

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 254
3 entitled “An act relating to creating a private right of action against law
4 enforcement officers for violating rights established under Vermont law”
5 respectfully reports that it has considered the same and recommends that the
6 bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

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

9 CHAPTER 190. PRIVATE RIGHT OF ACTION AGAINST LAW
10 ENFORCEMENT OFFICERS; DEPRIVATION OF STATE RIGHTS
11 § 5607. LEGISLATIVE INTENT

12 It is the intent of the General Assembly to eliminate the common law
13 defense of qualified immunity available to law enforcement officers in the
14 State of Vermont and replace it by codifying the damages-limiting principle
15 espoused in *Zullo v. State*, 2019 VT 1 as a burden that a plaintiff must prove to
16 obtain damages in an action brought under this chapter.

17 § 5608. LIABILITY OF LAW ENFORCEMENT; LIMITATIONS

18 (a) As used in this chapter:

19 (1) “Law enforcement agency” has the same meaning as in 20 V.S.A.

20 § 2351a.

1 (2) “Law enforcement officer” has the same meaning as in 20 V.S.A.
2 § 2351a.

3 (b) An individual injured or damaged by the commission or omission of
4 any act of a law enforcement officer acting under authority of the State or
5 within the scope of authority of a law enforcement agency that violates the
6 individual’s rights, privileges, or immunities guaranteed under the Constitution
7 of the State of Vermont may bring an action for damages or equitable relief
8 against the law enforcement officer.

9 (c) To obtain damages in any claim brought pursuant to this chapter, a
10 plaintiff must show, by a preponderance of the evidence, that:

11 (1) the law enforcement officer acting under authority of the State or
12 within the scope of authority of a law enforcement agency committed a
13 violation of subsection (b) of this section;

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

16 (3) the law enforcement officer acting under authority of the State or
17 within the scope of authority of a law enforcement agency knew or should
18 have known that the officer was violating clearly established law or the officer
19 acted in bad faith.

1 (d)(1) Qualified immunity shall not be a defense to suit or liability
2 available to a law enforcement officer in any action brought pursuant to this
3 chapter.

4 (2) The prohibition on the use of the defense of qualified immunity shall
5 not abrogate judicial or legislative immunity in any way and shall not abrogate
6 any statutory or common law immunity not subject to this chapter.

7 (e) In any action for damages brought pursuant to this chapter, the
8 maximum liability of a law enforcement officer shall be \$500,000.00 to any
9 one individual and the maximum aggregate liability shall be \$2,000,000.00 to
10 all individuals arising out of each occurrence.

11 (f) The remedies provided for in this chapter are not exclusive and shall be
12 in addition to any other remedies prescribed by law or available pursuant to
13 common law.

14 (g) A court may award reasonable attorney's fees and other litigation costs
15 reasonably incurred in any action brought under this chapter in which the
16 plaintiff substantially prevailed. When a judgment is entered in favor of a
17 defendant, a court may award reasonable attorney's fees and other litigation
18 costs reasonably incurred to the defendant for defending any claims the court
19 finds frivolous, brought with malicious intent, or in retribution for otherwise
20 lawful conduct.

1 (h) An action brought pursuant to this section shall be commenced within
2 three years after the cause of action accrues.

3 § 5609. NOTICE OF CLAIM

4 (a) A notice of claim is a condition precedent to the commencement of any
5 action brought pursuant to this chapter. Any individual who claims relief
6 pursuant to section 5608 of this title shall serve a written notice of claim on the
7 appropriate law enforcement agency within one year after an occurrence giving
8 rise to a claim pursuant to this chapter. The time for giving notice shall not
9 include the period during which the claimant is incapacitated from giving the
10 notice due to injury.

11 (b) A notice of claim shall include:

12 (1) the name and post office address of each claimant and of each
13 claimant's attorney, if any;

14 (2) the nature of the claim;

15 (3) the time, place, and manner in which the claim arose;

16 (4) the damages or injuries claimed to be sustained; and

17 (5) the claimant's sworn attestation.

18 (c) The notice of claim shall be served on a law enforcement agency either
19 personally or by regular or certified mail to the individual designated by law to
20 accept service of a court summons or to an attorney regularly engaged in
21 representing the law enforcement agency.

1 (d) When a wrongful death claim is brought pursuant to this chapter, the
2 personal representative of the decedent or any individual claiming benefits of a
3 wrongful death action may serve a notice of claim within one year and six
4 months after the date of the occurrence of the injury that resulted in the death.
5 No additional notice is required if the decedent served a proper notice pursuant
6 to this section prior to the decedent’s death.

7 (e) Each law enforcement agency shall maintain a record of all notices of
8 claim served on the law enforcement agency pursuant to this section and attach
9 a copy of the notice to each record. Each record and each notice of claim are
10 subject to disclosure unless an exemption applies pursuant to 1 V.S.A. § 317.

11 § 5610. INDEMNIFICATION OF LAW ENFORCEMENT OFFICERS;

12 RECORD OF DISPOSITION

13 (a) Notwithstanding the provisions of 3 V.S.A. chapter 29, chapter 189 of
14 this title, or 29 V.S.A. chapter 55 to the contrary, a law enforcement agency
15 shall fully indemnify its law enforcement officer for any liability incurred, and
16 for any judgment or settlement entered against the law enforcement officer, for
17 claims arising pursuant to this chapter.

18 (b) The maximum liability of a law enforcement agency under this section
19 shall be \$500,000.00 to any one individual, and the maximum aggregate
20 liability shall be \$2,000,000.00 to all persons arising out of each occurrence.

1 (c) Each law enforcement agency shall maintain a record of all final
2 judgments and settlements paid by the law enforcement agency for claims
3 made pursuant to this chapter and attach a copy of the complaint to each
4 record. All judgments, settlements, and complaints are subject to disclosure
5 unless an exemption applies pursuant to 1 V.S.A. § 317.

6 Sec. 2. EFFECTIVE DATE

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

8

9 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE