



A STATE LEGISLATIVE SOLUTION TO QUALIFIED IMMUNITY

BY THE INSTITUTE FOR JUSTICE

Qualified immunity is a judge-made doctrine that shields government officials from personal accountability when they violate the U.S. Constitution. Created by the U.S. Supreme Court in 1982, qualified immunity is at the center of calls for police reform. From political leaders to lawyers to athletes to musicians, there is a broad, bipartisan consensus that it is essential to end qualified immunity to address issues of accountability highlighted by George Floyd's killing.

Because qualified immunity is a federal judicial creation, only the U.S. Supreme Court or Congress can end the doctrine for federal constitutional challenges. But state legislators can address accountability in another way.

WHAT CAN STATE LEGISLATORS DO?

The Institute for Justice (IJ) is a national public interest, civil liberties law firm. We advocate for legislative reforms that help people of modest means, and litigate qualified immunity issues in court, including at the U.S. Supreme Court.

We offer the "Protecting Everyone's Constitutional Rights Act" (PECRA) – state legislation that restores constitutional accountability. It guarantees that if citizens must follow the law, governments must follow the Constitution.

WHAT DOES PECRA DO?

PECRA takes the well-established legal concept of *respondeat superior* and applies it to state and municipal government employers. This type of vicarious liability ensures that private employers take responsibility for their employees' actions. When private employees commit wrongs within the scope of their employment, victims can sue the employers. For example, an injured person can sue a pizza company for the damages caused by the company's delivery driver.

PECRA applies the same concept to state and municipal government employers. If government employees violate constitutional rights within the scope of their employment, the government would be responsible for the employees' actions. This incentivizes governments to take responsibility for hiring, training, managing and disciplining employees the way private employers do.

WHAT ARE PECRA'S BENEFITS? IT IS:

- Just: Ensures a remedy for individuals whose rights are violated.
- Focused: Makes governments responsible for training and managing employees.
- Responsive: Requires government employers to address "bad apples."
- Realistic: Does not create personal liability for government employees.
- Pragmatic: Respects split-second decisions that are objectively reasonable.
- Equitable: Treats government and private employers similarly.
- Narrow: Does not affect criminal prosecution.
- Efficient: Does not require a new legal framework.
- Tested: Applies a doctrine developed through centuries of common law.
- Targeted: Does not burden well-run governments with new requirements, oversight, reporting, or costs.



**FOR MORE INFORMATION ABOUT
OUR FREE LEGISLATIVE SERVICE:**

www.2021initiative.com

[View PECRA by clicking here.](#)

THE INSTITUTE FOR JUSTICE CAN HELP

The 2021 Initiative, a project of IJ, is a free legislative service that partners lawmakers with our lawyers, researchers, and advocates to identify and develop responsive and tailored legislation that will work for your state as you recover from 2020. We can help you implement PECRA and other reforms in your state.

For questions or to get started, e-mail Christina Walsh, director of the 2021 Initiative, at cwalsh@ij.org.