

Hearing of the Illinois House Restorative Justice Committee

Subject Matter On: **HB 1727**

Testimony on HB 1727
Peter Hanna, ACLU of Illinois
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Chairperson Cassidy, Chairperson Ford, and Members of the Restorative Justice Committee:

Good afternoon. My name is Peter Hanna, and I am a Legal Advisor with the ACLU of Illinois.

Thank you for the chance to testify today about HB 1727, the Bad Apples in Law Enforcement Accountability Act.

We often hear that egregious police misconduct is caused by “just a few bad apples.” Unfortunately, we rarely see bad apples actually being held accountable, as special protections like qualified immunity create an almost insurmountable barrier to justice for people whose constitutional rights have been violated by police. HB 1727 would change that, and would provide the people of this state a chance to hold bad police officers accountable when they violate someone’s constitutional rights.

This bill, which is modeled after the landmark Civil Rights Act of 1871, would allow a person to bring a lawsuit in Illinois state court against a police officer who violates that person’s rights under the Illinois Constitution, including under Art. I, Section 6, which prohibits police from using excessive force.

Qualified immunity would not be available as a defense to lawsuits brought under the Bad Apples Act, allowing courts and juries to evaluate allegations of constitutional violations by police on a case-by-case basis. There are many myths around qualified immunity, including the false claim that limiting qualified immunity would expose police to personal liability, and the self-defeating argument that we will not be able to recruit or retain police if we expect them to be accountable for constitutional violations. I would be happy to address these myths or answer any questions about qualified immunity at the conclusion of my testimony, but for now, I want to emphasize that HB 1727 would only apply to claims of constitutional magnitude, and would leave qualified immunity in place for all claims that do not allege constitutional misconduct.

HB 1727 creates no new rights at all – it just offers a limited remedy for the rights enshrined in our state constitution. Colorado already passed such a measure in June 2020, and similar efforts to curtail qualified immunity protection for police have gained traction across the country, and with good reason – an overwhelming majority of Americans and Illinoisans agree that people should be able to sue police officers to hold them accountable for excessive force and other constitutional violations – something that cannot happen with qualified immunity in place as is.

Enacting the Bad Apples Act will not only lead to more just and equitable outcomes for people harmed by egregious police misconduct, but seeing that police can be held accountable is essential to restoring the public’s trust in law enforcement. Moreover, with a measure like HB 1727 in place, police departments will be better enabled to (1) identify and discipline bad cops, (2) improve or modify constitutionally deficient practices and procedures, and (3) substantially reduce settlement costs.

Indeed, bad apples in law enforcement are not only responsible for an incalculable, horrific, human cost, but they account for the vast majority of settlements and payouts for civil rights violations. For example, a recent study of more than 50,000 civilian allegations of police officer misconduct in Chicago revealed that the 1 percent of officers who had the largest number of civilian complaints against them generated almost five times the total number of payouts, and more than four times the total damage payouts in civil rights litigation as police as a whole.

Just as civilians are expected to follow the law, police should be expected to follow the constitution. People who have been harmed by serious police misconduct deserve the chance to have their cases decided based on the merits, not an almost insurmountable hurdle that favors police. Passing HB 1727 means giving people whose constitutional rights have been violated by police a fair chance to see those police held accountable in civil court. It means recognizing that the people’s interest in an accountable police force is more important than shielding a handful of rogue police officers from lawsuits.

We can no longer just accept the presence of bad apples in law enforcement as an immutable truth. No police reform, no matter how well-intentioned, can be effective until we have real police accountability. Now is the time to pass HB 1727, and empower the people to hold bad police officers accountable.

I urge the Committee, and the General Assembly, to build on the work that has been done and pass HB 1727, and help us work towards an accountable police force that has no more bad apples. Thank you for the opportunity to share the ACLU’s strong support for this important bill, and I am happy to answer any questions you may have.