

## National Police Accountability Project

A Project of the National Lawyers Guild

**SUPPORT HB 1012 – Police Immunity and Accountability Act**  
**Written Testimony** of National Lawyers Guild-National Police Accountability Project, Keisha James, Staff Attorney  
**House Judiciary Committee – Tuesday, March 1, 2022**

Dear Members of the House Judiciary Committee,

Thank you for the opportunity to provide comment on this important issue. The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. We strongly support the passage of HB 1012, a bill that will provide victims of civil rights abuses with a clear path to hold all police officers accountable in court without the shield of qualified immunity.

The doctrine of qualified immunity has created a nearly insurmountable barrier for communities to hold police officers civilly liable in federal court for civil rights violations. Qualified immunity requires a victim of police misconduct to not only show that their constitutional rights were violated but prove that the violation was of “clearly established” law.<sup>1</sup> The Supreme Court has interpreted the “clearly established” law requirement to mean a plaintiff must be able to identify existing precedent that “squarely governs” the specific facts in their case in order to recover.<sup>2</sup>

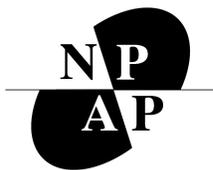
There are many cases where an officer’s patently unconstitutional conduct was shielded by qualified immunity because no prior defendant had been sued for similar behavior. For instance, in *Corbitt v. Vickers*,<sup>3</sup> a Georgia deputy sheriff accidentally shot a ten-year-old child lying on the ground while repeatedly attempting to shoot a pet dog that posed no threat. The circuit court held that the deputy was entitled to qualified immunity because there was no prior case with

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<sup>1</sup> *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

<sup>2</sup> *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018).

<sup>3</sup> 929 F.3d 1304 (11th Cir. 2019).



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the same unique set of facts. There are dozens of other equally ludicrous and unjust outcomes that have resulted from the doctrine of qualified immunity.<sup>4</sup>

While the Maryland legislature cannot eliminate qualified immunity in federal courts, it can provide people in this state with an alternative method to vindicate their rights in state court. Although Maryland provides a common law private right of action that allows people to recover for violations perpetrated by local police officers,<sup>5</sup> state police officers are still granted immunity by statute and, as such, victims of civil rights abuses do not currently have a clear path to hold state police officers accountable.<sup>6</sup> In *Smith v. Md. State Police Dep't*,<sup>7</sup> Maryland State Police officers stopped a car without probable cause and commanded a K-9 to attack an individual after he had already been restrained. The court found that the officers were not entitled to qualified immunity because prior cases had clearly established the constitutional rights at issue. If these prior cases had not existed, however, the officers would have been shielded by qualified immunity. HB 1012 would eliminate qualified immunity for police officers who deprive people of their constitutional rights, privileges, or immunities, enabling victims to vindicate their rights whether or not there are prior cases with similar facts.

Although Maryland passed reforms last year that addressed various areas of policing, qualified immunity remains unaddressed. The repeal of the Law Enforcement Officers' Bill of Rights ("LEOBOR") was a key step in increasing transparency in policing and ensuring that police officers face employment consequences for misconduct. However, LEOBOR's repeal does not help victims of civil rights abuses who have suffered tangible injuries as a result of police misconduct. HB 1012 seeks to help these victims. It is important to note that Maryland would not be the first state to eliminate strict immunity defenses for state court civil rights actions against police officers. Montana,<sup>8</sup> Colorado,<sup>9</sup> and

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<sup>4</sup> See Expanding Pathways to Accountability: State Legislative Options to Remove the Barrier of Qualified Immunity (attached).

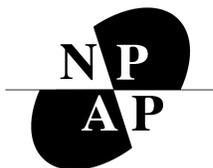
<sup>5</sup> See *Ritchie v. Donnelly*, 597 A.2d 432 (Md. 1991); *Clea v. Mayor and City Council of Baltimore*, 541 A.2d 1303, 1312 (Md. 1988).

<sup>6</sup> See Md. Code Ann., Cts. & Jud. Proc. § 5-522; *Lee v. Cline*, 863 A.2d 297 (Md. 2004).

<sup>7</sup> Civil Action No. GLR-18-2836, 2019 U.S. Dist. LEXIS 170767 (D. Md. Sep. 30, 2019).

<sup>8</sup> *Dorwat v. Caraway*, 58 P.3d 128, 131 (Mont. 2002).

<sup>9</sup> COLO. REV. STAT. ANN. § 13-21-131 (2020).



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New Mexico<sup>10</sup> have all rejected qualified immunity defenses for state constitutional actions against law enforcement officers.

A common concern about qualified immunity reform is that it will lead to a significant increase in crime because officers will be afraid to do their job. However, that has not been the case in Colorado. An examination of data from Denver and Colorado Springs shows that violent crime rates have remained the same since qualified immunity reform was passed.<sup>11</sup> Crime rates in Denver also remained consistent with cities with similar populations and demographics.<sup>12</sup>

Another argument typically cited in opposition to ending qualified immunity is that it is too costly. Forcing Maryland residents to contend with statutory and qualified immunity will not save costs but shift them to victims of government abuse. Victims of police brutality in particular experience tangible consequences. For instance, they may have medical costs, be forced to miss work, or navigate emotional trauma from their experiences. Barring their suits through qualified immunity forces these victims to bear the cost of police misconduct rather than the officers and law enforcement agencies responsible for their suffering.

We urge you to pass HB 1012. Thank you, again, for the opportunity to provide comment on this important issue.

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<sup>10</sup> New Mexico Civil Rights Act, 2021 Bill Text NM HB 4.

<sup>11</sup> See Exhibit A (attached).

<sup>12</sup> See Exhibit B (attached).