

Senate Study Bill 1178 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON SMITH)

A BILL FOR

1 An Act relating to qualified immunity of law enforcement
2 officers, the peace officer, public safety, and emergency
3 personnel bill of rights, and protected information of law
4 enforcement officers and state or federal judicial officers
5 and prosecutors.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

QUALIFIED IMMUNITY

Section 1. NEW SECTION. **669A.1 Findings.**

The general assembly finds the following:

1. Qualified immunity is intended for all but the plainly incompetent or those who knowingly violate the law and is meant to give law enforcement officials leeway to make reasonable mistakes of fact and law.

2. The United States supreme court has observed that qualified immunity balances two important interests: the need to hold law enforcement officers accountable when law enforcement officers exercise power irresponsibly and the need to shield law enforcement officers from harassment, distraction, and liability when law enforcement officers perform their duties reasonably.

Sec. 2. NEW SECTION. **669A.2 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "*Action for damages*" means any case brought in a court organized under the laws of this state in which the plaintiff seeks any amount of monetary compensation, including but not limited to claims alleging constitutional or statutory violations.

2. "*Constitution*" means the Constitution of the United States or the Constitution of the State of Iowa.

3. "*Law enforcement officer*" means any federal, state, tribal, or local official who is authorized by law to engage in or supervise the prevention, detection, investigation, or incarceration of any person for any violation of law, and has statutory powers of arrest, apprehension, detention, or incarceration. "*Law enforcement officer*" includes but is not limited to a peace officer, employee of the department of public safety, employee of the department of corrections, and employee of a judicial district's department of correctional services.

1 4. "Other law" means any statutory or common law, whether
2 federal or state.

3 Sec. 3. NEW SECTION. 669A.3 Liability — law enforcement
4 officers.

5 A law enforcement officer subject to any action for damages
6 in the law enforcement officer's individual capacity shall not
7 be found liable if such law enforcement officer establishes any
8 of the following:

9 1. The right, privilege, or immunity secured by the
10 constitution or any other law was not clearly established at
11 the time of the alleged deprivation by the law enforcement
12 officer, or at that time, the state of the law was not
13 sufficiently clear that every reasonable law enforcement
14 officer would have understood that the conduct alleged
15 constituted a violation of the constitution or any other law.

16 2. A court of competent jurisdiction had issued a final
17 decision on the merits holding, without reversal, vacatur, or
18 preemption, that the specific conduct alleged to be unlawful
19 was consistent with the constitution or any other law.

20 Sec. 4. NEW SECTION. 669A.4 Liability — agency or
21 political subdivision.

22 An agency or political subdivision who employed a law
23 enforcement officer subject to an action governed by this
24 chapter shall not be liable for such action if the law
25 enforcement officer is found not liable under section 669A.3
26 and the law enforcement officer was acting within the scope of
27 the law enforcement officer's employment with the agency or
28 political subdivision.

29 Sec. 5. NEW SECTION. 669A.5 Applicability of law.

30 To the extent any other provision of Iowa law provides less
31 protection to law enforcement officers than this chapter, this
32 chapter supplants that law.

33

DIVISION II

34 PEACE OFFICER, PUBLIC SAFETY, AND EMERGENCY PERSONNEL BILL OF
35 RIGHTS

1 Sec. 6. Section 80F.1, subsection 1, paragraph a, Code 2021,
2 is amended to read as follows:

3 a. "*Complaint*" means a formal written allegation signed
4 by the complainant or a signed written statement by an
5 officer receiving an oral complaint stating the complainant's
6 allegation.

7 Sec. 7. Section 80F.1, subsections 3, 5, 8, 9, and 18, Code
8 2021, are amended to read as follows:

9 3. a. A formal administrative investigation of an officer
10 shall be commenced and completed in a reasonable period of time
11 and an officer shall be immediately notified in writing of the
12 preliminary results of the investigation when the investigation
13 is completed and any recommendations for the disposition of the
14 complaint and discipline.

15 b. Upon initiating a formal administrative investigation
16 of an officer, the investigating agency shall promptly serve
17 the officer under investigation with written notice of the
18 complaint, shall inform the officer of the officer's right to
19 counsel, and shall provide the officer with a copy of the peace
20 officer bill of rights. The notice shall include the names of
21 all of the complainants, the alleged date of the occurrence
22 giving rise to the complaint, a summary of the factual
23 allegations against the officer, and the name and rank or title
24 of the investigator in charge of the formal administrative
25 investigation.

26 5. a. An officer who is the subject of a complaint, shall
27 at a minimum, be provided a written summary of the complaint
28 prior to an interview. If a collective bargaining agreement
29 applies, the complaint or written summary shall be provided
30 pursuant to the procedures established under the collective
31 bargaining agreement. If the complaint alleges domestic abuse,
32 sexual abuse, or sexual harassment, an officer shall not
33 receive more than a written summary of the complaint.

34 b. Upon written request of the officer or the officer's
35 legal counsel, the employing agency shall provide to the

1 officer or the officer's legal counsel a complete copy of the
2 officer's incident reports, other statements, and video or
3 audio recordings from the incident giving rise to the complaint
4 without unnecessary delay prior to an interview of the officer
5 and allowing at least seventy-two hours for review before the
6 interview unless the officer agrees to a shorter period of
7 time.

8 8. a. The officer shall have the right to have the
9 assistance of legal counsel present, at the officer's expense,
10 during the interview of the officer, hearings, or other
11 disciplinary or administrative proceedings related to the
12 complaint. ~~In addition, the officer shall have the right, at~~
13 ~~the officer's expense, to have a union representative present~~
14 ~~during the interview or, if not a member of a union, the~~
15 ~~officer shall have the right to have a designee present.~~

16 b. The officer's legal counsel, union representative, or
17 employee representative shall not be compelled to disclose in
18 any judicial proceeding, nor be subject to any investigation
19 or punitive action for refusing to disclose, any information
20 received from the officer under investigation or from an agent
21 of the officer. The officer and the officer's legal counsel
22 may coordinate and communicate in confidence with the officer's
23 designated union representative or employee representative,
24 and the communications are not subject to discovery in any
25 proceeding.

26 9. If a formal administrative investigation ~~results~~ may
27 result in the removal, discharge, or suspension, or other
28 disciplinary action against an officer, copies of any witness
29 statements and the complete investigative agency's report
30 shall be timely provided to the officer or the officer's legal
31 counsel upon ~~the request of the officer~~ at the completion of
32 the investigation.

33 18. A municipality, county, or state agency employing
34 an officer shall not publicly release the officer's official
35 photograph without the written permission of the officer or

1 without a request to release pursuant to [chapter 22](#). An
2 officer's personal information including but not limited to the
3 officer's home address, personal telephone number, personal
4 electronic mail address, date of birth, social security number,
5 and driver's license number shall be confidential and shall be
6 redacted from any record prior to the record's release to the
7 public by the employing agency. Nothing in this subsection
8 prohibits the release of an officer's photograph or unredacted
9 personal information to the officer's legal counsel, union
10 representative, or designated employee representative upon the
11 officer's request.

12 Sec. 8. Section 80F.1, subsection 13, Code 2021, is amended
13 by striking the subsection and inserting in lieu thereof the
14 following:

15 13. An officer who has suffered any injury, personal
16 or otherwise, during the performance of official duties
17 or directly related to the officer's status as an officer,
18 including due to a person knowingly filing a false complaint
19 against the officer, shall have the right to bring a private
20 cause of action and pursue civil remedies under the law against
21 any person, group of persons, organization, corporation, or the
22 head of an organization or corporation, for damages including
23 but not limited to actual damages, court costs, and reasonable
24 attorney fees. For purposes of this subsection, "*knowingly*
25 *filing a false complaint*" means filing a formal complaint
26 against an officer that contains a material fact which the
27 filer knows is untrue when filing the complaint.

28 Sec. 9. Section 80F.1, Code 2021, is amended by adding the
29 following new subsections:

30 NEW SUBSECTION. 20. The employing agency shall keep
31 an officer's statement, recordings, or transcripts of any
32 interviews or disciplinary proceedings, and any complaints made
33 against an officer confidential unless otherwise provided by
34 law or with the officer's written consent. This subsection
35 does not prohibit the release of an officer's statement,

1 recordings, or transcripts of any interviews or disciplinary
2 proceedings, and any complaints made against an officer to
3 the officer or the officer's legal counsel upon the officer's
4 request.

5 NEW SUBSECTION. 21. An agency employing full-time or
6 part-time officers shall provide annual training to any officer
7 or supervisor who may perform or supervise an investigation
8 under this section, and shall maintain documentation of any
9 training related to this section. The Iowa law enforcement
10 academy shall adopt minimum training standards not inconsistent
11 with this subsection, including training standards concerning
12 interviewing an officer subject to a complaint.

13 NEW SUBSECTION. 22. Upon request, the employing agency
14 shall provide to the requesting officer or the officer's legal
15 counsel a copy of the officer's personnel file and training
16 records regardless of whether the officer is subject to a
17 formal administrative investigation at the time of the request.

18 DIVISION III

19 PROTECTED INFORMATION

20 Sec. 10. Section 331.604, subsection 3, Code 2021, is
21 amended by adding the following new paragraph:

22 NEW PARAGRAPH. *f.* Upon request by a law enforcement
23 officer, as defined in section 80B.3, or state or federal
24 judicial officer or state or federal prosecutor, the recorder
25 or the recorder's staff shall redact the requestor's name
26 contained in electronic documents that are displayed for public
27 access through an internet site. This paragraph does not apply
28 to a requestor holding or seeking public office. The recorder
29 shall implement and maintain a process to facilitate these
30 requests. A fee shall not be charged for the administration
31 of this paragraph.

32 Sec. 11. Section 622.10, subsection 9, paragraphs a and b,
33 Code 2021, are amended to read as follows:

34 *a.* A peer support group counselor or individual present
35 for a group crisis intervention who obtains information from

1 an officer or a civilian employee of a law enforcement agency
2 or fire department by reason of the counselor's capacity as a
3 peer support group counselor or an individual's presence for
4 a group crisis intervention shall not be allowed, in giving
5 testimony, to disclose any confidential communication properly
6 entrusted to the counselor or individual present for a group
7 crisis intervention by the officer or civilian employee while
8 receiving counseling or group crisis intervention.

9 b. The prohibition in this subsection does not apply
10 where the officer or civilian employee has consented to the
11 disclosure of the information specified in paragraph "a" or
12 where the peer support group counselor or individual present
13 for a group crisis intervention was an initial responding
14 officer, a witness, or a party to the incident which prompted
15 the delivery of peer support group counseling services or the
16 group crisis intervention to the officer or civilian employee.

17 EXPLANATION

18 The inclusion of this explanation does not constitute agreement with
19 the explanation's substance by the members of the general assembly.

20 This bill relates to qualified immunity of law enforcement
21 officers, the peace officer, public safety, and emergency
22 personnel bill of rights, and protected information of law
23 enforcement officers and state or federal judicial officers and
24 prosecutors. The bill is organized into divisions.

25 DIVISION I — QUALIFIED IMMUNITY. Under the bill, the
26 general assembly finds that qualified immunity is intended
27 for all law enforcement officers except for law enforcement
28 officers who are incompetent or knowingly violate the law and
29 that as the United States supreme court has observed, qualified
30 immunity balances the need to hold law enforcement officers
31 accountable when law enforcement officers exercise their
32 power irresponsibly and the need to shield law enforcement
33 officers from harassment, distraction, and liability when law
34 enforcement officers perform their duties reasonably.

35 The bill defines "law enforcement officer" to mean any

1 federal, state, tribal, or local official who is authorized
2 by law to engage in or supervise the prevention, detection,
3 investigation, or incarceration of any person for any violation
4 of law, and has statutory powers of arrest, apprehension,
5 detention, or incarceration. "Law enforcement officers"
6 include but are not limited to peace officers, employees of
7 the department of public safety, employees of the department
8 of corrections, and employees of a judicial district's
9 department of correctional services. The bill defines "action
10 for damages" to mean any case brought in a court organized
11 under the laws of this state in which the plaintiff seeks any
12 amount of monetary compensation, including but not limited to
13 claims alleging constitutional or statutory violations. The
14 bill defines "constitution" to mean the Constitution of the
15 United States or the Constitution of the State of Iowa. The
16 bill defines "other law" to mean any statutory or common law,
17 whether federal or state.

18 The bill provides liability protection for a law enforcement
19 officer subject to any action for damages in the law
20 enforcement officer's individual capacity. A law enforcement
21 officer cannot be held liable if the law enforcement officer
22 establishes that the right, privilege, or immunity secured by
23 the constitution or any other law was not clearly established
24 at the time of the alleged deprivation by the law enforcement
25 officer, or at that time, the state of the law was not
26 sufficiently clear that every reasonable law enforcement
27 officer would have understood the conduct alleged constituted a
28 violation of the constitution or any other law, or that a court
29 of competent jurisdiction had issued a final decision on the
30 merits holding, without reversal, vacatur, or preemption, that
31 the specific conduct alleged to be unlawful was consistent with
32 the constitution or any other law.

33 The bill provides liability protection for an agency or
34 political subdivision who employed a law enforcement officer
35 subject to an action governed under the new Code chapter shall

1 not be liable if the law enforcement officer is found not
2 liable under the provisions of the bill and the law enforcement
3 officer was acting within the scope of employment with the
4 agency or political subdivision.

5 The bill provides that the applicability of the new Code
6 chapter supersedes any other provision of Iowa law that
7 provides less protection to law enforcement officers.

8 DIVISION II — PEACE OFFICER, PUBLIC SAFETY, AND EMERGENCY
9 PERSONNEL BILL OF RIGHTS. The bill modifies the definition
10 of "complaint" in Code section 80F.1 (peace officer, public
11 safety, and emergency personnel bill of rights) to mean a
12 formal written allegation signed by the complainant or a signed
13 written statement by an officer receiving an oral complaint
14 stating the complainant's allegation.

15 The bill provides that an officer shall be immediately
16 notified in writing of any preliminary results from a formal
17 administrative investigation and any recommendations for the
18 disposition of the complaint and discipline. Upon initiation
19 of the formal administrative investigation, an officer shall
20 be promptly served with written notice of the complaint, be
21 informed of the officer's right to counsel, and be provided
22 with a copy of the peace officer bill of rights. The written
23 notice shall include: names of all the complainants, alleged
24 date of the occurrence, summary of the factual allegations, and
25 the name and rank or title of the investigator in charge of the
26 formal administrative investigation.

27 The bill provides that the officer shall have a right
28 to legal counsel at the expense of the officer during the
29 interview, hearings, or other disciplinary or administrative
30 proceedings related to the complaint. The officer's legal
31 counsel, union representative, or employee representative shall
32 not be compelled to disclose during any judicial proceeding
33 any information received from the officer under investigation
34 or from an agent of the officer. An officer's legal counsel,
35 union representative, or employee representative shall not be

1 subject to any investigation or punitive action for refusing to
2 disclose any information. The bill provides that the officer
3 and officer's legal counsel may coordinate and communicate in
4 confidence with the officer's designated union representative
5 or employee representative and those communications shall not
6 be subject to discovery.

7 The bill provides that if a formal administrative
8 investigation may result in removal, discharge, suspension, or
9 other disciplinary action against the officer, the complete
10 investigative reports shall be timely provided to the officer
11 or officer's legal counsel upon request at the completion of
12 the formal administrative investigation.

13 The bill provides that an officer's personal information
14 shall be redacted from any record prior to the record's release
15 to the public. An officer's photograph or unredacted personal
16 information may be released to the officer's legal counsel,
17 union representative, or designated employee representative
18 upon the officer's request.

19 The bill provides that an officer may bring a private cause
20 of action, including but not limited to an action for money
21 damages, against a private citizen for filing a false complaint
22 against the officer.

23 The bill provides that an officer's personal information,
24 including certain personal information specified in the bill,
25 shall be confidential and shall be redacted from any record
26 prior to the record's release to the public by an employing
27 agency. The bill provides that the following information shall
28 also be kept confidential: an officer's statement, recordings,
29 or transcripts of any interviews or disciplinary proceedings,
30 and any complaints made against an officer.

31 The bill provides that an agency shall provide annual
32 training to any person who may perform or supervise an
33 investigation under the bill. The Iowa law enforcement academy
34 shall adopt minimum training standards not inconsistent with
35 the bill including training standards concerning interviewing

1 an officer subject to a complaint.

2 The bill provides that upon request, the employing agency
3 shall provide to a requesting officer or the officer's legal
4 counsel a copy of the officer's personnel file and training
5 records regardless of whether the officer is subject to a
6 formal administrative investigation at the time of the request.

7 DIVISION III — PROTECTED INFORMATION. The bill provides
8 that upon request by a law enforcement officer, state or
9 federal judicial officer or prosecutor, the recorder or the
10 recorder's staff shall redact the requester's name contained in
11 electronic documents displayed for public access, unless the
12 person is holding or seeking public office. A fee shall not be
13 charged to redact the requester's name.

14 The bill provides that a peer support group counselor
15 or individual present for a group crisis intervention who
16 obtains information from a law enforcement officer, fire
17 fighter, or civilian employee of a law enforcement agency or
18 fire department shall not be allowed, in giving testimony, to
19 disclose any confidential communication properly entrusted to
20 the counselor or individual by the law enforcement officer,
21 fire fighter, or civilian employee while receiving counseling.
22 However, the law enforcement officer, fire fighter, or civilian
23 employee may consent to the disclosure. Under current law,
24 this evidentiary rule applies to communications between peer
25 support group counselors and law enforcement officers or fire
26 fighters.