

S.254

Introduced by Senators Sears, Balint, Baruth and Ram Hinsdale

Referred to Committee on Judiciary

Date: January 13, 2022

Subject: Civil liability of law enforcement officers; qualified immunity;
indemnification

Statement of purpose of bill as introduced: This bill proposes to create a private right of action against law enforcement officers for violations of Vermont constitutional, statutory, and common law rights. This bill also proposes to waive the use of qualified immunity as a defense in such actions and provides for qualified indemnification of law enforcement officers by law enforcement agencies.

~~An act relating to creating a private right of action against law enforcement officers for violating rights established under Vermont law~~

~~An act relating to recovering damages for Article 11 violations by law enforcement and a report on qualified immunity~~

~~An act relating to maintaining records of judgments and settlements paid by law enforcement agencies and a legal analysis of qualified immunity~~

It is hereby enacted by the General Assembly of the State of Vermont:

~~Chapter 190 of 12 V.S.A. chapter 190 is added to read:~~

~~CHAPTER 190. PRIVATE RIGHT OF ACTION AGAINST LAW~~

~~ENFORCEMENT OFFICERS; DEPRIVATION OF STATE RIGHTS~~

~~§ 5607. LIABILITY OF LAW ENFORCEMENT OFFICERS~~

1 ~~(a) As used in this section:~~

2 ~~(1) "Law enforcement agency" has the same meaning as in 20 V.S.A.~~

3 ~~§ 2351a.~~

4 ~~(2) "Law enforcement officer" has the same meaning as in 20 V.S.A.~~

5 ~~§ 2351a.~~

6 ~~(b) An individual injured or damaged by the commission or omission of~~

7 ~~any act of a law enforcement officer acting under authority of the State, or~~

8 ~~within the scope of authority of a law enforcement agency, that violates the~~

9 ~~individual's rights guaranteed under a provision of the Constitution of the~~

10 ~~State of Vermont that provides a private right of action, prescribed by Vermont~~

11 ~~statute, or created by Vermont common law, may bring an action for damages~~

12 ~~or equitable relief against the law enforcement officer.~~

13 ~~(c) An action brought pursuant to this section is not subject to:~~

14 ~~(1) common law doctrines of immunity as a defense to liability;~~

15 ~~(2) statutory immunities and statutory limitations on liability, damages,~~

16 ~~or attorney's fees;~~

17 ~~(3) the provisions of chapter 189 of this title; or~~

18 ~~(4) the provisions of 24 V.S.A. chapter 33, subchapter 4.~~

19 ~~(d) A court may award reasonable attorney's fees and other litigation costs~~

20 ~~reasonably incurred in any action brought under this section in which the~~

21 ~~plaintiff substantially prevailed. When a judgment is entered in favor of a~~

1 ~~defendant, a court may award reasonable attorney's fees and other litigation~~
2 ~~costs reasonably incurred to the defendant for defending any claims the court~~
3 ~~finds frivolous.~~

4 ~~(e) Notwithstanding the provisions of 3 V.S.A. chapter 29, chapter 189 of~~
5 ~~this title, or 29 V.S.A. chapter 55, a law enforcement agency shall indemnify~~
6 ~~its law enforcement officer for any liability incurred, and for any judgment or~~
7 ~~settlement entered against the law enforcement officer, for claims arising~~
8 ~~pursuant to this section, except that if the law enforcement agency determines~~
9 ~~that the law enforcement officer did not act in good faith and under reasonable~~
10 ~~belief that the action was lawful, then the law enforcement officer is personally~~
11 ~~liable and shall not be indemnified by the law enforcement agency for five~~
12 ~~percent of the judgment or settlement or \$25,000.00, whichever is less.~~

13 ~~(f) Notwithstanding any provision of this section to the contrary, to the~~
14 ~~extent that a law enforcement officer's portion of a judgment or settlement is~~
15 ~~uncollectable from the law enforcement officer, the law enforcement agency or~~
16 ~~the law enforcement agency's insurance shall satisfy any such uncollected~~
17 ~~amount of the judgment or settlement.~~

18 ~~(g) An action brought pursuant to this section shall be commenced within~~
19 ~~three years after the cause of action accrues.~~

20 Sec. 2. EFFECTIVE DATE

21 ~~This act shall take effect on July 1, 2022.~~

~~Sec. 1. 12 V.S.A. chapter 190 is added to read:~~

~~CHAPTER 190. VIOLATIONS OF ARTICLE 11 OF THE VERMONT
CONSTITUTION BY LAW ENFORCEMENT~~

~~§ 5607. STANDARD TO RECOVER DAMAGES~~

~~(a) It is the intent of the General Assembly to codify the common law principle for a plaintiff seeking damages for an alleged violation of Article 11 of the Vermont Constitution as established by the Vermont Supreme Court's decision in *Zullo v. State*, 2019 VT 1 and apply it uniformly as a burden that a plaintiff must prove to recover damages in an action brought against any Vermont law enforcement agency alleging a violation of Article 11.~~

~~(b) A plaintiff seeking damages against any Vermont law enforcement agency directly under Article 11 of the Vermont Constitution based on a law enforcement officer's alleged violation of that constitutional provision must show that:~~

~~(1) the law enforcement officer committed a violation of Article 11 of the Vermont Constitution;~~

~~(2) there is no meaningful alternative in the context of the particular case; and~~

~~(3) the law enforcement officer knew or should have known that the officer violated clearly established law or the officer acted in bad faith.~~

~~(c) As used in this chapter, "law enforcement agency" has the same meaning as in 20 V.S.A. § 2351a.~~

~~§ 5608. RECORD OF CASE DISPOSITION~~

~~Each law enforcement agency shall maintain a record of all final judgments and settlements paid by the law enforcement agency for claims made pursuant to this chapter and attach a copy of the complaint to each record. All judgments, settlements, and their underlying complaints are subject to public disclosure unless an exemption applies pursuant to 1 V.S.A. § 317. Any record disclosed shall include the name of the law enforcement agency and the monetary amount paid pursuant to the judgment or settlement.~~

~~Sec. 2. REPORT ON ACCESS TO CIVIL JUSTICE REMEDIES AND LAW ENFORCEMENT QUALIFIED IMMUNITY IN VERMONT~~

~~(a) On or before November 15, 2022, the Office of Legislative Counsel shall submit a written report to the Senate Committee on Judiciary, the House Committee on Judiciary, and the Joint Legislative Justice Oversight Committee concerning the impact of the doctrine of qualified immunity on access to civil justice remedies for people wrongfully harmed by bad faith policing and~~

~~violations of civil rights in the State of Vermont. In particular, the report shall identify:~~

~~(1) the origins of the doctrine of qualified immunity and its present interpretation by the State courts of Vermont;~~

~~(2) existing constitutional, statutory, and common law causes of action for redressing the alleged misconduct of Vermont law enforcement under Vermont law;~~

~~(3) existing immunities from suit concerning allegations of Vermont law enforcement misconduct under Vermont law;~~

~~(4) existing defenses to liability concerning allegations of Vermont law enforcement misconduct under Vermont law;~~

~~(5) existing statutory and common law limitations on damages concerning allegations of Vermont law enforcement misconduct under Vermont law; and~~

~~(6) the applicability of the doctrine of qualified immunity to all certified law enforcement officers.~~

~~(b) The report shall be confined to legal analysis and shall not make any policy recommendations.~~

~~(c) In the preparation of the report, the Office of Legislative Counsel shall have the administrative, technical, and legal assistance of the Office of the Vermont Attorney General, the Office of the Vermont Defender General, the Center for Justice Reform at Vermont Law School, and other stakeholders interested in assisting with the report.~~

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2022.~~

Sec. 1. 20 V.S.A. § 2370 is added to read:

§ 2370. RECORD OF CASE DISPOSITION

Each law enforcement agency shall maintain a record of all final judgments and settlements paid by the law enforcement agency for court claims related to alleged violations of constitutional rights established under the Constitution of the State of Vermont. All judgments, settlements, and their underlying complaints are subject to public disclosure unless an exemption applies pursuant to the Vermont Public Records Act. Any record disclosed shall include the name of the law enforcement agency and the monetary amount paid pursuant to the judgment or settlement.

*Sec. 2. REPORT ON ACCESS TO CIVIL JUSTICE REMEDIES AND LAW
ENFORCEMENT QUALIFIED IMMUNITY IN VERMONT*

(a) On or before November 15, 2022, the Office of Legislative Counsel shall submit a written legal analysis to the Senate Committee on Judiciary, the House Committee on Judiciary, and the Joint Legislative Justice Oversight Committee concerning the impact of the doctrine of qualified immunity on access to civil justice remedies in the State of Vermont and the U.S. Court of Appeals for the Second Circuit. In particular, the analysis shall identify:

(1) the origins of the doctrine of qualified immunity and its present interpretation and application by the State courts of Vermont;

(2) existing constitutional, statutory, and common law causes of action for redressing the alleged misconduct of Vermont law enforcement under Vermont law;

(3) existing immunities from suit concerning allegations of Vermont law enforcement misconduct under Vermont law;

(4) existing defenses to liability concerning allegations of Vermont law enforcement misconduct under Vermont law;

(5) existing statutory and common law limitations on damages concerning allegations of Vermont law enforcement misconduct under Vermont law;

(6) the applicability of the doctrine of qualified immunity to all certified law enforcement officers;

(7) the level of specificity necessary for a statute to be considered clearly established law pursuant to a qualified immunity analysis under Vermont law;

(8) the difference between remedies available pursuant to a direct private right of action based on self-executing provisions of the Vermont Constitution and remedies available in an action pursuant to 42 U.S.C § 1983; and

(9) a survey of states that maintain a central database of all final judgments and settlements paid by a law enforcement agency for allegations of law enforcement officer misconduct.

(b) The written analysis shall be confined to legal analysis and shall not make any policy recommendations.

(c) In the preparation of the legal analysis, the Office of Legislative Counsel shall have the administrative, technical, and legal assistance of the Office of the Vermont Attorney General, the Office of the Vermont Defender General, the Center for Justice Reform at Vermont Law School, and other stakeholders interested in assisting with the report.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2022.