

## Qualified Immunity Legislation Evaluation Rubric

Initials of Reviewer LRC Date of Review 1/27/2022, 2/3/2022

Category		Criteria	Proposed Legislation in Minnesota <u>HF 1104.1</u>	Determination	Score
<b>END</b>					
1.1	<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>	Section 1. [626.893] IMMUNITY PROHIBITED. Subdivision 1. Civil liability. (a) Notwithstanding any law to the contrary, a peace officer who, under color of law, subjects or causes to be subjected, including but not limited to failing to intervene, another person to the deprivation of any rights, privileges, or immunities granted to the person under the constitutions and laws of the United States and this state, is liable to the injured party for compensatory damages, punitive damages, equitable relief, or any other appropriate relief. If the plaintiff prevails in the action, in addition to any monetary or injunctive relief, the court may award reasonable attorney fees and costs. If the defendant prevails in the action, the court may award reasonable attorney fees and costs if the court finds the claim to have been frivolous. (b) Statutory immunities and statutory limitations on liability, damages, and attorney fees shall not apply to claims brought under this subdivision. Qualified immunity is not a defense to liability imposed under this subdivision.	<b>Meets Standard.</b> The proposed legislation makes peace officers liable and bans the use of statutory and qualified immunities as a defense.	<b>1 pt = All LEOs</b>  <b>0 pts = no ban</b>
1.2	<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</b> acting on behalf of or under the authority of a public body.	The proposed legislation addresses peace officers only; no other public employees included.	<b>Does Not Meet Standard.</b> The proposed legislation does not deny immunities to other public employees.	<b>1 pt = All public employees (including LEOs)</b>  <b>0 pts = no ban</b>
1.3	<b>END: Qualified Immunity for all violations of someone's rights,</b>	A person may bring claims under state laws for violations of their constitutional rights. This includes <b>ALL</b> violations of	Section 1. [626.893] IMMUNITY PROHIBITED. Subdivision 1. Civil liability. (a) Notwithstanding any law to the contrary, a peace officer who, under color of law, subjects or causes to be subjected, including but not limited to failing to intervene, another person to the deprivation of any rights, privileges, or immunities granted to the person under the	<b>Meets Standard.</b> The proposed legislation prohibits immunities for deprivation of any state or federal rights.	<b>1 pt = Includes all constitutional violations on a state level</b>

	<b>including all state and United States constitutional violations</b>	the constitution on a state level.	constitutions and laws of the United States and this state, is liable to the injured party for compensatory damages, punitive damages, equitable relief, or any other appropriate relief.		0 pts = Has carve-outs or has a limited list of liable violations
<b>1.4</b>	<b>END: Monetary Caps on Public Liability Amount</b>	<p>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></p> <ol style="list-style-type: none"> <li>1. At least \$2 million dollars</li> <li>2. it must be per <b>plaintiff per claim</b> and <u>not</u> per occurrence</li> <li>3. Adjusted for inflation each year</li> </ol>		<b>Meets Standard.</b> The proposed legislation removes any caps on damages and attorney fees.	<p><b>1 pt = No cap</b></p> <p>0 pts = There is a cap on damages/monetary award.</p>
<b>“END” Score: 3/4</b>					

Category		Criteria	Proposed Legislation in Minnesota HF 1104.1	Determination	Score
START					
2.1	START: Accountability for Failure to Intervene	<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>	<p>Section 1. [626.893] IMMUNITY PROHIBITED.</p> <p>Subdivision 1. Civil liability. (a) Notwithstanding any law to the contrary, a peace officer who, under color of law, subjects or causes to be subjected, including but not limited to failing to intervene, another person to the deprivation of any rights, privileges, or immunities granted to the person under the constitutions and laws of the United States and this state, is liable to the injured party for compensatory damages, punitive damages, equitable relief, or any other appropriate relief.</p>	<p><b>Partially Meets Standard.</b></p> <p>The proposed legislation imposes liability for failure to intervene, but does not require reporting.</p>	<p>1 pt = Civilly liable for failure to intervene <b>and</b> there is a requirement to report the intervention</p> <p><b>0.5 pt=Civilly liable for failure to intervene, but there is no reporting requirement.</b></p>

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

					0 pts = No liability, or no mention, for failure to intervene
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>	The proposed legislation is silent on indemnification.	<b>Does Not Meet Standard.</b> The proposed legislation is silent on employer liability and employee indemnification.	1 pt = Employer is liable for full amount or must indemnify their employees <sup>3</sup>  <b>0 pts = Employers hold no, or partial, liability</b>
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)	If the plaintiff prevails in the action, in addition to any monetary or injunctive relief, the court may award reasonable attorney fees and costs.	<b>Meets Standard.</b> The proposed legislation awards a successful plaintiff attorney fees separately from damages.	<b>1 pt = Reasonable attorney fees awarded to prevailing plaintiff.</b>  0 pts = Reasonable attorney fees are not awarded to prevailing plaintiff.
2.3	<b>START: Hold individual employees accountable for their actions</b>	(1) Hold individual employees financially accountable  <i>Example: If the employer determines that the employee did not act upon a</i>	The proposed legislation is silent on individual peace officer liability.	<b>Does Not Meet Standard.</b> The proposed legislation does not impose individual financial liability or material professional consequences for peace officers found liable.	1 pt = Employer holds employee financially accountable <b>OR</b> employer must decertify any officer found

<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.

		<p>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></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 receive their pension benefits</b></p>			<p>civilly liable and immediately terminate them <b>OR</b> officer will not receive a payout or any pension benefits upon termination.</p> <p><b>0 pts =</b> <b>Employees hold no personal liability</b></p>
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> <p>a) The complaints, allegations, and charges against an employee</p>	The proposed legislation is silent on public records disclosure.	<p><b>Does Not Meet Standard.</b> The proposed legislation does not require public disclosure of records.</p>	<p><b>1 pt = Documents must be made public</b></p> <p><b>0 pts = Partial documentation or no mention</b></p>

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

		<div>b) The name of the employee complained of or charged</div> <div>c) The transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing</div> <div>d) The disposition of any disciplinary proceeding; and</div> <div>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 discipline of the covered employee<sup>5</sup></div>			
"START" Score: 1.5/5					
Overall Score: 4.5/9					

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

**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.*