

Protecting Everyone's Constitutional Rights Ordinance—(PECRO)

A Municipal Solution to the Problem of Qualified Immunity
that Stymies Federal Litigation under 42 U.S.C. 1983

May 21, 2022

A bill for an act
relating to public safety; prohibiting immunity for government employees; proposing coding
for a new Ordinance in Municipal Law.

BE IT ENACTED BY THE CITY COUNCIL OF THE MUNICIPALITY OF _____.

Subdivision 1: Definitions

1. "Government" means the municipality and its political subdivisions.
2. "Government employee" means an individual employed or contracted by a government employer.
3. "Governmental employer" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the municipality and its political subdivisions.

Subd. 2: State Cause-of-Action

1. Under this chapter, the government employer shall be liable for an injury caused by an act or omission of a government employee who, under color of law, violates a right under (a) the laws of the municipality, this State or the United States or (b) the constitution of this State or the United States.
2. An individual may seek legal, equitable, or other relief in a court of this state for a violation of a right under (a) the laws of the municipality, this State or the United States or (b) the constitution of this State or the United States.
3. The proper defendant in an action is the government employer and not a government employee.
4. A government employee shall not be found financially liable for a violation of a right under (a) the laws of the municipality, this State or the United States or (b) the constitution of this State or the United States.
5. The government employer shall notify the government employee, whose act or omission is the subject of a claim under this chapter, within 10 days of the government employer being served. The government employee has an unconditional right to intervene in the action, as a third-party defendant, pursuant to this State's rules of civil procedure and court rules.
6. The plaintiff bears the burden of proving a violation of a right under (a) the laws of the

municipality, this state or the United States or (b) the constitution of this State or the United States by a preponderance of the evidence.

7. The action is not subject to:
 - A. Common law doctrines of immunity;
 - B. Federally-recognized doctrines of qualified immunity;
 - C. Sovereign immunity, governmental immunity, custom or policy; or
 - D. Statutory immunities and limitations on liability or damages.
8. Nothing in this chapter abrogates judicial or legislative immunity of the municipality and its political subdivisions.
9. Notwithstanding this State's rules of civil procedure and court rules, a class action is prohibited under this chapter.
10. A claim shall commence no later than three years from the date a claim can be brought for the deprivation of a right under (a) the laws of the municipality, this State or the United States or (b) the constitution of this State or the United States.

Subd. 3: Jurisdiction

1. An action under this chapter arises out of municipal law.
2. Jurisdiction is in a municipal or State court of competent jurisdiction pursuant to this State's laws and rules of civil procedure.

Subd. 4: Judicial Process

1. The court's order shall be supported by findings of facts and conclusions of law. The court shall make the findings of fact in a bench trial and the jury shall make them in a jury trial. The court shall make conclusions of law.

Subd. 5: Judicial Evaluation of the Use of Force

1. When evaluating a government employee's use of force under the constitution of this State or the United States, the court's determination of reasonableness must be made from the perspective of a reasonable government employee on the scene, rather than with the 20/20 vision of hindsight. It shall be an objective one based on the facts and circumstances confronting the government employee. It shall recognize a government employee often must make split-second decisions in tense, uncertain, and rapidly-evolving situations.¹

¹ *Graham v. Connor*, 490 U. S. 386, 396 (1989) (Adopting the perspective "of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and allowing for "the fact that police officers are often forced to make split-

Subd. 6: Attorney Fees

1. In any proceeding in which a plaintiff's claim prevails, the government shall be liable for reasonable attorney fees and other litigation costs.
2. Reasonable attorney fees include those incurred on an hourly or contingency basis, or by an attorney providing services on a pro bono basis.
3. The court shall recognize that a plaintiff's claim prevails if the plaintiff obtains any relief the plaintiff seeks in its complaint, whether the relief is obtained via judgment, settlement or the government's voluntary change in behavior.
4. Under this State's rules of civil procedure, the court may dismiss a frivolous claim and may award reasonable attorney fees and costs to the defendant for defending against a frivolous claim.

Subd. 7: Termination of Contract, Agreement or Employment

1. For any contract or agreement enacted after the effective date of this legislation and notwithstanding any other law, a court's finding that a government employee violated a right under (a) the laws of the municipality, this State or the United States or (b) the constitution of this State or the United States under this chapter is per se evidence that the government employer has just cause for terminating the employment of the government employee.
2. The government's termination of a contract, agreement or employment with the government employee shall not affect the government's liability under this chapter.

Subd 8: Public information

All documents, including complaints, judgments, settlements, and consent decrees, are subject to public disclosure.

Severability Clause

Effective Date

second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”) A drafter may object to using the exact phrase from the case: “20/20 vision of hindsight.” An acceptable alternative sentence is “A court must not determine reasonableness based on facts and circumstances of a claim that are later discovered.”

Plumhoff v. Rickard, 572 U.S. 765, 777 (2014). (The Court has repeatedly emphasized that police officers “are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving.”)

Legislative Findings

(Not to be codified in the municipal ordinance)

1. Government's most important responsibility is to protect rights under 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 threatened by the absence of a meaningful civil process for an injured individual to seek redress of a violation of rights.
5. Government is responsible for hiring, training, supervising and retaining employees, and for ensuring they perform their duties consistent with rights under (a) the laws of the municipality, this State or the United States and (b) the 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 reasonable split-second decisions made by police officers. The legislature recognizes and agrees with the Supreme Court's precedent.
7. Courts can address frivolous lawsuits. Rules of civil procedure authorize judges (a) to grant a motion to dismiss and (b) to sanction an attorney who files a case to harass a defendant.
8. Courts must be free to engage in fact finding to determine whether a government employee's action violates a constitutional right. 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.