

February 25, 2022

**Via Electronic Delivery**

Luke H. Clippinger, Chair  
David Moon, Vice Chair  
House Judiciary Committee  
Maryland House of Delegates  
House Office Building  
6 Bladen St. Room 101  
Annapolis, MD 21401

***RE: House Bill 1012 – Police Immunity and Accountability Act – Favorable***

Dear Chairperson Clippinger and Vice Chair Moon:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),<sup>1</sup> we appreciate the opportunity to submit written testimony in support of HB 1012, the Police Immunity and Accountability Act. HB 1012 creates a solution for people whose state or federal constitutional rights have been violated by law enforcement officers but are barred from relief in civil court due to qualified immunity. HB 1012 would allow people to file suit in state court and would prevent officers from claiming qualified immunity as a shield from civil liability in limited, serious cases involving violations of constitutional rights.

**I. Qualified Immunity Creates Near-Impunity for Law Enforcement Officers Even When They Violate People’s Fundamental Rights**

Qualified immunity is a judicial doctrine that has evolved to protect government officials in all cases except when they are “plainly incompetent” or “knowingly violate the law.”<sup>2</sup> In practice, it undermines accountability for law enforcement officers by shielding them from civil liability even when they have egregiously violated people’s constitutional rights. Courts have afforded qualified immunity to officers in situations where the court has deemed that their actions

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<sup>1</sup> Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF’s work to address police violence and misconduct dates back to its inception. *See, e.g., Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949; the men were brutally beaten by sheriff’s deputies to force confessions). Today, LDF’s Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to transform public safety systems, advance police accountability, and prevent and remedy the impact of racial bias in public safety.

<sup>2</sup> *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

did not violate “clearly established” law.<sup>3</sup> But what is “clearly established” has been interpreted in some cases to mean that a previous court must have ruled on the same fact-pattern and found virtually the same facts to be unconstitutional.<sup>4</sup> For example, the Eleventh Circuit ruled that law enforcement officers were shielded from civil liability after shooting an unarmed child because a “child's right to not be accidentally shot in the leg was not clearly established.”<sup>5</sup> Similarly, the Ninth Circuit ruled that officers who allegedly stole money and rare coins worth more than \$225,000 had acted immorally but were “protected by qualified immunity” because it was not “clearly established” that they had violated the Fourth Amendment.<sup>6</sup> Qualified immunity denies the victims of police violence or misconduct the opportunity to seek justice through civil damages in court – and removes an important mechanism for police accountability.

While the doctrine of qualified immunity was created by federal courts and can only be overturned through federal courts or by Congress, states can create workarounds through legislation like HB 1012. This type of workaround allows victims of police violence and misconduct to file suit in state court, and have their rights vindicated through the state court system.

## **II. HB 1012 Would Provide Compensation to Victims and Deter Misconduct**

HB 1012 creates a path for victims of police violence and misconduct to be compensated for the violations of their rights, and prevents officers from being shielded from liability for their actions that caused the rights violations. Importantly, it permits law enforcement agencies to be recompensated for up to \$25,000 by officers if they violate a person’s rights under the Maryland or U.S. Constitution. In instances where only the law enforcement agency is required to pay damages, victims of misconduct are compensated, but officers are not deterred from committing the same misconduct again. Currently, state and local law enforcement agencies indemnify officers in more than 99 percent of cases, often amounting to millions of dollars of public funds.<sup>7</sup> The threat of civil liability alone, when officers know that they will not be required to contribute to the damages paid, has little to no deterrent effect on officer misconduct. Law enforcement officers will only be deterred from future bad conduct by a real threat of personal liability. Thus, HB 1012’s provision of personal liability for officers is an important component.

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<sup>3</sup> *City & Cty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 616, 135 S. Ct. 1765, 1777, 191 L. Ed. 2d 856 (2015) (officers were immune from liability because there was no “clearly established” law requiring them to provide accommodations to an armed, mentally ill person).

<sup>4</sup> See e.g. *Baxter v. Bracey*, 751 F. App’x 869, 872 (6th Cir. 2018) (officers did not violate “clearly established” law when using a canine to apprehend a person who had surrendered with his hands raised even though a prior decision, *Campbell v. City of Springboro*, 700 F.3d 779, 789 (6th Cir. 2012), held officers violated Fourth Amendment by using canine on suspects who were not fleeing).

<sup>5</sup> *Corbitt v. Vickers*, 929 F.3d 1304 (11th Cir. 2019).

<sup>6</sup> *Jessop v. City of Fresno*, 936 F.3d 937, 942 (9th Cir. 2019)

<sup>7</sup> JOANNA C. SCHWARTZ, *Police Indemnification*, New York University Law Review Vol. 89:885, 885 (2014), <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-89-3-Schwartz.pdf>.

There is precedent for a prohibition on the defense of qualified immunity such as that included in HB 1012. The states of Colorado<sup>8</sup> and New Mexico<sup>9</sup> have enacted similar prohibitions to defenses of qualified immunity by law enforcement officers. And New York City has also enacted a prohibition on officers' claims of qualified immunity for certain rights granted under the city code.<sup>10</sup> Furthermore, several other states are considering similar prohibitions.<sup>11</sup> Maryland can continue to be a leader on police accountability issues by enacting HB 1012 into law.

We applaud the efforts to strengthen law enforcement accountability for incidents of misconduct that result in violations of people's fundamental rights and urge the committee to vote in favor of HB 1012.

Thank you for considering our testimony. If you have any questions, please do not hesitate to contact us at [pcheema@naacpldf.org](mailto:pcheema@naacpldf.org).

Sincerely,

*Puneet Cheema*

Puneet Cheema  
Manager, Justice in Public Safety  
Project

Lisa Cylar Barrett  
Director of Policy

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<sup>8</sup> Law Enforcement Integrity and Accountability Act, SB20-217, Colorado (2020), [https://leg.colorado.gov/sites/default/files/2020a\\_217\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf).

<sup>9</sup> New Mexico Civil Rights Act, HB 4, sec. 3(A) (2021), <https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0004.pdf>.

<sup>10</sup> New York City, NY. Local Law 2021/048 (2021), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4771043&GUID=32ED0C83-7506-45F9-81AA-F5144FCA193A&Options=&Search=>.

<sup>11</sup> See e.g. *Vermont legislators preparing bill to end qualified immunity*, Vermontbiz (Dec. 15, 2021), <https://vermontbiz.com/news/2021/december/15/vermont-legislators-preparing-bill-end-qualified-immunity>; Corina Cappabianca, *Progressive lawmakers, advocates rally for bill to end qualified immunity*, NY Capitol News, (Jun. 2, 2021), <https://www.news10.com/news/progressive-lawmakers-advocates-rally-for-bill-to-end-qualified-immunity/>.