or arrange for the preparation of all tax returns; and
- Materially participate in the administration of the trust.

The only claims of creditors that can be enforced against the assets in a Connecticut DAPT are:

- Fraudulent transfer claims under the Connecticut Uniform Fraudulent Transfer Act;
- Child support obligations;
- Marital support obligations; and
- Tort claims arising prior to the transfer of assets to the Connecticut DAPT.

While creating a CT DAPT requires that you give up a certain amount of control over your assets, you can retain:

- Power to veto a distribution from the trust;
- The power to change who gets your assets in the event of your death through what is called a testamentary limited power of appointment; and
- The power to remove a trustee or trust director and appoint a new trustee or trust director who is not related or subordinate to you.

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TRANSFERRING ASSETS TO YOUR SPOUSE OR OTHER RELATIVE

Another way to protect your assets is to transfer them to your spouse or other relative. There are two key points to know about transferring assets.

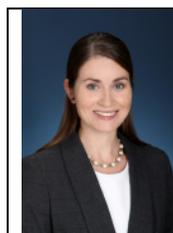
First, **any transfer must be a preventative measure and be done before a case or judgment has been made against you.** If not, you could be exposing yourself to a Fraudulent Transfer claim. The Connecticut Uniform Fraudulent Transfer Act (CUFTA; C.G.S. §§ 52-552a through 52-552l) provides relief to creditors when there has been a transfer of a debtor's assets and the circumstances establish that the transfer was fraudulent. There are many factors considered by the court in determining the actual intent and whether or not it constitutes fraud. Some of the crucial factors relevant here are: (a) the transfer or obligation was to an insider; (b) the debtor retained possession or control of the property transferred after the transfer; (c) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suits; (d) the transfer was substantially all the debtor's assets.

As you can see, the transfer of assets is given a close look by the court, thus any such transfer would need to be planned and executed before a lawsuit or judgment was pending. The Statute of Limitations on a CUFTA claim is 4 years. If a CUFTA case is brought, it would bring in all parties involved, including the recipient of the transfers (i.e. spouse or other relative). Some of the consequences include a penalty to pay legal fees and to have the transfer set aside.

Second, the law in Connecticut for purposes of equitable distribution in dissolution of marriage is that this is an "all property" state, so rest assured that the transfer of title would not disadvantage either spouse in the event of a divorce (C.G.S. § 46b-81(a)). All real and personal property owned by the parties, regardless of when acquired or how acquired, through employment, gifts, or inheritance, before marriage or jointly-acquired, or separately-acquired during the marriage, are all considered property for purposes of marital distribution in Connecticut. The important point here is that if preventative measures were taken by transferring assets to a spouse, they would still be subject to equitable distribution in the event of a divorce – thus protecting your interests and claims to your equitable share of the property in such an event.

If you are married, an attorney should be consulted prior to transferring assets to a relative other than your spouse. No one likes to plan for circumstances of a divorce, but there could be avoidable complications with a future divorce case if transfers are made to other relatives without certain records in place.

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POTENTIAL INSURANCE PROTECTION

The Police Accountability Task Force has been charged with exploring the availability of personal insurance for police. U.S. insurers are starting to craft coverage for officers as government officials around the country pass laws increasing personal liability risks. To date, we have not been able to locate a credible carrier with adequate coverage or reasonable premiums to cover civil liability risks.

PORAC and FOP are well-established insurers created by police groups that have insurance to cover legal defense costs. Both insurers cover legal costs for defense of criminal matters. The insurance provides for legal defense from the time of the incident through trial.

Both insurers also have coverage for disciplinary matters, but in Connecticut, officers generally are covered for only criminal matters by PORAC.

They also provide legal defense for civil matters, but such insurance is not necessary in Connecticut as officers sued are entitled to legal defense provided by their government entities under statute.

Officers should consult with their unions to explore coverage by FOP and/or PORAC.

We will continue to search for professional liability and errors and omissions policies and will update this memo if additional information becomes available.

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THANK YOU FOR YOUR SERVICE.

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