



National Police Accountability Project

A Project of the National Lawyers Guild

NEW YORK SENATE BILL 1991

Background and summary information

SUMMARY

SB 1991 will ensure that law enforcement officers and other government officials who violate New Yorkers civil rights are held accountable for misconduct. The bill:

- Creates a state cause of action to sue in state court for civil rights violations;
- Authorizes the Attorney General to sue for violations of the statute;
- Eliminates the defense of qualified immunity.

BACKGROUND

The doctrine of qualified immunity allows a police officer in New York state to escape civil liability in federal court even if the judge finds that they abused their authority and violated the Constitution. The doctrine of qualified immunity requires a New Yorker to not only show that their rights were violated but that the Second Circuit or Supreme Court had previously decided a factually similar case. This additional hurdle routinely results in heartbreaking, unfair results for victims of police misconduct. Senator Jackson's bill will create a state court alternative so that New Yorkers can seek relief and hold government officials accountable when their rights are violated.

FIVE FREQUENTLY ASKED QUESTIONS

1. What is qualified immunity?

Qualified immunity is a judicial doctrine developed by the Supreme Court in the late 1960s, which shields state actors from liability for their misconduct when they break the law. Under the doctrine of qualified immunity, the Court has held that defendants can't be sued unless they violated "clearly established law." Qualified immunity only matters when a public official has, in fact, violated someone's federally protected rights.

In New York, qualified immunity has repeatedly blocked recovery for plaintiffs when their constitutional rights were violated but no factually analogous case had been decided by the Second Circuit or United States Supreme Court. In one case, officers who violated the Fourth Amendment avoided liability for using excessive force because the plaintiff said "ouch", "ow", and cried to communicate she was in pain instead of making the type of clear verbal complaint that created a "clearly established" violation in a prior factually similar case.¹ In another case, the Second Circuit held officers were entitled to qualified immunity for unconstitutional arrests despite finding there was no legal basis to detain plaintiffs because a factually

¹ *Cugini v. City of New York*, 941 F.3d 604 (2d Cir. 2019)



National Police Accountability Project

A Project of the National Lawyers Guild

analogous case had not been decided in the jurisdiction.² In short, qualified immunity consistently protects officers because what they have done had not been done before in the Second Circuit.

2. **Doesn't qualified immunity simply protect officers from being sued for doing their jobs in good faith?**

No. Qualified immunity does not protect an officer who acted in good faith or because they made a split-second decision; the Fourth Amendment provides that protection. The shield created by qualified immunity only comes into play when an officer has acted objectively unreasonably under all the circumstances. Police officers who are “legitimately performing their duties” — i.e., acting lawfully — do not need qualified immunity because they’re not violating anyone’s rights in the first place.

3. **Will government employees have to pay out of pocket for settlement agreements or judgments reached for cases brought under S 1991?**

No. Municipalities are required to indemnify their employees under the bill. This is consistent with the indemnification requirements that already exist for civil lawsuits against police officers in New York state.³

4. **What if municipalities can't afford the cost of litigation enabled by S 1991?**

First, continuing to force New York communities to contend with qualified immunity will not *save* costs but *shift* them to the people injured by police misconduct. Barring suits through qualified immunity forces victims to bear the costs of the concrete harm they suffer (eg. medical bills, lost income, etc.). Moreover, there is no evidence that S 1991 will significantly increase litigation defense costs for municipalities. While a government actor can move to dismiss a case on qualified immunity grounds in the initial stages of litigation, the majority of cases proceed to discovery and even trial before the defense is granted.⁴ Additionally, fears that local governments will face insurmountable expenses related to an influx of new claims currently precluded by qualified immunity have no concrete basis. Montana⁵ and Colorado⁶ have already eliminated qualified immunity for state civil rights claims without seeing an onslaught of new cases.

² *Berg v. Kelly*, 897 F.3d 999 (2d Cir. 2018)

³ N.Y. Gen. Mun. Law §50-j(6)

⁴ Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 60 (2017) (studied civil rights cases in five federal district courts over a two-year period and found that qualified immunity only disposed of 3.2% of cases before trial)

⁵ *Dorvat v. Caramay*, 58 P.3d 128, 131, 137 (Mont. 2002)

⁶ COLO. REV. STAT. ANN. § 13-21-131 (2020)



National Police Accountability Project

A Project of the National Lawyers Guild

5. **Will S 1991 make it harder to recruit, retain, and train good government employees and law enforcement officers? Won't it discourage law enforcement from vigorously carrying out their duties?**

S 1991 is only going to impact police officers who violate someone's civil rights. Officers who do not break the law have no cause for concern. There is no evidence to suggest potential government employees consider immunity from suit when considering a job. Substantial research indicates that many law enforcement officers agree that officials should be subject to civil suits when they violate a person's rights and that lawsuits could deter unlawful behavior by government employees.⁷

⁷ Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 *Notre Dame L. Rev.* 1797, 1811-1813 (2018)