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Maryland bill would make it easier to sue police officers for brutality in state court

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Lawmakers seeking to tighten police accountability in Maryland have also set their sights on civil lawsuits, with legislation that would make it easier to sue officers — and localities — for police misconduct.

Del. Jheanelle K. Wilkins (D-Montgomery) called the state's immunity defense, which shields officers from legal liability, “the missing piece that we have to address.”

Her proposed legislation would remove the immunity defense for police officers, increase caps for monetary damages awarded in civil lawsuits, allow the state to decertify officers who are found liable in those lawsuits and permit local jurisdictions to forfeit officers' pensions and use that money to help pay legal settlements.

“The ability of officers to claim immunity is the antithesis of accountability and justice, and it perpetuates the challenges that we are facing when it comes to policing,” Wilkins said during a virtual news conference on Monday before a hearing on her bill.

She was joined by victims of police misconduct, attorneys, civil rights advocates and Ben Cohen and Jerry Greenfield, the co-founders of the ice cream company Ben & Jerry's. The pair last month launched a national campaign to end qualified immunity that includes the Cato Institute, the American Civil Liberties Union, the NAACP and many business leaders, athletes and celebrities.

“It is time to shift from protest to policy,” Cohen said Monday.

Qualified immunity shields government officials from personal civil liability for carrying out their duties, unless the official violates a statutory or constitutional right clearly established by a previous case. The idea is to allow government officials wide latitude to do their jobs without being hamstrung by frequent and costly litigation.

Cary Hansel, an attorney supporting the Maryland bill, told lawmakers at the hearing that the immunity “creates a lopsided playing field for people seeking justice.”

Opponents of the measure, including the state Fraternal Order of Police and associations representing counties and municipalities, said the bill is punitive toward police officers and would be costly for local jurisdictions.

“We understand that these are important and complex issues, but our main concern is the bill’s financial implications for local governments,” said Angelica Bailey, a lobbyist for the Maryland Municipal League. “The fiscal note sums it up well. There will be significant increases for us to pay the judgment awards under the claims that would be brought, and to pay the increased insurance premiums.”

The bill, which does not have co-sponsors, would hold both the officer and the local jurisdiction jointly responsible for civil awards and allows lawsuits against police officers for causing physical abuse and mental distress.

Chaz Ball, an attorney for the state police union, told lawmakers that the bill appears to be designed to bring in more money for attorneys.

“This goes toward getting plaintiffs more money, but does it serve the purposes that this act is supposed to?” he asked.

Wilkins said she believes the legislation would “reduce reckless and harmful actions by an officer, because they will know that they have to face the consequences directly, and that jurisdictions also understand they need to weed out officers because of this direct liability.”

More than 100 policing-related measures are being considered by the Maryland General Assembly in the wake of the police killing of George Floyd in Minneapolis last spring.

Several that have the backing of top legislative leaders focus on who should investigate police use of force and alleged misconduct; what police discipline records should be available to the public; and what should be included in a statewide policy on use of force, including a ban on chokeholds and a restriction on no-knock warrants.

House Speaker Adrienne A. Jones (D-Baltimore County) has said that one of her highest priorities is the repeal of the Law Enforcement Officers’ Bill of Rights, a decades-old statute that provides workplace protections for officers accused of wrongdoing.

Efforts by Democrats in Congress to end qualified immunity have been unsuccessful. According to advocates, Colorado is the only state that has removed the defense.

Among those speaking in support of the Maryland bill was Marion Gray-Hopkins, the head of the Coalition of Concerned Mothers, an advocacy group made up of mothers who have lost their children to police violence.

She said she has been lobbying for police reform in Maryland for many years with little success.

“Law enforcement cannot be above the law,” she said. “If officers had to pay lawsuits and possibly have their pensions taken away, we’re bound to see a drop in these deadly force and excessive force cases.”

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