**Maine Law Enforcement Coalition**

**Member Organizations**

**Maine State Law Enforcement Association –Maine Association of Police –Maine State Troopers Association**

**Maine Fraternal Order of Police- Maine State Employees Association -American Federation of State, County & Municipal Employees**

**Qualified Immunity Protections in Jeopardy in Maine**

**Issue.** LD 214 which was introduced in the Maine Legislature on January 27, 2021 seeks to strip away protections for **any law enforcement officer** in the State of Maine based upon qualified immunity **(**or **“QI”)**. There is similar pending federal legislation known as the George Floyd Justice in Policing Act Of 2021 (HR 1280).

**Qualified Immunity.** What exactly is “qualified immunity?” Qualified Immunity is the legal principle that provides immunity for government **employees** (not the government itself) from **civil suits** in the exercise of their discretionary functions. Unless a plaintiff can show that the employee violated a clearly established right which a reasonable person would know about then the employee receives qualified immunity protection which frequently serves as a knock-out **defense** to a suit.

**Why Qualified Immunity Exists.** “Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officers from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan,* 555 US 223 (2009). Qualified Immunity is an attempt by society to protect those who perform discretionary functions for the benefit of the public. All types of government employees have immunity, not just the police. Society has decided that they need the protection to get the job done for the common good. Many officers will not remain officers without this protection. New officers will be even harder to recruit.

**Change in Maine Law.** The text of the Maine bill would add the following language to the Civil Rights statute: “Qualified immunity, including the immunity provided by Title 14, § 8103 is not a defense to a civil action brought pursuant to this section when the civil action concerns the actions of …” virtually any LEO in Maine.

**LEOs Sole Target of Bill.** The new bill only effects law enforcement officers. Immunities enjoyed by other government actors, including legislators, judges, public employees, etc. would stay intact.

**Why is Qualified Immunity being attacked?** A key talking point of bill proponents is that police officers act with impunity in their dealings with people as they know they face no consequences for their actions under their immunity from a lawsuit.

The national discussion on QI has been projected upon the State of Maine without asking if there is justification for a change of law in Maine or not. Is there actually a problem with the violation of civil rights by police officers in Maine? If not, why change the law? If there is a problem, is the best fix for that eliminating qualified immunity?

**Qualified Immunity is Misunderstood.** It needs to be remembered that if an officer violates a clearly established right of a citizen, say under the 4th Amendment, then that officer **does not** get the benefit of qualified immunity. There are sets of established and well-known rights, arising out of decades of cases and their resulting precedents; a reasonable officer is deemed to know about these rights, the violation of which are not protected by QI. Many legislators and members of the public do not like QI because they think it simply gives officers a pass; it does not. It only comes into play where there is no clearly established right that may have been violated.

**What are the ramifications of eliminating qualified Immunity?** There are many, both immediate and cumulative over time. They include but are not limited to:

* **Immediate retirements of eligible officers, reducing an already alarming shortage of officers.**
* **Exacerbating the recruitment and retention problem already existing in Maine and the country.**
* **Impacts on officer wellness, safety and self-initiated activity, which reduces community safety and public confidence in the Police.**
* **Significant increases in the attrition of both new and veteran officers out of concern for their families and financial stability.**

**Will the pending legislation pass?** The Maine Law Enforcement Coalition is working at both the federal and state levels to ensure that our concerns are heard. Although there may be more issues preventing the elimination of QI in the U.S. Congress, our fear is that there is a better chance for the Maine legislation to pass, as legislation has in other states. It is imperative that all LEOs, their families, and friends participate along with the Coalition in voicing their concerns and opposition to eliminating QI.

In educating the public, and legislators, we need to communicate the facts and information with a strong, consistent message. The Coalition is continually working on crafting this message and will keep you all up to date.

Thank you for your interest and we look forward to your help in preventing the elimination of Qualified Immunity for all law enforcement officers. Stay safe and watch out for each other!