

Qualified Immunity Legislation Evaluation Rubric

Initials of Reviewer JL Date of Review 5/16/2024

Category		Criteria	Proposed Legislation in CO SB1287	Determination	Score
END					
1.1	END: Qualified Immunity for all law enforcement officers	For all law enforcement officers: Prohibit the use of Qualified Immunity as a defense.	<i>"(1) (a) A PERSON OR PUBLIC ENTITY THAT, UNDER COLOR OF LAW, SUBJECTS OR CAUSES TO BE SUBJECTED ANY OTHER PERSON TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE COLORADO CONSTITUTION, IS LIABLE TO THE INJURED PARTY FOR LEGAL OR EQUITABLE RELIEF OR ANY OTHER APPROPRIATE RELIEF."</i> <i>(3)(c) "NEITHER QUALIFIED IMMUNITY, NOR A DEFENDANT'S GOOD FAITH BUT ERRONEOUS BELIEF IN THE LAWFULNESS OF HIS OR HER CONDUCT, IS A DEFENSE TO LIABILITY PURSUANT TO THIS SECTION."</i>	Meets our Standard. The statewide law bans qualified immunity for all peace officers.	1 pt = All LEOs 0 pts = no ban
1.2	END: Qualified Immunity for all public employees	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.	<i>"(1) (a) A PERSON OR PUBLIC ENTITY THAT, UNDER COLOR OF LAW, SUBJECTS OR CAUSES TO BE SUBJECTED ANY OTHER PERSON TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE COLORADO CONSTITUTION, IS LIABLE TO THE INJURED PARTY FOR LEGAL OR EQUITABLE RELIEF OR ANY OTHER APPROPRIATE RELIEF."</i> <i>(3)(c) "NEITHER QUALIFIED IMMUNITY, NOR A DEFENDANT'S GOOD FAITH BUT ERRONEOUS BELIEF IN THE LAWFULNESS OF HIS OR HER CONDUCT, IS A DEFENSE TO LIABILITY PURSUANT TO THIS SECTION."</i>	Meets our Standard. The statewide law ends qualified immunity for all public employees.	1 pt = All public employees (including LEOs) 0 pts = no ban
1.3	END: Qualified Immunity for all violations of someone's rights, including all state and United States constitutional violations	A person may bring claims under state laws for violations of their constitutional rights. This includes ALL violations of the constitution on a state level.	<i>"(1) (a) A PERSON OR PUBLIC ENTITY THAT, UNDER COLOR OF LAW, SUBJECTS OR CAUSES TO BE SUBJECTED ANY OTHER PERSON TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE COLORADO CONSTITUTION, IS LIABLE TO THE INJURED PARTY FOR LEGAL OR EQUITABLE RELIEF OR ANY OTHER APPROPRIATE RELIEF."</i> <i>(3)(c) "NEITHER QUALIFIED IMMUNITY, NOR A DEFENDANT'S GOOD FAITH BUT ERRONEOUS BELIEF IN THE LAWFULNESS OF HIS OR HER CONDUCT, IS A DEFENSE TO LIABILITY PURSUANT TO THIS SECTION."</i>	Meets our Standard. The statewide law bans qualified immunity for all violations of someone's rights.	1 pt = Includes all constitutional violations on a state level 0 pts = Has carve-outs or has a limited list of liable violations

1.4	END: Monetary Caps on Public Liability Amount	There shall be no cap or limit on the appropriated amount for plaintiff to be awarded. If there is a cap: ¹ - At least \$2 million dollars - it must be per plaintiff per claim <u>and not</u> per occurrence - Adjusted for inflation each year	(3) (a) "STATUTORY IMMUNITIES AND STATUTORY LIMITATIONS ON LIABILITY, DAMAGES, OR ATTORNEY FEES DO NOT APPLY TO CLAIMS BROUGHT PURSUANT TO THIS SECTION"	Meets our Standard. There are no caps to limits on the appropriated amount for plaintiff.	1 pt = No cap 0 pts = There is a cap on damages/monetary award.
"END" Score: 4/4					

Category		Criteria	Proposed Legislation in	Determination	Score
START					
2.1	START: Accountability for Failure to Intervene	A public agency or employee is civilly liable for the failure to intervene in a case of an officer violating a constitutional right. There is a requirement to report the incident to a supervisor.	N/A	Does Not Meet Our Standard. This version of the bill does not hold officers accountable for failure to intervene.	1 pt = Civilly liable for failure to intervene and there is a requirement to report the intervention 0.5 pt=Civilly liable for failure to intervene, but there is no reporting requirement. 0 pts = No liability, or no mention, for failure to intervene
2.2	START: Guarantee that victims are compensated the full	Government employer is liable for the full amount awarded to the prevailing plaintiff or they must indemnify their officers. ³	"(5) 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	Meets our Standard. Law requires employer to indemnify employee for any claims, unless they are convicted for criminal violation.	1 pt = Employer is liable for full amount or must indemnify their employees*

¹ This typically is read as: "statutory limitations on liability, damages, or attorney fees do not apply"

³ **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.

	amount² awarded* *government employer liable or must indemnify officers		ARISING UNDER THIS SECTION; EXCEPT THAT A PUBLIC ENTITY DOES NOT HAVE TO INDEMNIFY A PUBLIC EMPLOYEE IF THE EMPLOYEE WAS CONVICTED OF A CRIMINAL VIOLATION FOR THE CONDUCT FROM WHICH THE CLAIM ARISES."		0 pts = Employers hold no, or partial, liability
2.3	START: Award Attorney fees	Plaintiff is entitled to monetary compensation for the full amount of their attorney fees (as is reasonable)	"(b) IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, A COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A PREVAILING PLAINTIFF. WHEN A JUDGMENT IS ENTERED IN FAVOR OF A DEFENDANT, THE COURT MAY AWARD REASONABLE COSTS AND ATTORNEY FEES TO THE DEFENDANT ONLY FOR DEFENDING ANY CLAIMS THE COURT FINDS FRIVOLOUS."	Meets our Standard: Law requires court to award reasonable attorney fees to a prevailing plaintiff.	1 pt = Reasonable attorney fees awarded to prevailing plaintiff. 0 pts = Reasonable attorney fees are not awarded to prevailing plaintiff.
2.4	START: Hold individual employees accountable for their actions	(1) Hold individual employees financially accountable <i>Example:</i> If the employer determines that the employee did not act upon a good faith and reasonable belief that the action was lawful, then the employee is liable for 5% or \$25,000, whichever is less. If the employee's portion of the judgement is uncollectable, the employer or insurer shall satisfy the full amount of the judgement or settlement to the victim OR	N/A	Does Not Meet our Standard: There is no provision to hold employee financially accountable, decertify employee, or denial of benefits.	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. 0 pts = Employees hold no personal liability

² Full amount as is reasonable. Reasonable amount is also acceptable here

		(2) (For LEOs specifically) Any officer found civilly liable for violating a right will be decertified and have their license revoked immediately. AND/OR (3) Officer will not receive a payout upon termination and will not receive their pension benefits			
2.5	START: Increase Public Records Disclosure⁴	All documents pertaining to officer disciplinary records and details of an officer violating a citizen's constitutional right shall be publicly disclosed. This should include but not be limited to: a) The complaints, allegations, and charges against an employee b) The name of the employee complained of or charged c) The transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing d) The disposition of any disciplinary proceeding; and e) The final written opinion or memorandum supporting the	<i>The Colorado Open Records Act exempts personnel records from disclosure. Although HB 19-1119 (passed in 2019), and the subsequent CO Supreme Court ruling in June 2021 gave a broader interpretation of record disclosure, the law as it stands still does not ensure that all disciplinary records and details of an officer violating a citizen's constitutional rights are publicly and readily disclosed.</i>	Does Not Meet. The law is silent on provisions regarding public disclosure of records.	1 pt = Documents must be made public 0 pts = Partial documentation or no mention

⁴ Typically, this requirement is found in a separate statute from a QI related bill

		disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee ⁵			
					"START" Score: 2/5
					Overall Score: 6/5

⁵ Language lifted from NY State [SB 8496](#)

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**:**

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.