

July 17, 2020

Re: Written Testimony for Draft LCO #3471

Dear Members of the Judiciary Committee,

I write on behalf of myself.

I support our men and women in blue and decry the treatment of George Floyd by rogue police officers. Currently a system is in place which protects bad actors like Derek Chauvin over and above the mission of the police to “protect and serve” the general public. This cannot stand any longer. It destroys community trust and it destroys the morale of the vast majority of police officers who execute their job with professionalism and at the risk of their own lives.

Some of the provisions in this bill will create mechanisms and incentives for reducing the chances of police encounters that turn violent or deadly. Other provisions will have no or minimal impact and are simply window dressing. I encourage the committee to move forward on the bill, even though there is much more work to do.

I would like to focus on the qualified immunity portion of the bill, § 41 – CIVIL CAUSE OF ACTION AGAINST CERTAIN POLICE OFFICERS – which I fully support. [Here](#) is what Clark Neily of the Cato Institute had to say about qualified immunity:

“American police and prosecutors wield extraordinary power over the lives of others – including even the power of life and death – and yet they are among the least accountable people on the planet. And just because the killers of George Floyd are being prosecuted for murder, no one should be fooled into supposing that that would have happened without a viral video of the incident, or if the officers’ violent assault had merely injured Floyd instead of killing him. The reality is that police are almost never prosecuted for the crimes they commit under color of law, and the judiciary ... has helped ensure that other avenues of accountability, including particularly the ability to bring civil-damages claims, are largely toothless.”

I urge you to give citizens whose civil rights were violated in egregious ways the ability to sue for damages against the responsible party. The magazine *Reason* cites numerous

instances where civil litigants were not even allowed to argue the facts in cases of blatantly bad behavior: A police officer [who sicced a dog on a surrendered suspect](#); prison guards who forced one of their charges to [sleep naked for several days in a cell covered in human feces and raw sewage](#); a police officer who [shot a ten-year old boy while he lay on the ground](#) in his own yard; and many other instances like these.

Criminal justice is about accountability. We, the people, can be held fully accountable--criminally *and* civilly – when we break the law regardless of our intentions. Yet the enforcers of these very rules get a special exemption. How is this “equal before the law”? How does this not make certain government employees “above the law”?

Immunity from lawsuits gives abusers impunity to use excessive force, knowing their life savings, their home, and their pensions are safe. The rest of us live with the threat of lawsuits every single day: whether we sit on a board, work in a hospital, or run a deli, we might be sued for a mistaken or intentional act. Many of us buy professional liability for this reason and act with the utmost care and due diligence. I would like to think that money doesn't matter, but for many people it's a very powerful incentive.

Coincidentally, one objection to allowing civil action against police is that it would impose undue financial costs on them in terms of insurance premiums. But cost-incentives can be a powerful motivator in changing how institutions and individuals behave.

First, consider the hidden costs on states and municipalities where these types of litigants ultimately go to seek justice and restitution. [Bloomberg](#) notes, “the legal costs for defending police are usually paid out of the city's own general funds, or through issuing bonds, either way paid with taxpayer funds.” And according to [ABC News](#), taxpayers spent \$300 million in 2019 defending against lawsuits and in settlements. While towns and cities do bear some responsibility for a poorly-run police department, these lawsuits do not create any type of meaningful deterrent.

A cost for police brutality is paid alright, but police departments and police officers have no financial skin in this game. A portion of these costs must be shifted to the level of the cop on the beat for it to reduce incidences of excessive police force. Section 41 of this bill does that. If police departments and, ideally, police officers themselves, were forced to buy liability insurance, it would be in everyone's individual and collective interest to see that 1) new hires were well-vetted, trained, and mentored, 2) bad actors

were rooted out, 3) cameras were on during all interactions, and 4) a high degree of professionalism is maintained at all times.

The argument against stripping civil immunity from police is that lucrative awards would send insurance premiums skyrocketing and be unaffordable for towns and/or employees. Police cameras would be one effective deterrent to this. And, experience has shown that a policeman's word against a citizen's — particularly one with a rap sheet — sways juries more often than not in getting convictions. The same dynamic would apply in civil awards. Even so, the state could address this possibility with much needed general tort reform to prevent frivolous lawsuits and obscenely large awards, and everyone would benefit.

There is much that this bill does not do to root out problems throughout our criminal justice system. One avenue to consider, and I hope something the legislature will soon take action on, is reducing the number of laws on our books, especially our drug prohibitions. Police should be freed from enforcing penny-ante and otherwise victimless crimes so that they can respond more effectively to crimes of violence and theft, which all too often go unsolved.

Thank you for your consideration.

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