



LAW ENFORCEMENT ACTION PARTNERSHIP

ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

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Date: January 19, 2022

Re: S. 254

Position: SUPPORT

To: Vermont State Senate Committee on Judiciary

Dear Senators,

Thank you for the opportunity to testify in support of Senate Bill 254. This bill would codify a right of action for state constitutional violations committed by law enforcement officers and eliminate qualified immunity as a defense to constitutional, common law, and statutory causes of action for law enforcement officers.

I am the executive director of The Law Enforcement Action Partnership (LEAP), a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience. Our mission is to make communities safer by focusing law enforcement resources on the greatest threats to public safety and addressing the root causes of crime.

In my twenty years in law enforcement, I have learned that trust between police and the communities we serve is not just a preference; it is a requirement for public safety. Without these relationships, police are left to investigate crimes with little to no help from the community. People have so little trust in us that a majority of violent crimes go unreported, even by victims themselves. Our agencies are failing to protect and serve: many people would rather take matters into their own hands or suffer in silence.

One major reason that people do not trust law enforcement is that they believe police are not held accountable to the law. A key reason for this belief is qualified immunity. It is a federal doctrine that holds officers and their agencies harmless against federal lawsuits unless the officer's action has already been "clearly established" as a constitutional violation in that court's jurisdiction.

For example, in *Jessop v City of Fresno* (2019), it was shown that police officers stole money, and the victims sued. But the Ninth Circuit dismissed the lawsuit on qualified immunity grounds, because no previous Ninth Circuit case had specifically said that police stealing from plaintiffs is a violation of the Fourth Amendment.

No two situations will be exactly the same, so many important cases of civilian complaints are dismissed. When such cases are dismissed, the media firestorm has a devastating impact on public trust in the justice system.

The State of Vermont cannot fix a federal issue, but state legislators have proposed legislation that would protect the constitutional rights of the residents of Vermont through state court. The Vermont Civil Rights Act would allow Vermont residents to pursue meaningful civil remedies for injuries as a result of police misconduct that has violated a citizen's constitutional rights. The qualified immunity defense would no longer keep justified claims out of court, helping to salvage law enforcement's reputation for accountability.

We understand firsthand why police are concerned about losing the qualified immunity defense, and we want to be clear that this concern is not warranted.

First, qualified immunity is not the officer's lone shield protecting us from a flood of frivolous lawsuits. Studies show that judges dismiss cases on qualified immunity grounds in less than [four percent](#) of civil rights cases involving law enforcement. When cases are without merit, judges dismiss them based on other tools in the rules of civil procedure. This four percent of unjustifiably dismissed lawsuits is not a concern for decent officers, but it provides highly visible evidence of the disastrous perception that officers are "above the law."

Second, when a case makes it into court, qualified immunity is not the officer's only defense for actions that were reasonable or in good faith. Our real protection is the Fourth Amendment itself, which is only violated by *unreasonable* searches or seizures. Officers who acted in a reasonable way considering the heat of the moment are protected by this reasonableness standard, without the need to resort to qualified immunity.

Finally, bypassing qualified immunity in Vermont will not bankrupt officers. When officers' actions lead to settlements or judgments against them, [research shows](#) that 99.98% of the bills get paid by cities. Governments foot the bill even when indemnifying the officer is against local law or policy, and even when the officer is terminated or convicted in criminal court for their conduct. Officers will not be bankrupted by settlements, judgments, or personal liability insurance.

In short, ending qualified immunity will not bring open season upon law enforcement. It will simply allow judges to hear the facts of the most egregious cases, which are currently causing the public perception that police are above the law. As law enforcement professionals, we support the Vermont Civil Rights Act because it will strengthen police relationships with the communities that law enforcement in Vermont have sworn to protect and serve.

Thank you for the opportunity to share our perspective in support of this bill.

Respectfully,

Lieutenant Diane Goldstein, Ret.
Executive Director
Law Enforcement Action Partnership