

Drafted Qualified Immunity Legislation Evaluation Rubric

Initials of Reviewer _____ EKP _____ Date of Review _____ 2/22/2022 _____

Category		Criteria	H.B. 367	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.	Yes. The proposed legislation states "A peace officer who, under color of law, subjects any other person to the deprivation of individual rights is liable to the person for legal, equitable, or other appropriate relief... Qualified immunity is not a defense to liability under this section."	Meets Standard. Bans 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.	No. The proposed legislation does not end qualified immunity for all public employees.	Does Not Meet Standard. Only refers to peace officers. Classifications: https://le.utah.gov/xco/de/Title53/Chapter13/C53-13_1800010118000101.pdf	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.	Partial. The proposed legislation addresses only select rights from the Utah Constitution, and states "Deprivation of individual rights" which "means the deprivation of any of the following rights under the Utah Constitution: (a) Utah Constitution, Article I, Section 1 [Inherent and inalienable rights]; (b) Utah Constitution, Article I, Section 7 [Due process of law]; (c) Utah Constitution, Article I, Section 9 [Excessive bail and fines -- Cruel punishments]; (d) Utah Constitution, Article I, Section 14 [Unreasonable searches forbidden -- Issuance of warrant]; (e) Utah Constitution, Article I, Section 17 [Elections to be free -- Soldiers voting]; (f) Utah Constitution, Article I, Section 22 [Private property for public use]; (g) Utah Constitution, Article I, Section 24 [Uniform operation of laws]; and (h) Utah Constitution, Article I, Section 25 [Rights retained by people]."	Partially Meets Standard. Includes constitutional violations without being all-encompassing.	1 pt = Includes all constitutional violations on a state level 0.5 pt- Only select constitutional rights are addressed 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 <ol style="list-style-type: none"> At least \$2 million dollars it must be per plaintiff per claim <u>and not</u> per occurrence Adjusted for inflation each year 	No. The proposed legislation states, "A civil action under this section: (a) must be commenced within four years after the cause of action accrues; and (b) is subject to the statutory calculations and limitations on damages described in Title 133 63G, Chapter 7, Part 6, Legal Actions Under this Chapter - Procedures, Requirements, Damages, and Limitations on Judgments." That section of the code places caps on damages.	Does Not Meet Standard. Damage limitations are established in state statutes.	1 pt = No cap 0 pts = There is a cap on damages/monetary award.
"END" Score: 1.5/4					

Category	Criteria	H.B. 367	Determination	Score
START				
2.1	START: Accountability for Failure to Intervene	<p>A public agency or employee is civilly liable for the failure to intervene in a case of an officer violating a constitutional right.</p> <p>There is a requirement to report the incident to a supervisor.</p>	No. The proposed legislation does not hold officers civilly liable when failing to intervene. Bill does mention failure to intervene, but only with regards to physical force.	<p>Does Not Meet Standard. Only mentions use of force.</p> <p>1 pt = Civilly liable for failure to intervene and 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	START: Guarantee that victims are	Government employer is liable for the full amount awarded to the prevailing	Yes. The proposed legislation states, "Except as provided in Subsections (4)(b), (4)(c), and (4)(d), a peace officer's employer shall indemnify the peace officer for any liability incurred by the peace officer and for any judgment entered against the peace	<p>Meets Standard. Assurance of full victim compensation in proposed legislation.</p> <p>1 pt = Employer is liable for full amount</p>

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

	compensated the full amount² awarded* *government employer liable or must indemnify officers	plaintiff or they must indemnify their officers. ³	<i>officer for claims arising under this section. Except as provided in Subsection (4)(c): (i) the peace officer is personally liable for damages awarded under this chapter not exceeding \$50,000 of the damages awarded. The peace officer's employer shall pay any portion of the amount described in Subsection (4)(b) that the plaintiff is not able to recover from the peace officer."</i>		or must indemnify their employees* 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)	Yes. Legislation states, <i>"In an action brought under this section, a court shall award reasonable attorney fees and costs to a prevailing plaintiff."</i>	Meets Standard. Proposed legislation includes attorney fees.	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	Yes. The proposed legislation states <i>"Except as provided in Subsection (4)(c): (i) the peace officer is personally liable for damages awarded under this chapter not exceeding \$50,000 of the damages awarded;..."</i>	Meets Standard. Proposed legislation holds officers financially accountable.	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.

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.

		<p>or insurer shall satisfy the full amount of the judgement or settlement to the victim</p> <p>OR</p> <p>(2) (For LEOs specifically) Any officer found civilly liable for violating a right will be decertified and have their license revoked immediately.</p> <p>AND/OR</p> <p>(3) Officer will not receive a payout upon termination and will not receive their pension benefits</p>			<p>0 pts = Employees hold no personal liability</p>
2.5	START: Increase Public Records Disclosure⁴	<p>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:</p> <ul style="list-style-type: none"> 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 	<p>No. The proposed legislation does not require that all records are publicly disclosed. Utah Code § 63G-2-301(3)(o) is conditional, states <i>"Records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if: the disciplinary action has been completed and all time periods for administrative appeal have expired; and the charges on which the disciplinary action was based were sustained;"</i></p>	<p>Does Not Meet Standard. Restrictive state law in place.</p>	<p>1 pt = Documents must be made public</p> <p>0 pts = Partial documentation or no mention</p>

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

		<p>at such trial or hearing</p> <p>d) The disposition of any disciplinary proceeding; and</p> <p>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 employee⁵</p>			
					"START" Score: 3/5
					Overall Score: 4.5/9

⁵ 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.*