



SUPPORT HB 1727: THE BAD APPLES IN LAW ENFORCEMENT ACCOUNTABILITY ACT

Sponsors: Tarver, Buckner, Collins, Flowers

Families of people injured or killed by law enforcement turn to civil courts to seek justice. But due to blanket protections like qualified immunity, their lawsuits are often denied, preventing officers from being held accountable for violating people’s constitutional rights. These protections do not serve good police officers; they do not serve our communities; they only serve bad apples in our state’s police ranks.

What It Does

HB 1727: The Bad Apples in Law Enforcement Act removes unfair and unnecessary legal barriers so courts can hold police officers accountable when they violate a person’s constitutional rights.

- ✓ HB 1727 does not create any new rights. It provides a vehicle for enforcing rights created by the Illinois Constitution when police officers violate them.
- ✓ HB 1727 would allow a person to bring a lawsuit in Illinois state court against a peace officer who, while on duty, violates that person’s rights under the Illinois Constitution, including Art. I, Section 6, which prohibits police from using excessive force.
- ✓ The defense of qualified immunity (and its state law analogue) would not be available as a defense to lawsuits brought under the Bad Apples Act, allowing courts and juries to assess allegations of constitutional violations by police on a case-by-case basis, leading to more just and equitable outcomes for people harmed by law enforcement and better enabling police departments to identify and discipline bad cops.

Qualified immunity creates an often-insurmountable barrier to justice for people whose rights have been violated, and it enables a small minority of police to engage in unconstitutional conduct against residents with limited consequences or ramifications.

For federal claims:

Qualified immunity refers to the judge-made doctrine that shields public officials from liability in civil rights lawsuits brought under 42 U.S.C. § 1983.

For state tort claims:

Qualified immunity and absolute immunity under the Tort Immunity Act (concepts that are sometimes conflated) operate to immunize police officers from liability for violating a person’s rights.

Common Misconceptions

Ending qualified immunity would penalize officers for “mistakes” and allow police to be “sued for anything.”

- **This is false.** The Bad Apples Act would authorize lawsuits in very narrow circumstances: when a police officer violates someone’s constitutional rights.

Ending qualified immunity would expose individual officers to personal liability

- **This is false.** Police are fully indemnified by state law and under their contracts, and the Bad Apples Act would not change that.

Eliminating qualified immunity would adversely affect recruitment and retention of police.

- **This is unfounded.** Every year, thousands of people enter professions that provide vital services in our society, and none of them is entitled to a blanket promise of immunity should their actions lead to the serious injury or death of an Illinois resident. Moreover, the police officers we want to recruit and retain are not people drawn to the job by the promise of no accountability.

EXAMPLES OF INEQUITABLE AND UNJUST OUTCOMES THAT OCCUR WHEN QUALIFIED IMMUNITY IS APPLIED

Qualified immunity has shielded from accountability police officers who:

Deployed an attack dog on a man who had already surrendered and was sitting on the ground with his hands up

- *Baxter v. Bracey*, the Sixth Circuit granted immunity to officers who deployed a police dog against a suspect who had already surrendered and was sitting on the ground with his hands up. The plaintiff had successfully identified a prior case with nearly identical facts, in which the Sixth Circuit had held that it was unconstitutional for police to deploy a dog against a suspect who had surrendered by lying on the ground. However, the Sixth Circuit was able to distinguish the circumstances because in the prior case, the suspect was lying on the ground, whereas Baxter was sitting on the ground with his hands up.

Shot a 10 year old while attempting to shoot a pet dog that wasn't a threat

- The Eleventh Circuit in *Corbitt v. Vickers* concluded that a deputy sheriff in Georgia who accidentally shot a ten-year-old child lying on the ground – while repeatedly attempting to shoot a pet dog that posed no threat – was entitled to qualified immunity simply because there was no prior case with this particular set of facts.

Stole more than \$225,000 in cash and rare coins while executing a search warrant

- In *Jessop v. City of Fresno*, a case in which police officers stole more than \$225,000 in cash and rare coins while executing a search warrant, the Ninth Circuit held that while “the theft [of] personal property by police officers sworn to uphold the law” may be “morally wrong,” the officers could not be sued for the theft because the Ninth Circuit had never specifically decided “whether the theft of property covered by the terms of a search warrant, and seized pursuant to that warrant, violates the Fourth Amendment