

# STATE OF NEW YORK

8668

## IN SENATE

July 2, 2020

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil rights law, in relation to ending qualified immunity for law enforcement; and providing a civil action for deprivation of rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The civil rights law is amended by adding a new section  
2 79-q to read as follows:

3 § 79-q. Qualified immunity for law enforcement defendants. It shall  
4 not be a defense or immunity to any action brought for the deprivation  
5 of any rights, privileges, or immunities secured by the federal or state  
6 Constitution and laws where the defendant is a police officer, peace  
7 officer, correction officer or other law enforcement representative or  
8 entity, that such defendant was acting in good faith, or that the  
9 defendant believed, reasonably or otherwise, that his or her conduct was  
10 lawful at the time when it was committed. Nor shall it be a defense or  
11 immunity that the rights, privileges, or immunities secured by the  
12 federal or state Constitution or laws were not clearly established at  
13 the time of their deprivation by the defendant, or that the state of the  
14 law was otherwise such that the defendant could not reasonably have been  
15 expected to know whether his or her conduct was lawful.

16 § 2. The civil rights law is amended by adding a new section 79-r to  
17 read as follows:

18 § 79-r. Civil action for deprivation of rights. 1. (a) A person or  
19 public entity that subjects or causes to be subjected any other person  
20 to the deprivation of any rights, privileges, or immunities secured by  
21 the federal or state Constitution or laws, is liable to the injured  
22 party for legal or equitable relief or any other appropriate relief.  
23 For the purposes of this section, a public entity subjects, or causes to  
24 be subjected, any person to the deprivation of any rights, privileges,  
25 or immunities secured by the federal or state Constitution or laws, by  
26 employing any person who violates this section.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (b) In any action brought pursuant to this section, a court shall  
2 award reasonable attorney fees and costs to a prevailing plaintiff. For  
3 the purposes of this section, the term "prevailing" includes a plaintiff  
4 whose commencement of litigation has acted as a catalyst to effect  
5 change in the defendant's conduct, regardless of whether that change has  
6 been implemented as a result of a judgment in such plaintiff's favor.  
7 When a judgment is entered in favor of a defendant, the court may award  
8 reasonable costs and attorney fees to the defendant only for defending  
9 any claims the court finds frivolous.

10 2. (a) If a person or public entity that subjects or causes to be  
11 subjected any other person to the deprivation or any rights, privileges,  
12 or immunities secured by the federal or state Constitution or laws, the  
13 attorney general may bring a civil action for legal or equitable relief  
14 or other proper redress. The civil action shall be brought in the name  
15 of the state and may be brought on behalf of the injured party. A civil  
16 action brought by the attorney general shall not foreclose an injured  
17 party from bringing their own civil action for legal or equitable relief  
18 or other proper redress. A civil action brought by an injured party  
19 shall not foreclose the attorney general from bringing a civil action  
20 for legal or equitable relief or other proper redress.

21 (b) If the attorney general prevails in an action brought pursuant to  
22 this section, the court shall order the distribution of any award of  
23 damages to the injured party.

24 3. (a) Statutory immunities and statutory limitations on liability,  
25 damages or attorney fees do not apply to claims brought pursuant to this  
26 section.

27 (b) Neither qualified immunity nor a defendant's good faith but erro-  
28 neous belief in the lawfulness of his or her conduct, is a defense to  
29 liability pursuant to this section.

30 4. A civil action pursuant to this section shall be commenced within  
31 three years after the cause of action accrues.

32 5. Notwithstanding any other provision of law, a public entity shall  
33 indemnify its public employee for any liability incurred by the employee  
34 and for any judgment entered against the employee for claims arising  
35 under this section; except that a public entity shall not indemnify a  
36 public employee if the employee was convicted of a criminal violation  
37 for the conduct from which the claim arises.

38 6. For the purpose of this section, "public entity" shall mean the  
39 state, any county, city and county, municipality, and every other poli-  
40 tical subdivision of the state; and any private entity that engages in  
41 state action.

42 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-  
43 sion, section or part of this act shall be adjudged by any court of  
44 competent jurisdiction to be invalid, such judgment shall not affect,  
45 impair, or invalidate the remainder thereof, but shall be confined in  
46 its operation to the clause, sentence, paragraph, subdivision, section  
47 or part thereof directly involved in the controversy in which such judg-  
48 ment shall have been rendered. It is hereby declared to be the intent of  
49 the legislature that this act would have been enacted even if such  
50 invalid provisions had not been included herein.

51 § 4. This act shall take effect on the thirtieth day after it shall  
52 have become a law.