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Massachusetts' Progressive Lawmakers Push Congress To Abolish Qualified Immunity

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A bill introduced by Rep. Ayanna Pressley and Sens. Ed Markey and Elizabeth Warren comes as the House prepares to vote on major policing reform.

REP. AYANNA PRESSLEY and Sens. Ed Markey and Elizabeth Warren, Democrats of Massachusetts, are introducing a [bill](#) to fully end qualified immunity, a legal doctrine that protects police and law enforcement officials from civil liability in cases where they are accused of violating someone's constitutional rights.

Pressley and former Rep. Justin Amash, I-Mich, first introduced a bipartisan version of the bill last summer, as an amendment to the George Floyd Justice in Policing Act, a package of sweeping police reforms developed in response to nationwide [protests against police brutality](#). Pressley and Amash's amendment did not make it into the version of the JPA that was passed by the House in June, which instead included a provision to reform qualified immunity to allow individuals who file civil suits against local and federal law enforcement officers the possibility to recover damages, something the current qualified immunity doctrine widely protects against.

The doctrine of qualified immunity “for too long has shielded law enforcement from accountability and denied recourse for the countless families robbed of their loved ones,” Pressley said, noting that ending systemic racism in policing depends in part on ending qualified immunity. “There can be no justice without healing and accountability, and there can be no true accountability with qualified immunity.”

Markey echoed that sentiment, citing the cases of Daniel Prude in Rochester, New York; Elijah McClain in Aurora, Colorado; “and countless others” that inspired a renewed push to end the doctrine. Colorado became the first state to end qualified immunity in June, picking up efforts to do so [in the wake of McClain's death](#). The doctrine would have theoretically protected police officers who chose to administer an inappropriate dose of ketamine, [a fast-acting sedative](#), to McClain. “It's time we end the outdated and judge-made doctrine of qualified immunity and start delivering accountability for the officers who abuse their positions of trust and responsibility in our communities,” Markey said. “There will not be true racial justice until we end qualified immunity.”

The bill, the full text of which was shared exclusively with The Intercept, is substantially similar to last year's amendment. It would apply to future civil litigation, in addition to cases that are pending when it's passed.

The bill from the Massachusetts Democrats comes as Congress prepares to vote a second time on the Justice in Policing Act, which includes a provision that would limit but not end qualified immunity. It would also ban the use of chokeholds and no-knock warrants by federal officers, limit the transfer of military equipment to state and local law enforcement, require state and local law enforcement agencies to report data on use of force, and establish a national registry of officers who engage in misconduct.

The prospect of narrowing qualified immunity has historically had broad bipartisan support, from the libertarian Cato Institute, to NFL quarterback Tom Brady, to the American Civil Liberties Union, and even Supreme Court Justice Clarence Thomas, with some disagreement on particulars. As The Intercept previously reported, however, some Democrats have backed away from efforts to reform qualified immunity for fear of angering law enforcement groups and Republicans, as well as facing attack ads in the next round of midterm elections. During a call with House Democrats just after last year's elections, New Jersey Rep. Bill Pascrell said he didn't want to be made to "walk the plank" on qualified immunity.

A group of moderate lawmakers — including Reps. Josh Gottheimer, D-N.J.; Tom O'Halleran, D-Ariz; and Fred Upton, R-Mich. — is now pushing to water down the JPA's provision on qualified immunity before the bill comes to the House floor for a vote, Politico reported last week. They are arguing that the current provision will endanger their chances of reelection and make it harder to work with Republicans down the road.

Efforts to weaken the qualified immunity provision in the JPA, Pressley told The Intercept, are "bad-faith attempts from people in the pockets of special interests spreading misinformation to undermine our progress on ending qualified immunity and we will not back down in our pursuit of true justice and accountability."

Asked about pushback to the JPA provision, Markey said there was no room to make half-hearted efforts to reform qualified immunity. "The lives that are lost to excessive force and police brutality are not half lives, so there can be no half measures to ending qualified immunity," Markey said. "Full accountability means abolishing qualified immunity once and for all. We owe it to the families of those who have been murdered to provide them this full measure of justice."