



Colorado Association of
Chiefs of Police



COUNTY SHERIFFS
OF COLORADO

Qualified Immunity

Every day, law enforcement officers work to keep Colorado communities safe. Unfortunately, officers are often faced with dangerous, rapidly evolving situations where they are forced to make split-second decisions to save lives.

Recognizing the perilous and extraordinarily unique circumstances that officers face, the Courts provided them with a limited type of immunity commonly referred to as “qualified immunity.” For qualified immunity to apply, the officer must act in good faith and meet other requirements. As a result, this immunity only applies in very limited circumstances, and it is by no means absolute. Officers who violate clearly established statutory or constitutional rights can still be held accountable for their actions.

What is qualified immunity?

Qualified immunity is a legal principle that applies only in civil cases. It protects government officials, including law enforcement officers, from civil liability for reasonable actions they take while performing their official duties. It protects those who are acting in good faith to perform their duties within the law, particularly in difficult or uncertain situations where the Courts have not established in case law that such actions are unconstitutional. It provides no protection for those who knowingly and willfully violate the law.

What does qualified immunity NOT protect?

- Qualified immunity does not protect those who are incompetent or those who knowingly violate the law.
- Qualified immunity does not apply when state or federal criminal charges are brought against an officer.
- Qualified immunity does not protect law enforcement officers or agencies from clearly established unconstitutional practices or from violating clearly established statutory or constitutional rights.

Qualified immunity vs. other legal immunities

Qualified immunity has more limitations than immunities provided to federal and state governments, to state legislators and state and federal prosecutors, all of whom enjoy almost absolute immunity. This is despite the fact these individuals generally have ample time to

consider their decisions before making them, unlike law enforcement officers, who are provided no such luxury and must make decisions on-the-spot.

Qualified immunity in the courts

The courts have found that:

- Qualified immunity is necessary to protect government actors, including police officers, from liability to allow them to function in uncertain situations where immediate action is needed for the public good. *Pearson v. Callahan*, 555 U.S. 223 (2009)
- The qualified immunity rule seeks a proper balance between two competing interests by allowing damages suits for vindication of constitutional guarantees while allowing officers to perform their duties in good faith with breathing room to make reasonable but mistaken judgments about open legal questions. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017)
- The courts have held that eliminating qualified immunity would keep officers from making crucial, split-second, life or death decisions to stop a lethal threat and that innocent victims and officers would be hurt or killed as a result. *Mullenix v. Luna*, 136 S. Ct. 305 (2015).

Practical effects of qualified immunity

- **The ability to carry out public safety functions.** Public officials, including police officers, perform important tasks in a high-stress environment that often requires split-second decisions. Without qualified immunity, officers may hesitate to take necessary action, fearing that they could lose their home and their ability to support their families due to the potential financial consequences.
- **Recruitment and retention.** Applications for law enforcement positions are at an all-time low. Qualified applicants are looking for jobs in other career paths, and great officers are leaving the profession for other careers. Increased personal liability in any area of work reduces the talent pool for filling positions in that line of work. And there is concern the number of qualified people interested in becoming a peace officer will decrease.
- **Litigation.** Qualified immunity protects officers and local governments from frivolous or baseless litigation that is costly to taxpayers and would divert public safety resources away from communities. Qualified immunity seeks to strike a balance between addressing unacceptable conduct by not protecting incompetent officers who violate clearly established statutory or constitutional rights while also protecting government funds from costly litigation.

Colorado Senate Bill 20-217 and qualified immunity

Under Colorado Senate Bill 20-217, qualified immunity is not a defense to the civil action, and officers may be liable for up to \$25,000 for knowingly unlawful actions. If the peace officer's employer determines the officer did not act upon a good faith and reasonable belief that the action was lawful, then the peace officer is *personally* liable for 5 percent of the judgment (up to \$25,000). A public entity does not have to indemnify a peace officer if the peace officer was convicted of a criminal violation for the conduct from which the claim arises.