

## Qualified Immunity Legislation Evaluation Rubric

Initials of Reviewer **JL** Date of Review **9/3/2024**

Category		Criteria	Proposed Legislation in <u>NY A10978</u>	Determination	Score
<b>END</b>					
<b>1.1</b>	<b>END: Qualified Immunity for all law enforcement officers</b>	<b>For all law enforcement officers: Prohibit the use of Qualified Immunity as a defense.</b>	<p><i>“(b) It shall not be a defense or immunity to any action brought for the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution and laws, that such defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that their conduct was lawful at the time such conduct was committed. Nor shall it be a defense or immunity that the rights, privileges, or immunities secured by the federal or state Constitution or laws were not clearly established at the time of their deprivation by the defendant, or that the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether their conduct was lawful”</i></p> <p><i>“The immunity granted pursuant to subdivision one of section twenty-four of the correction law shall not extend to actions brought pursuant to this section.”</i></p>	<b>Meets Standard.</b> The proposed legislation ends qualified immunity for all law enforcement officers. By enacting this chapter language, qualified immunity is erased as a defense for these claims.	<b>1 pt = All LEOs</b>  0 pts = no ban
<b>1.2</b>	<b>END: Qualified Immunity for all public employees</b>	<b>Prohibit the use of Qualified Immunity as a defense for any public body or person acting on behalf of or under the authority of a public body.</b>	<p><i>§ 79-q. Civil action for deprivation of rights. 1. (a) A person or public entity acting under color of law that subjects or causes to be subjected any other person to the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution or laws, is liable to the injured party for legal or equitable relief or any other appropriate relief. For the purposes of this section, a public entity subjects, or causes to be subjected, any person to the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution or laws, by employing any person who violates this section.”</i></p> <p><i>“(b) It shall not be a defense or immunity to any action brought for the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution and laws, that such</i></p>	<b>Meets Standard.</b> The proposed legislation ends qualified immunity for all public employees. By enacting this chapter language, qualified immunity is erased as a defense for these claims.	<b>1 pt = All public employees (including LEOs)</b>  0 pts = no ban

			defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that their conduct was lawful at the time such conduct was committed. Nor shall it be a defense or immunity that the rights, privileges, or immunities secured by the federal or state Constitution or laws were not clearly established at the time of their deprivation by the defendant, or that the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether their conduct was lawful"		
1.3	<b>END: Qualified Immunity for all violations of someone's rights, including all state and United States constitutional violations</b>	A person may bring claims under state laws for violations of their constitutional rights. This includes <b>ALL</b> violations of the constitution on a state level.	"A person or public entity acting under color of law that subjects or causes to be subjected any other person to the deprivation of any rights, privileges, or immunities secured by the federal or state Constitution or laws, is liable to the injured party for legal or equitable relief or any other appropriate relief."	<b>Meets Standard.</b> The proposed legislation ends qualified immunity for all violations of Constitutional Rights.	<b>1 pt = Includes all constitutional violations on a state level</b>  0 pts = Has carve-outs or has a limited list of liable violations
1.4	<b>END: Monetary Caps on Public Liability Amount</b>	There shall be <b>no cap or limit on the appropriated amount for plaintiff</b> to be awarded. If there is a cap: <sup>1</sup> <ol style="list-style-type: none"> <li>At least \$2 million dollars</li> <li>it must be per <b>plaintiff per claim</b> and not per occurrence</li> <li>Adjusted for inflation each year</li> </ol>	"Statutory immunities and statutory limitations on liability, damages or attorney fees do not apply to claims brought pursuant to this section."	<b>Meets Standard.</b> The proposed legislation explicitly states that there shall be no cap or limit on the monetary amount awarded to the plaintiff.	<b>1 pt = No cap</b>  0 pts = There is a cap on damages/monetary award.
<b>"END" Score: 4/4</b>					

Category	Criteria	Proposed Legislation in <u>NY SB1991</u>	Determination	Score
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<sup>1</sup> This typically is read as: "statutory limitations on liability, damages, or attorney fees do not apply"

## START

2.1	<b>START: Accountability for Failure to Intervene</b>	<p>A public agency or employee is <b>civilly liable for the failure to intervene</b> in a case of an officer violating a constitutional right.</p> <p>There is a requirement to report the incident to a supervisor.</p>	Proposed legislation A7283A, known as “Cariol’s Law,” is in committee as of February 2022. This would mandate police officers to safely intervene when officers observe another officer using excessive force, however, this would still not meet our requirement of such officers being civilly liable.	<b>Does Not Meet.</b> There is no mention of duty to intervene in the proposed legislation.	<p>1 pt = Civilly liable for failure to intervene <b>and</b> there is a requirement to report the intervention</p> <p>0.5 pt = Civilly liable for failure to intervene, but there is no reporting requirement.</p> <p>0 pts = No liability, or no mention, for failure to intervene</p>
2.2	<b>START: Guarantee that victims are compensated the full amount<sup>2</sup> awarded*</b>  <i>*government employer liable or must indemnify officers</i>	<b>Government employer is liable</b> for the full amount awarded to the prevailing plaintiff <b>or</b> they must indemnify their officers. <sup>3</sup>	<i>"Notwithstanding any other provision of law, a public entity shall indemnify its public employee for any liability incurred by the employee and for any judgment entered against the employee for claims arising under this section; except that a public entity shall not indemnify a public employee if the employee was convicted of a criminal violation for the conduct from which the claim arises."</i>	<b>Meets Standard.</b> The proposed legislation indemnifies its employees for any liability incurred.	<p>1 pt = Employer is liable for full amount or must indemnify their employees*</p> <p>0 pts = Employers hold no, or partial, liability</p>
2.3	<b>START: Award Attorney fees</b>	1. <b>Plaintiff is entitled to monetary compensation</b> for the full amount of their attorney fees (as is reasonable)	<p><i>"Statutory immunities and statutory limitations on liability, damages or attorney fees do not apply to claims brought pursuant to this section."</i></p> <p><i>"(b) Notwithstanding any other law to the contrary, in any action brought pursuant to this section or the New York human rights</i></p>	<b>Meets Standard.</b> The proposed legislation meets our requirement that plaintiff is entitled to full amount	<b>1 pt = Reasonable attorney fees awarded to prevailing plaintiff.</b>

<sup>2</sup> Full amount as is reasonable. Reasonable amount is also acceptable here

<sup>3</sup> **Indemnification:** an obligation of employers to compensate the loss incurred to the other party due to the acts of the employee or any other party.

			law, a court shall award reasonable attorney fees and costs to a prevailing plaintiff. For the purposes of this section, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect change in the defendant's conduct, regardless of whether that change has been implemented as a result of a judgment in such plaintiff's favor."		0 pts = Reasonable attorney fees are not awarded to prevailing plaintiff.
2.4	<b>START: Hold individual employees accountable for their actions</b>	<p>(1) Hold individual employees financially accountable</p> <p><i>Example: If the employer determines that the employee did not act upon a good faith and reasonable belief that the action was lawful, then the <b>employee is liable for 5% or \$25,000, whichever is less.</b></i></p> <p>If the employee's portion of the judgement is uncollectable, the employer or insurer shall <b>satisfy the full amount of the judgement or settlement to the victim</b></p> <p><b>OR</b></p> <p>(2) (For LEOs specifically) Any officer found civilly liable for violating a right will be <b>decertified</b> and have their <b>license revoked immediately.</b></p> <p><b>AND/OR</b></p> <p>(3) Officer will <b>not receive a payout upon termination</b> and <b>will not</b></p>	N/A	<b>Does Not Meet.</b> There is no mention of employee accountability that meets our standard explicitly.	<p>1-pt = Employer holds employee financially accountable OR employer must decertify any officer found civilly liable and immediately terminate them OR officer will not receive a payout or any pension benefits upon termination.</p> <p><b>0 pts = Employees hold no personal liability</b></p>

		receive their pension benefits			
2.5	<b>START: Increase Public Records Disclosure<sup>4</sup></b>	<p>All documents pertaining to officer disciplinary records and details of an officer violating a citizen's constitutional right shall be <b>publicly disclosed</b>. This <b>should</b> include but not be limited to:</p> <ul style="list-style-type: none"> <li>a) The complaints, allegations, and charges against an employee</li> <li>b) The name of the employee complained of or charged</li> <li>c) The transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing</li> <li>d) The disposition of any disciplinary proceeding; and</li> <li>e) The final written opinion or memorandum supporting the disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate</li> </ul>	<p>In 2020, the <u>New York Civil Rights Law § 50-a</u> was repealed, meaning that police disciplinary records are within the scope of New York's Freedom of Information Law, found in Public Officers Law §§ 84-90.</p>	<p><b>Meets Standard.</b> Public Officers Law §§ 84-90 ensures that disciplinary records are public.</p>	<p><b>1 pt = Documents must be made public</b></p> <p>0 pts = Partial documentation or no mention</p>

<sup>4</sup> Typically, this requirement is found in a separate statute from a QI related bill

		discipline of the covered employee <sup>5</sup>			
					"START" Score: 3/5
					<b>Overall Score: 7/9</b>

**Template updated 8/18/2022 by CSI**

**Qualified Immunity legislation rubric elements:** In order to ensure those victims whose rights have been violated by law enforcement receive financial compensation, there are 4 practices that must **END** and a set of 5 practices that must **START**:

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<sup>5</sup> Language lifted from NY State [SB 8496](#)

## END

1. END: Qualified Immunity for all law enforcement officers
2. END: Qualified Immunity for all public employees (if they violate, then they're liable)
3. END: Qualified Immunity for all violations of someone's rights, including all state and US Constitutional violations
4. END: Cap on public liability amount. Plaintiff should be paid what they are owed, no cap: no indemnification limits, no damages caps, no insurance fees where attorneys fees are being taken out of amount of total paid

## START

1. START: Holding officers civilly liable when failing to intervene in witnessing violations of constitutional rights
2. START: Guarantee that victims are compensated full amount awarded: local governments are liable for the conduct of their officers
3. START: Attorneys should be paid reasonable fees when clients are successful (no carve-outs), in all instances when they prevail (inc. settlements)
4. START: Consequences for officers who engage in wrongdoing // financial or otherwise
5. START: Requiring all records to be publicly disclosed

## DEFINITIONS

### Law Enforcement

1. **Colorado definition:** "peace officer" means any person employed by a political subdivision of the state required to be certified by the P.O.S.T board pursuant to section 16-2.5-102." (CO State Patrol Officer has a different definition).
  - a. **Section 16-2.5-102:** The following peace officers shall meet all the standards imposed by law on a peace officer and shall be certified by the peace officers standards and training board, referred to in this article as the "P.O.S.T. board": A chief of police; a police officer; a sheriff; an undersheriff; a deputy sheriff; a Colorado state patrol officer; a town marshal; a deputy town marshal; a reserve police officer; a reserve deputy sheriff; a reserve deputy town marshal; a police officer or reserve police officer employed by a state institution of higher education; a Colorado wildlife officer; a Colorado parks and recreation officer; a Colorado police administrator or police officer employed by the Colorado mental health institute at Pueblo; an attorney general criminal investigator; a community parole officer; a public transit officer; a municipal court marshal; and the department of corrections inspector general.
- **US Legal definition:** A law enforcement officer is a government employee who is responsible for the prevention, investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position; or serving as a probation or pretrial services officer.
- **Federal Definition:** Federal law enforcement officer
  - means a Federal employee—
    - (i) who has statutory authority to make arrests or apprehensions;
    - (ii) who is authorized by the agency of the employee to carry firearms; and
    - (iii) whose duties are primarily—
      - (I) engagement in or supervision of the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law; or
      - (II) the protection of Federal, State, local, or foreign government officials against threats to personal safety; and
  - includes a law enforcement officer employed by the Amtrak Police Department or Federal Reserve.

### Public Body

- **New Mexico definition:** As used in the New Mexico Civil Rights Act, "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education, but not including an acequia or community ditch, a

*soil and water conservation district, a land grant-merced, a mutual domestic water consumers association or other association organized pursuant to the Sanitary Projects Act or a water users' association.*