Protecting Everyone's Constitutional Rights Act

A State Solution to the Issue of Qualified Immunity under Federal Law

July 29, 2020

Section 1:   <u>Findings</u>

1. Government's most important responsibility is to protect the rights recognized in the laws and constitutions of this State and the United States.

2. Government's violation of rights diminishes the lives, liberty, property and pursuits of individuals.

3. Government's failure to remedy a violation of rights imposes an unjust cost on an injured individual.

4. Government's legitimacy is threated by the absence of a meaningful civil process for an injured individual to seek redress of a violation of rights.

5. Government is responsible to hire, train, supervise and retain employees, and to ensure they perform their duties consistent with rights recognized in the laws and constitutions of this State and the United States.

6. The U.S. Supreme Court has interpreted the U.S. Constitution to protect police officers and other government employees against claims of excessive force in an arrest, investigatory stop or other seizure under a standard of objective reasonableness. An objectively reasonable action does not violate the U.S. Constitution. The Court's interpretation of the 4th Amendment protects against second-guessing a police officer or other government employee's split-second decisions. The legislature recognizes and agrees with the Supreme Court's precedent.[1]

7. Courts must be free to engage in fact finding to determine whether a government employee's action violated the constitution. By making the government a defendant and the financially responsible party, the legislature wants to free courts to determine if an employee's action violated the constitution (a) unencumbered by doctrines that impede fact finding, like the federal doctrine of qualified immunity, and (b) without the employee being exposed to personal financial liability.

Section 2:   <u>Respondeat Superior</u>

1. This State or a subordinate level of government is a principal responsible for the actions of its employees.

2. An employee is an agent of this State or a subordinate level of government that employs the employee.

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[1] A police officer has discretion to make split-second decision. In *Graham v. Connor*, 490 U.S. 386 (1989), the U.S. Supreme Court held that an officer's split-second decision that is objectively reasonable does not violate the U.S. Constitution. Having decided that an officer's action did not violate the 4th Amendment, the Supreme Court did not have to reach the question of immunity.

3. This State or a subordinate level of government is legally responsible for a wrongful act of its agent if such act occurs under the color of law and within the scope of employment.

4. This chapter constitutes (a) a waiver of sovereign immunity and (b) acceptance of responsibility for an agent's acts under the color of law and within the scope of employment under the common law theory of respondeat superior by this State or a subordinate level of government as required to enforce the chapter.

Section 3:   <u>Cause of Action</u>

1. This Chapter establishes a cause of action in state court by which an individual may seek legal, equitable, or other relief for an injury caused by an agent of the State or a subordinate level of government in violation of a right recognized in the laws or constitution of this State or the United States.

2. The individual seeking relief bears the burden of proving a violation of a right recognized in the laws or constitution of this State or the United States by a preponderance of the evidence.

Section 4:   <u>Judicial Process</u>

1. The court is responsible for findings of fact, conclusions of law and judgement against the State or a subordinate level of government, and any other defendant.

2. The court shall not be impeded by an invocation of a government agent's defense or immunity[2] including that:

    A. the rights, privileges, or immunities secured by the laws or constitution of this State or the United States were not clearly established at the time of their deprivation by the government agent, or that the state of the law was otherwise such that the government agent could not reasonably or otherwise have been expected to know whether the government agent's conduct was lawful; or

    B. the government agent acted in good faith, or that the government agent believed, reasonably or otherwise, that the agent's conduct was lawful at the time it was committed.

3. The court shall **<u>not</u>** find a government agent financially liable for a violation of a right recognized in the laws or constitution of this State or the United States.

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[2] In *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978), the U.S. Supreme Court held that a municipality can be liable for constitutional torts. The defenses and immunities available to an individual government employee are not available to a municipality.

Section 5:   <u>Jurisdiction in State Court</u>

1. An action under this chapter arises out of state law.

2. Jurisdiction is in this State's judicial system pursuant to this State's laws and rules of civil procedure.

Section 6:   <u>Attorney Fees</u>

1. In any proceeding in which a plaintiff's claims prevail, the government defendant shall be liable for reasonable attorney fees and other litigation costs.

2. Paragraph 1 includes reasonable attorney fees incurred on a contingency basis or by an attorney providing legal services on a pro bono basis.

Section 7:   <u>Termination of Contract, Agreement or Employment</u>

1. Notwithstanding any other law, contract or agreement, the government defendant may terminate a contract, agreement or employment with the government agent if the court finds, under this chapter, that the government agent violated an individual's right recognized in the laws or constitution of this State or the United States.

2. The government defendant's termination of a contract, agreement or employment with the government agent shall not affect the government defendant's liability under this chapter.

Section 8:   <u>Effective Date</u>