



March 31, 2022

Representative Maxine Grad, Chair  
House Judiciary Committee  
115 State Street  
Montpelier, VT 05633-5301

Dear Chairperson Grad,

I am writing on behalf of the 246 city and town members of the Vermont League of Cities and Towns to comment on S. 254.

We testified in the Senate Judiciary Committee regarding the bill as it was introduced, and as it was passed by the Senate. We have been involved in discussions addressing the future of law enforcement in Vermont and how to grow our communities' trust in municipal policing for many years.

In 2017, Act 56 was enacted, establishing new provisions for the professional regulation of law enforcement officers. More recently, in 2020 the legislature passed Act 147 defining prohibited restraints, Act 165 establishing a use of force standard, and Act 166, which addresses the collection of roadside stop data and use of body cameras, substantially restructures and expands the Criminal Justice Council, and requires law enforcement agencies to report credible complaints of professional misconduct to the Council. The Council has established a Professional Regulation Subcommittee to hear those complaints.

In 2021, the legislature passed Act 27 revisiting the use of force standard, establishing an officer's duty to intervene, and establishing new statewide training requirements. These are now "the law". In the last two years, even as the COVID pandemic struck, and already difficult recruitment and retention problems were significantly exacerbated, police departments, the restructured Criminal Justice Council and the newly appointed Executive Director of the Police Academy have worked to implement your legislative directives.

As it was passed by the Senate, S. 254 would require the Legislative Counsel to submit a report to the legislature that identifies the origins of the doctrine of qualified immunity, and establishes its context relative to other laws, presumably including those you have passed since 2017. It would direct the legislative counsel to assess 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 Vermont.

The bill also seeks to codify, effective July 1, 2022, "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 decision in *Zullo v. State*, 2019 VT 1". The legislative Counsel would be confined to legal analysis and directed to not make recommendations regarding policy.



We suggest that the study of qualified immunity as it pertains to law enforcement and its context relative to other laws, should include the most appropriate way to apply the Zullo decision to local law enforcement.

We are grateful for the Senate stepping back from passing legislation in haste without benefit of their own full analysis of qualified immunity and an exhaustive understanding of its application in Vermont specifically.

Sincerely

A handwritten signature in black ink that reads "Karen B. Horn". The signature is written in a cursive style.

Karen Horn, Director  
Public Policy & Advocacy