

Senate Judiciary Committee

Testimony on S. 254, Private Right of Action Against Law Enforcement Officers

January 20, 2022

The Vermont League of Cities and Towns joins twelve organizations in opposition to the effort to create a private right of action against law enforcement officers and eliminate qualified immunity as proposed in S. 254.

In August 2020, the VLCT Board of Directors offered its perspectives on police reform, which is linked and attached here. That perspective calls for both holding officers accountable and preserving qualified immunity. The goals are not exclusive of each other. Local officials embrace actions to both increase accountability among law enforcement officers and to improve access to justice for all. [https://www.vlct.org/VLCT Perspectives on Police Reform](https://www.vlct.org/VLCT_Perspectives_on_Police_Reform)

All public officials, from plow drivers to school and selectboard members, listers, teachers, health officers, police officers and fire fighters rely on qualified immunity to protect them from individual liability unless an official violated a clearly established constitutional right. Qualified immunity, according to the US Supreme Court, is a safeguard available to all government officials *except those who are plainly incompetent or those who knowingly violate the law.*”

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.

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”, referenced above. 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 those legislative directives.

With me today is Trevor Whipple, retired S. Burlington police chief and VLCT Law Enforcement Risk Management Consultant. He serves on the Criminal Justice Council and is currently chair of its Professional Regulation Subcommittee. Mr. Whipple is available to discuss the implementation of training, accountability, and professional system-wide standards in the law enforcement area.

The effort to create a private right of action and eliminate qualified immunity protection for police officers will serve to exacerbate the difficulty that police departments have in filling vacancies, retaining officers and providing law enforcement services statewide. We believe the bill will compromise earlier legislative action to enact police reform with a focus on accountability. According to the Department of Public Safety, this includes every law enforcement agency having recently adopted a new statewide use of force policy.

We have recently heard of at least one small town considering the creation of a new police department because there is no available coverage from state police, sheriff's office or nearby communities. At the current time that option is also infeasible because a new department will face the same staffing challenges that make it impossible for state police, sheriffs or nearby communities to offer coverage.

In other past efforts, the legislature has considered mandates to require every town to provide law enforcement coverage. Section 32 of Act 166 requires each regional planning commission to inventory the public safety resources of each town within its jurisdiction and report the inventory to all its towns by December 31, 2021 in order for towns to better understand the public safety resources available to them and how those resources may be shared. H. 689, a newly introduced bill, would prohibit a town from receiving state aid for town highways, bridges or structures unless it has filed a plan for local enforcement of traffic laws, which shall include enforcement of speeding on town highways and prohibited idling.

We wrote in our Legislative Preview that, "this session, we hope the legislature gives our service providers the support they need to succeed in these difficult times and make sure that any action taken will better resource, support and professionalize all public safety sectors. And local governments are ready to partner with the state to build upon recent legislative success in accomplishing these goals." We will work with the committee to advance legislation that accomplishes those aims. S. 254 is not that bill.

Karen Horn, Director Public Policy & Advocacy