

## Legislative subcommittee hears about qualified immunity as lawmakers look toward 2021

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August 10, 2020

Protesters nationwide have demanded increased police accountability in the wake of George Floyd's death when a Minneapolis police officer knelt on his neck for nearly nine minutes.

One area that has come into the spotlight during the national debate sparked by that incident is qualified immunity. Qualified immunity shields officers from lawsuits resulting from actions done while on duty unless there is a previous case that proves those actions violated constitutional rights.

This topic was the center of conversations during the legislative Criminal Justice Reform subcommittee meeting on Aug. 10. That meeting can be viewed on [nmlegis.gov](http://nmlegis.gov).

On the law enforcement side, the lawmakers heard from Bob Martinez, a member of the Public Safety Advisory Commission and the past president of the Fraternal Order of the Police Albuquerque Lodge #1, as well as Albuquerque Police Department Detective Shaun Willoughby, who also serves as president of the Albuquerque Police Officers' Association.

In terms of opposition to qualified immunity, the subcommittee heard from Jay Schweikert, a policy analyst for the Cato Institute's Project on Criminal Justice, who described the doctrine as the biggest obstacle preventing police accountability. The Cato Institute is a Libertarian think tank.

Because it was created by a U.S. Supreme Court ruling, the states themselves are limited in what they can do to address the issues that opponents say qualified immunity has created.

This summer, the state of Colorado passed a law that prohibited qualified immunity as a defense to state constitutional claims. The same method could be used by New Mexico to limit the use of the qualified immunity defense.

New Mexico lawmakers will likely debate qualified immunity during the 2021 legislative session that starts in January.

Willoughby urged lawmakers not to follow in Colorado's footsteps, warning that it will make it harder to recruit and retain officers.

"We're not afraid of accountability. We're not afraid of reform," Willoughby said.

He encouraged lawmakers to work in tandem with law enforcement "to bring common sense reforms."

“Please don’t let the national dialogue make you forget that New Mexico isn’t Minneapolis,” Willoughby said.

Sen. Antoinette Sedillo Lopez, D-Albuquerque, asked Willoughby and Martinez what their understanding is of qualified immunity.

Willoughby said qualified immunity means that if an officer is doing the right things for the right reasons and acting in good faith that officer is protected from lawsuits.

“This is a highly litigious profession,” he said, giving a variety of examples in which an officer could face a lawsuit.

Meanwhile, Martinez described qualified immunity as protection from frivolous lawsuits.

Those definitions, according to Schweikert, are inaccurate and Sedillo Lopez said qualified immunity is not applied consistently. She said that it requires people to show the police officer's actions were articulated in a previous case as not being in the color of the law.

The senator’s appraisal of qualified immunity was correct, Schweikert said. He said it protects officers from lawsuits by requiring there to be a nearly identical previous case in which that conduct was proven to be unlawful and a violation of constitutional rights.

He argues that qualified immunity prevents police officers from being held accountable, which increases the negative public perception of law enforcement officers. This distrust then makes it harder and more dangerous for police to do their jobs.

He gave examples from around the country of qualified immunity preventing officers from being held accountable. In one case, officers pocketed some cash from an illegal gambling operation for personal enrichment. Because the court had never faced that scenario and no case law existed, the officers were granted qualified immunity.

In another case, he highlighted a suspect who had surrendered and was sitting with his hands in the air when the police dog was released on him. There was a similar case that the plaintiff used in the suit, but that case involved a person laying down rather than sitting. The officers were given qualified immunity due to that difference.

During the public comment section at the end of the meeting, Grace Philips, general counsel for New Mexico Counties, warned that following Colorado’s footsteps could hurt or even bankrupt local governments that foot the bill for officers’ defenses and may see higher insurance premiums. Additionally, she said the state’s Tort Claims Act states that immunity is waived if constitutional rights have been violated.

Earlier, Schweikert acknowledged that removing or limiting qualified immunity would have fiscal impacts.