

THE WALL STREET JOURNAL.

New Mexico Makes It Easier to Sue Police

Zusha Elinson and Dan Frosch

April 7, 2021

States legislatures now have a record number of proposals to end qualified immunity for law enforcement

‘This is not an anti-police bill,’ New Mexico Gov. Michelle Lujan Grisham said in a statement.

New Mexico this week became the third state to make it easier to sue police officers for civil-rights violations, as it enacted a law barring a legal defense known as qualified immunity.

The legislation passed the state’s Democratic controlled legislature last month and was signed by Gov. Michelle Lujan Grisham on Wednesday. It comes amid a national push to curb legal protections for police in the aftermath of the 2020 death of George Floyd in Minneapolis.

“This is not an anti-police bill. This bill does not endanger any first responder or public servant—so long as they conduct themselves professionally within the bounds of our constitution and with a deep and active respect for the sacred rights it guarantees all of us as New Mexicans,” Ms. Lujan Grisham, a Democrat, said in a statement.

The U.S. Congress and at least two dozen other states are currently considering limiting or eliminating qualified immunity, according to the National Conference of State Legislatures. The tally represents the most such bills ever proposed in a given year going back to at least 2003, according to the organization.

Ending qualified immunity is one of the most contested reforms being debated nationwide. Police unions have vigorously opposed the change, arguing that doing so would force them to work under constant threat of legal action.

“It’s going to have a chilling effect on the kind of appropriately aggressive policing that has helped drive crime rates to historic lows,” said Jim Pasco, executive director of the Fraternal Order of Police, America’s largest police labor organization.

Police in New Mexico won’t be able to use a legal defense known as qualified immunity.

Police unions’ opposition to ending qualified immunity is one of the main reasons an omnibus law enforcement reform bill is stalled in the Texas legislature, said State Sen. Royce West, a Democrat who is sponsoring the proposal.

Groups including the liberal American Civil Liberties Union and the libertarian Cato Institute say ending qualified immunity is one of the best ways to hold police accountable, because it makes lawsuits alleging civil-rights violations more likely to succeed.

“If you don’t have accountability for violations of those constitutional rights then you don’t have protection of them,” said Jay Schweikert, a policy analyst at the Cato Institute.

The doctrine of qualified immunity, which the Supreme Court first recognized in 1967, protects officials from the threat of litigation for most law-enforcement actions. It requires that plaintiffs suing police officers not only demonstrate that their rights were violated, but also that officers’ actions were previously established as unconstitutional within the jurisdiction where they occurred. That typically means plaintiff lawyers must find a prior case where an officer was found at fault for the same type of misconduct.

The total number of cases dismissed on the grounds of qualified immunity is small. Joanna Schwartz, a UCLA Law School professor who testified in favor of the New Mexico bill, studied more than 1,000 lawsuits filed in five federal district courts and found that just 3.9% of cases in which qualified immunity could be raised were dismissed on those grounds.

Should citizens be allowed to personally sue police officers for misconduct? Why or why not? Join the conversation below.

But Ms. Schwartz said the defense was often used to combat the most serious allegations of civil-rights violations.

In 2019, a federal appeals court ruled that a sheriff’s deputy in Georgia should not face a lawsuit for shooting a 10-year-old boy who was lying on the ground. The deputy, who was searching for a fugitive, wounded the child while trying to shoot the family’s pet dog. Attorneys for the deputy persuaded the court he was entitled to qualified immunity because case law had not established that unintentionally shooting a child while firing at a dog was unlawful.

Elimination of the defense by state lawmakers will have no impact on federal cases, but it creates an avenue for police abuse lawsuits over civil-rights violations in state court.

Last year, Colorado became the first state to bar such a defense by statute. Colorado’s new law also allows officers to be held personally liable for up to \$25,000 or 5% of a judgment—whichever is less—in civil rights claims if the officer’s actions are determined to be unlawful.

Connecticut passed a bill last year that makes a similar change by limiting when police officers can use a similar defense known as “governmental immunity” in state cases.

In March, the New York City Council passed a measure ending qualified immunity as a defense for police officers sued over civil-rights violations. Mayor Bill de Blasio said he supports the legislation.

Under New Mexico’s bill, most government employees would be prohibited from using qualified immunity as a defense in civil rights lawsuits in state court. Police officers wouldn’t have to pay any judgments or settlements out of their own pockets. The cities or counties that employ them would foot the bill. Damages would be capped at \$2 million.

Steve Hebbe, chief of police in Farmington, N.M. and the president of the state’s police chiefs association, said the bill didn’t address more pressing issues such as better training for police officers.

“It will get a few people some justice in state court,” he said. “Communities and taxpayers are going to have to pay for it. It will be easier to sue the police, but it won’t bring about police reform.”

Even with the hurdle of qualified immunity, plaintiffs have won large settlements in high-profile cases. The city of Minneapolis agreed to pay Mr. Floyd’s family \$27 million last month. Legal experts say that cities are often loath to fight such cases because of the publicity.