INSTITUTE FOR JUSTICE

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Testimony in Support of HB 1012
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Introduction

One of the bedrocks of the American legal system is that rights do not exist if there is no remedy for victims when those rights are violated.

Put more simply, if your rights as enshrined in the federal or state constitution are violated, and the justice system provides no way to hold the person or entity responsible, then that right may as well never have existed in the first place.

The bill before this Committee, HB 1012, is a positive step towards ensuring that when the state of Maryland says its residents have certain rights, those rights are taken seriously by Maryland's courts.

My testimony focuses on the importance of ensuring a path to justice for victims of civil rights violations and provides a response to those who believe that removing qualified immunity for government officials is detrimental to advancing public safety goals.

Maryland Should Commit to Providing Justice for Civil Rights Abuse Victims

While Maryland's immunity and accountability practices are not the worst in the nation, they are far from robust enough to ensure that the rights of its citizens are taken seriously.

Since the summer of 2020, qualified immunity in particular has become a household term, as many Americans suddenly learned about the complex web of legal immunities enjoyed by government officials who violate their oath to uphold the U.S. or a state constitution.

Qualified immunity is a federal judicial doctrine that can ultimately only be addressed and eliminated by the Supreme Court or Congress, but its pernicious effect on state and municipal officials is something state legislatures can and should address.

A recent report[i] from the Institute for Justice that grades states based on the ease of bringing civil rights claims under state law gives Maryland a "C," and importantly finds

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that there is no true state-based civil rights statute analogous to "Section 1983," the federal statute under which most civil rights claims are brought.

Maryland does provide a cause of action for damages under its constitution against both the government and its employees, but still provides qualified immunity for discretionary acts, leaving an unacceptable gap in the state's civil rights laws.

To the extent that this bill and other civil rights reform efforts in Maryland aim to close that gap and provide a clear cause of action for all constitutional and statutory rights violations, this Committee should support them whole-heartedly.

To state what should be obvious to all public servants in the state of Maryland, if ordinary citizens must follow the law, government officials must follow the Constitution.

Importantly, this Committee, and the state of Maryland, does not have to choose between public safety and taking civil rights seriously. While efforts to restore accountability to government officials, particularly law enforcement, often generates opposition from those concerned about impeding police officers' ability to do their job, it's worth noting that there is no evidence to actually suggest these two goals are at odds with one another.

Myths About Ending Qualified Immunity

The myths about the potential negative consequences facing law enforcement without qualified immunity are, fortunately, easy to dispel.

First, this Committee should not be concerned that HB 1012 or other efforts to eliminate qualified immunity for law enforcement will create an undue burden on the ability of police officers to make split second decisions in life or death situations.

That's because the Supreme Court has clearly articulated in its *Graham v. Connor*[ii] decision that courts must use an "objective reasonableness" standard for excessive use of force cases, and that they must adopt "the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

Second, the Committee should not take seriously claims that ending qualified immunity for officers will clog courts with frivolous lawsuits.

The very nature of qualified immunity means that it effects non-frivolous cases, and the same statutes and rules of civil procedure that discourage or punish frivolous lawsuits would remain in place if HB 1012 or similar legislation were enacted.

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Third, Colorado provides a clear example of a state that ended qualified immunity for law enforcement officials without experiencing the kind of mass exodus predicted by those who opposed reforms there.

Colorado passed qualified immunity reform in 2020. That year, around 1,700[iii] officers left their department. That number was actually down from more than 2,000 who left in each of the prior two years. There are many reasons why police departments may find recruitment and retention challenging in 2022, but restoring justice to the victims of civil rights abuses is not high on that list.

Conclusion

The work of all public officials, especially law enforcement, is only possible through trust and cooperation with the communities in which they serve. Immunity doctrines that prevent victims from holding those officials accountable destroys that trust and cooperation, and makes the work of law enforcement harder and more dangerous than it needs to be.

Evan Douglas, former Washington D.C. wrote the following in an op-ed[iv] last fall:

"I took an oath to protect and serve my community, and part of doing so is listening to my constituents and advocating on their behalf. Ending qualified immunity is the best path forward for both law enforcement and the public; doing so will allow judges to hear the most grievous cases without endangering police officers. Ultimately, we cannot have meaningful reform without ending qualified immunity. Doing so would better equip local courts to hold government employees accountable when they violate a person's constitutional rights. Removing these barriers to police accountability is central to public safety."

Mr. Douglas is not alone in his assessment.

Americans Against Qualified Immunity Reform (AAQI), a project by the Institute for Justice, illustrates the diversity of voices who recognize the need to end qualified immunity. AAQI includes the voices of Maryland residents like Jacob Deavan, an attorney who points out that "When you and I act in bad faith, we're held accountable for our actions. On the other hand, when law enforcement and government officials do, they can claim qualified immunity."

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Captain Sonia Pruitt, a Maryland law enforcement officer and advocate for police reform adds "After 28 years in policing, I can attest to the damage that this doctrine does to the public and the public trust."

Constitutional rights matter. Justice for the victims of civil rights abuse matters. And accountability for government officials matters.

Maryland has the opportunity to be a leader in this area by passing legislation like HB 1012 that enshrines those principles in statute.

[i] Cairns, Megan. 50 Shades of Government Immunity. Institute for Justice. January 2022. https://ij.org/report/50-shades-of-government-immunity/state-profile/maryland/

[ii] Graham v. Connor, 490 U.S. 386 (1989**).** https://supreme.justia.com/cases/federal/us/490/386/

[iii] Schmelzer, Elise. "Did Colorado Law Enforcement Flee the Profession in 2020? Depends on the Department." Denver Post. March 2021. https://www.denverpost.com/2021/03/08/colorado-police-sheriffs-leaving-2020/

[iv] Douglas, Evan. "Both the Police and the Public Will Benefit From Ending Qualified Immunity." The Hill. August 2021. https://thehill.com/opinion/criminal-justice/567174-both-the-police-and-the-public-will-benefit-from-ending-qualified?rl=1

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