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It May Soon Be Easier to Sue the N.Y.P.D. for Misconduct

Jeffery C. Mays and Ashley Southall

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A year after nationwide protests against police brutality, the City Council passed a bill limiting qualified immunity, a longstanding legal protection officers had against lawsuits.

Responding to last year's protests against police brutality, the city council passed a law that removes a longstanding legal protection the police enjoyed against certain lawsuits.

A year after nationwide protests against police brutality ignited calls for reform, the New York City Council passed legislation on Thursday aimed at reining in police misconduct by making it far easier to sue officers for conducting illegal searches or using excessive force.

For decades, the police across the country have been able to invoke an esoteric legal doctrine known as qualified immunity to protect themselves from lawsuits claiming they had violated the constitutional rights of people they arrested.

In the aftermath of the protests against the killing of George Floyd by the police in Minneapolis, ending the use of that defense on the local and federal levels has become a top demand of police reform activists.

With the council's vote, New York City becomes the largest jurisdiction to limit the ability of officers to invoke the defense, joining the states of Colorado and Connecticut. Mayor Bill de Blasio said at a news conference on Thursday that he supported the legislation, suggesting he would not veto it.

“What we are doing is saying the police can't walk into the courtroom and say, ‘The plaintiff has no right to bring me here because I am immune,’” said Councilman Stephen Levin, the Brooklyn Democrat who sponsored the bill. “This is about giving people a right to protect the most fundamental rights in our democracy.”

The bill was one of several police-reform measures passed by the City Council on Thursday. City lawmakers also gave final approval to Mr. de Blasio's \$72 million plan for improving police practices and accountability, which Gov. Andrew M. Cuomo has asked all jurisdictions in the state to finish before April 1.

The combined package addresses a range of issues. One bill gives the Civilian Complaint Review Board, which looks into misconduct, the power and staff to investigate racial bias in policing. Another requires the police to collect data on car stops, including the race of the people arrested.

But the centerpiece of the package was the bill intended to make it harder for officers to deploy a qualified immunity defense to shield themselves from lawsuits. It passed by a vote of 37 to 11.

In essence, the bill establishes a local right — the protection against unreasonable searches and the use of excessive force — and says officers cannot use the qualified immunity defense against it. As a practical matter, it allows people to sue the police for damages under local law, rather than federal or state statutes.

The doctrine dates back to the 1960s, when the courts ruled that officers who arrested clergy members for using segregated facilities in a Mississippi bus terminal could not be held liable if they acted in good faith and with probable cause under a statute they believed to be valid.

But over the years the rule has been expanded by the courts, and it now requires plaintiffs to prove that officers violated a constitutional right that had been “clearly established” in a previous case. That is a high legal hurdle that critics say is often impossible to overcome and allows officers to escape accountability for their actions.

Researchers from the City Council found at least 180 lawsuits over the last three years in which qualified immunity or its equivalent was invoked on behalf of the Police Department. A judge approved its use in about 100 cases.

Corey Johnson, the speaker of the City Council, said before the vote that qualified immunity is “rooted in our system of systemic racism” and has been used to “deny justice to victims of police abuse for decades.”

Recent rulings by the Supreme Court have stirred speculation that the nation’s highest court might roll back the doctrine, which emerged as a flash point during nationwide protests over Mr. Floyd’s death.

The doctrine has attracted opposition from across the ideological spectrum. The Cato Institute, a libertarian think tank based in Washington, called for abolishing the qualified immunity defense last year in a scathing policy paper, and the National Basketball Players Association voiced support for the City Council’s bill.

Robert Quackenbush, staff attorney with the Prisoners’ Rights Project at The Legal Aid Society, said in a statement that qualified immunity had allowed a “culture of impunity” to “exist and fester” within the Police Department. He also called for state lawmakers to pass similar legislation.

Opponents of the bill, however, argued that the rule was a necessary protection that allowed police officers to do their jobs effectively. Ending qualified immunity is reckless and may discourage people from going into law enforcement, they said.

“Ending qualified immunity will prevent the best young men and women in our city from joining the police force,” Councilman Robert F. Holden said as he voted no.

The Police Benevolent Association also opposed the bill, and has said it would “chill the operations of law enforcement” and remove “longstanding safeguards protecting police officers” who are acting in good faith.

“New Yorkers are getting shot, and police officers are on the streets day and night, trying to stop the bloodshed,” the union’s president, Patrick J. Lynch, said in a statement.

Mr. de Blasio said he had concerns about earlier versions of the legislation but now felt that the City Council version was “aligned” with national legislation, known as the George Floyd Justice in Policing Act, which also limits qualified immunity as a defense.

“I think it’s a very strong reform package,” the mayor said.

Some experts on policing questioned, however, whether the measure would be effective at curbing police misbehavior. Taxpayers already pay millions of dollars annually to settle police misconduct lawsuits, but allegations of abuse have not slowed. The city paid out about \$220 million to settle lawsuits against the police in 2019, the comptroller’s office said.

“People want to see a system where it’s not easy to violate people’s civil rights, such as removing police from certain situations,” said Susan Kang, a political scientist at John Jay College of Criminal Justice.

Councilwoman Adrienne E. Adams, a Queens Democrat and chairwoman of the public safety committee, said the bills passed on Thursday were only the “beginning and not the end of police reform in New York City.”

Even as the council moved to curb the use of qualified immunity, the city Law Department indicated recently that it would use the defense in lawsuits being brought by state Attorney General Letitia James and others accusing the Police Department of using excessive force against protesters during the Floyd protests last summer.

Ms. James’s office has charged in Federal District Court in Manhattan that the Police Department “unjustifiably deployed pepper spray and used batons, bikes, and other force against protesters, repeatedly violating New Yorkers’ constitutional rights.”

City lawyers said in a Feb. 15 letter to Judge Colleen McMahon that the qualified immunity defense would apply because the protests happened during the coronavirus pandemic.

“Given the unique circumstances that policing mass protests in a pandemic present, it cannot be said that the law is clearly established,” the lawyers wrote.