

Drafted Qualified Immunity Rubric

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 police officers
2. END: Qualified Immunity for all public employees
3. END: Qualified Immunity for all state and U.S. constitutional violations
4. END: Cap on monetary amount awarded to victims; plaintiff should be paid what they are owed: no public liability 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: Attorneys should be paid reasonable fees when clients are successful (no carve outs), in all instances when they prevail (inc. settlements)
2. START: Guarantee that victims are compensated full amount awarded: local governments are liable for the conduct of their officers
3. START: Holding officers civilly liable when failing to intervene in witnessing violations of constitutional rights
4. START: Publicly disclosing misconduct records pertaining to a relevant case
5. START: Enforcing consequences for officers who engage in wrongdoing - financial or otherwise

Category		Criteria	Proposed Legislation in (state name and bill # here)	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.			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.			1 pt = All public employees (including LEOs) 0 pts = no ban
1.3	END: Qualified Immunity for	A person may bring claims under state laws for violations of their state and		.	1 pt =Includes all constitutional violations on a state level

	all violations of someone's rights, including all state and United States constitutional violations	federal constitutional rights. This includes ALL violations of state and federal constitutional rights that can be brought into state court			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 1. At least \$2 million dollars 2. It must be per plaintiff per claim and not per occurrence 3. Adjusted for inflation each year			1 pt = No cap 0 pts = There is a cap on damages/monetary award.
"END" Score: 0					

Category	Criteria	Proposed Legislation in (state name and bill # here)	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.		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

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

2.2	START: Guarantee that victims are compensated the full amount² awarded* <i>*government employer liable or must indemnify officers</i>	Government employer is liable for the full amount awarded to the prevailing plaintiff or they must indemnify their officers.³			1 pt = Employer is liable for full amount or must indemnify their employees* 0 pts = Employers hold no, or partial, liability
2.3	START: Award Attorney's fees	Plaintiff is entitled to monetary compensation for the full amount of their attorney fees (as is reasonable)			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 judgment is uncollectable, the employer or insurer shall satisfy the			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

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.

		full amount of the judgment or settlement to the victim OR (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 misconduct 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 misconduct trial or hearing, including any exhibits introduced at such trial or hearing d) The disposition of any misconduct proceeding; and			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

		e) The final written opinion or memorandum supporting the disposition, misconduct 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: 0
					Overall Score: 0

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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

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

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.