

S.254

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

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

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.