



LAW ENFORCEMENT ACTION PARTNERSHIP

ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

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Date: May 10, 2021

Re: S.1991- Relates to providing a civil action for deprivation of rights

Position: SUPPORT

To: The New York Senate Investigations and Government Operations
Committee

Dear Committee Members,

As an organization of police, sheriffs, and prosecutors, the Law Enforcement Action Partnership is writing this letter to express our support for **S 1991** in New York. This bill would create a state-based alternative for courts to hold law enforcement officers accountable when they violate a person's constitutional rights in New York. We believe that removing barriers to police accountability is central to public safety.

The Law Enforcement Action Partnership (LEAP) is a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience. Our mission is to make communities safer by focusing law enforcement resources on the greatest threats to public safety and addressing the root causes of crime.

Trust between police and the communities we serve is not just a preference; it is a requirement for public safety. Without these relationships, police are left to investigate crimes with little to no help from the community. People have so little trust in us that a majority of violent crimes go unreported, even by victims themselves. Our agencies are failing to protect and serve in part because people have lost trust in our ability to make a difference. They would rather take matters into their own hands or suffer in silence.

One major reason that people do not trust law enforcement is that they believe police are not held accountable to the law. A key reason for this belief is qualified immunity. It is a federal doctrine that holds officers and

their agencies harmless unless the officer's action has already been "clearly established" as a constitutional violation in that court's jurisdiction.

For example, in *Jessop v City of Fresno* (2019), police officers stole money, and the victims sued. The Ninth Circuit dismissed the lawsuit on qualified immunity grounds, because no previous Ninth Circuit case specifically said that police stealing from plaintiffs is a violation of the Fourth Amendment. No two situations will be exactly the same, so many important cases of civilian complaints are dismissed. When such cases are dismissed, the media firestorm has a devastating impact on public trust in the justice system.

New York cannot fix a federal issue, but state legislators have proposed legislation that would protect New York residents' constitutional rights through state court. S 1991 would allow New York civil courts to hear cases where a government employee has violated a citizen's constitutional rights. The qualified immunity defense would no longer keep justified claims out of court, helping to salvage law enforcement's reputation for accountability.

We understand firsthand why police are concerned about losing the qualified immunity defense, and we want to be clear that this concern is not warranted.

First, qualified immunity is not the officer's lone shield protecting us from a flood of frivolous lawsuits. Studies show that judges dismiss cases on qualified immunity grounds in less than [four percent](#) of civil rights cases involving law enforcement. When cases are without merit, judges dismiss them based on other tools in rules of civil procedure. This four percent is significant because it includes key cases that are dismissed despite having merit, creating the perception that officers are "above the law."

Second, when a case makes it into court, qualified immunity is not the officer's only defense for actions that were reasonable or in good faith. Our real protection is the Fourth Amendment itself, which is only violated by *unreasonable* searches or seizures. Officers who acted in a reasonable way considering the heat of the moment are protected by this reasonableness standard, without the need to resort to qualified immunity.

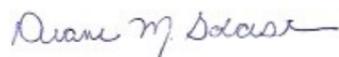
Finally, bypassing the qualified immunity in New York will not bankrupt officers. When officers' actions lead to settlements or judgments against

them, [research shows](#) that 99.98% of the bills get paid by cities. Governments foot the bill even when indemnifying the officer is against local law or policy, and even when the officer is terminated or convicted in criminal court for their conduct. Officers will not be bankrupted by settlements, judgments, or personal liability insurance.

In short, ending qualified immunity will not bring open season upon law enforcement. It will simply allow judges to hear the facts of the most egregious cases, which are currently causing the public perception that police are above the law. As a group of law enforcement professionals, we support S 1991 because it will strengthen police relationships with the communities that law enforcement in New York have sworn to protect and serve.

Thank you for the opportunity to share our perspective in support of this bill.

Respectfully,



Lt. Diane Goldstein (Ret.)
Executive Director, Law Enforcement Action Partnership