

New Mexico's landmark qualified immunity reform gets its mostly right

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Our nation is undergoing a crisis of confidence in law enforcement. Gallup reported last summer that, for the first time in the history of its polling, a majority of Americans do not have faith in the police. This plummeting confidence is fueled by the fact that police officers are rarely held accountable when they commit misconduct, and that lack of accountability is largely the product of qualified immunity — a judicial doctrine that shields public officials from civil liability, even when they break the law.

But New Mexico took a huge step toward correcting this crisis this past Wednesday when Gov. Lujan Grisham signed into law HB 4, otherwise known as the New Mexico Civil Rights Act. This landmark piece of legislation permits citizens to sue any public official who violates their constitutional rights, and it specifically provides that qualified immunity is not a defense.

Although some have described HB 4 as “ending” or “eliminating” qualified immunity in New Mexico, that’s not exactly correct. Qualified immunity is a federal doctrine available in federal lawsuits, and states can’t change federal law.

But states can pass state-level civil rights laws. Whereas federal law allows people whose rights are violated under the federal Constitution to sue in federal court, HB 4 allows people whose rights are violated under the state constitution to sue in state court. And even though New Mexico can’t eliminate qualified immunity in federal litigation, it’s free to clarify that qualified immunity won’t apply to these state-law claims.

New Mexico has therefore created a robust remedy for citizens whose rights are violated by government agents. The New Mexico Constitution has a bill of rights that largely mirrors the federal Constitution, which means citizens can get redress for the same sort of injuries they could pursue in federal lawsuits. The statute also allows courts to award “reasonable attorney fees and costs” to prevailing plaintiffs.

HB 4 is similar to Colorado’s Law Enforcement Integrity and Accountability Act, enacted last June, which also precluded the application of qualified immunity to a new civil rights law. But whereas the Colorado law was limited to police officers, HB 4 applies more broadly to all public officials.

The other notable difference between the New Mexico and Colorado statutes concerns the question of personal liability for defendants. Colorado provided that police officers sued under the new law would be indemnified (meaning any judgment against them would ultimately be paid by their employer), but officers could be required to contribute a small portion of the

judgment if they “did not act upon a good faith and reasonable belief” that their actions were lawful. New Mexico’s HB 4, however, provides for complete and automatic indemnification, which means individual defendants can never be personally liable for the injuries they cause.

Even though most police officers are fully indemnified anyway, it’s better to ensure that officers have some skin in the game when it comes to the risk of personal liability. Civil rights laws are supposed to have a deterrent effect, but removing any possibility for personal liability — even modest contributions, like Colorado allowed for — may somewhat undermine the individualized accountability that laws like HB 4 are intended to provide.

Nevertheless, HB 4 gets the most fundamental policy judgment exactly right: someone whose rights are violated will get a complete remedy, and qualified immunity won’t stand in the way. New Mexico has therefore made history as the first state to enact legislative qualified immunity reform for all public officials. As both Congress and other states around the country continue to debate policing reform in general and qualified immunity in particular, the enactment of the New Mexico Civil Rights Act is a welcome beacon of hope.