

Qualified Immunity Legislation Evaluation Rubric

Initials of Reviewer CSI Date of Review 02/23/22

Category		Criteria	Proposed Legislation in VT <u>S-0254</u>	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>No. Proposed legislation does not prohibit qualified immunity as a defense.</i>	Does Not Meet: Legislation does not prohibit 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.	N/A	Does Not Meet. Proposed legislation only pertains to law enforcement officers.	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>No. Proposed legislation does not outline violations for which someone can bring a civil suit.</i>	Does Not Meet: Legislation does not end qualified immunity for all violations of an individual'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	There shall be no cap or limit on the appropriated amount for plaintiff to be awarded. If there is a cap. ¹	N/A	Does Not Meet: Legislation does not prohibit a monetary cap.	1 pt = No cap 0 pts = There is a cap on

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

	Liability Amount	- At least \$2 million dollars - it must be per plaintiff per claim <u>and not</u> per occurrence - Adjusted for inflation each year			damages/monetary award.
“END” Score: 0/4					

Category	Criteria	Proposed Legislation in VT_S-0254	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. Legislation does not mention duty 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	N/A	Does Not Meet. Legislation does not guarantee compensation 1 pt = Employer is liable for full amount or must indemnify their employees*

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* <i>*government employer liable or must indemnify officers</i>				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)	N/A	Does Not Meet. Legislation does not guarantee attorney's 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: 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.</i> If the employee's portion of the judgement is uncollectable, the employer or insurer shall satisfy the full amount of the	N/A	Does Not Meet. Legislation does not hold officers 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. 0 pts = Employees hold no personal liability

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

		judgement 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 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	<i>Vermont keeps records and names private unless a state board imposes discipline, in which case the names and details are then public. Rutland Herald v. City of Rutland ruled that if public interest outweighs the officers' privacy interest, then they are made public. This proposed bill states: "Each law enforcement agency shall maintain a record of all final judgments and settlements paid by the law enforcement agency for court claims related to alleged violations of constitutional rights established under the Constitution of the State of Vermont. All judgments, settlements, and their underlying complaints are subject to public disclosure unless an exemption applies pursuant to the Vermont Public Records Act. Any record disclosed shall include the name of the law enforcement agency and the monetary amount paid pursuant to the judgment or settlement."</i>	Does Not Meet. Vermont is restricted in its public records and the proposed legislation has no mention of public records disclosure.	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

		d) The disposition of any disciplinary proceeding; and 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 ⁵			
					"START" Score: 0/5
					Overall Score: 0/9

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**:

⁵ 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.