



March 25, 2021

RE: HF 1104 (prohibition of peace officer civil liability immunity)

Dear Members of the House Public Safety and Criminal Justice Reform Committee,

On behalf of our 835 members, many of which directly employ law enforcement officers, the League of Minnesota Cities respectfully opposes HF 1104. I am writing to share why legislatively created statutory and judicially created common law immunities, as well as statutory limitations on liability and damages, remain necessary and vital to local governments. As such, careful consideration is needed before this Committee decides to vacate well-established legal doctrines in civil actions against police officers as is being proposed in HF 1104.

As the House continues to engage in important conversations regarding police reform (as local governments across our state are also doing right now), we urge you to take the time to thoughtfully balance the need to have accountability for officer misconduct on the job with the consequences of creating a whole new set of civil claims against law enforcement officers. Completely eliminating qualified¹ and other state-created immunities as a legal defense in these cases will have significant adverse consequences for local governments and the police officers whom they employ; and who are called upon to perform some of the most dangerous and difficult duties in our society.

We recognize the call for abolishment of qualified immunity has gained national attention and appeal. However, while not often discussed by the critics of qualified immunity, it is important to note that the doctrine is not an absolute defense for public officials, but a very limited one. It was created to balance the competing public values: namely, the ability for citizens to seek damages for a violation of their individual rights with the need to protect government officials who must exercise discretion and act for the greater public good. **Importantly, qualified immunity does not protect a law enforcement officer who knowingly violates the law.** Every officer must still provide evidence to show their conduct did not violate a clearly established right in order to assert it as a defense in a civil action.

We urge you to recognize that there are many public policy reasons to continue to provide statutory limitations on liability and damages, and to maintain a “good faith” defense for police officers, including:

- A limited or “qualified” immunity allows public officials, like police officers, to safely and effectively carry out essential job duties that preserve public safety and protect both the general public and the officers themselves. These officials perform essential life-saving functions that often require split-second decisions in uncertain and extremely stressful circumstances. Eliminating all current immunity defenses will encourage litigants with the benefit of hindsight to second-guess actions that appeared reasonable in

¹ Qualified immunity is a limited protection for government officials for alleged violations of federal law. It does not apply to any claim brought under state law.

the moment. This will create doubt and hesitation in police officers when decisiveness and reliance on their training is what is most needed.

- Eliminating immunity as a defense would inevitably open up police officers to unwarranted lawsuits where all cases will potentially go to trial where judges and/or juries could then pick apart split-second decisions after lengthy and costly discovery, litigation, trials, and appeals. Even when the officers eventually prevail in court, this will result in significant financial costs for cities, police officers, and ultimately the local taxpayers who foot the bill. It will also impact the ability to recruit and train new officers who, if this bill is passed, would no longer be offered any legal protections against lawsuits.
- While there are legitimate concerns about the role of courts in creating a set of rules to guide law enforcement officers in making tactical decisions, elimination of qualified and other immunity defenses is not a solution to those concerns, and it will have unintended consequences. The current test for qualified immunity is whether an officer violated clearly established precedent. That test is still viable and appropriate because police officers should not be forced to analyze and apply unclear and uncertain constitutional rights while making decisions in an emergency. Officers cannot realistically be expected to be legal scholars, processing complex, legal arguments when attempting to make an arrest or take other official action for their safety or the safety of others
- HR 1104's proposed new and untested framework for constitutional claims against law enforcement officers would result in cases that are currently litigated in federal court to now be brought in state court. This would likely have a detrimental impact on our state court judges who do not routinely handle this subject matter and on a court system already limited in resources and the ability to have civil cases timely heard and decided.

For the reasons listed above we respectfully ask that you oppose HF 1104 and continue working with stakeholders on balanced police reform. Thank you for your consideration of this important and complicated issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Beety', written in a cursive style.

Patricia Beety
General Counsel
League of Minnesota Cities