

**Subject** Prohibiting civil immunity for peace officers in some situations

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## Overview

Following the Civil War, the United States Congress passed the Civil Rights Act of 1871, also known as the Ku Klux Klan Act. Within that act was a provision allowing a person to sue someone acting “under the color” of law if that action deprived the person of any rights secured by the constitution or other laws. That portion of law, 42 U.S.C. § 1983, is sometimes called a “civil rights suit” or a “section 1983 suit.” For violations alleged to have occurred in Minnesota, a person must bring a suit within six years of the incident.

While section 1983 suits have been brought on many different grounds, common use of the federal law is to bring a suit alleging abuse, mistreatment, or neglect by a peace officer and police department, or a corrections officer and jail or prison. Federal courts have developed a doctrine known as “qualified immunity” that applies to these suits. Under qualified immunity, a suit against a peace officer or other person must be dismissed unless the right alleged to have been violated was “clearly established.” Proponents of this doctrine argue that it protects officers and others from frivolous claims and from facing liability for situations where the officer had no reason to believe that his or her action infringed on the rights of another. Opponents argue that the doctrine has replaced common sense with the need to find prior cases with a nearly identical set of facts.

Individuals can also bring suits against officers and other government officials on other grounds under state law. Claims made under state law can include allegations of assault, battery, and negligence. The doctrine of qualified immunity does not apply to claims brought under state law. See, *Elwood v. Rice County*, 423 N.W.2d 671, 676-77 (Minn. 1988). However, several provisions of state law apply when a person sues a peace officer. The officer’s employer, typically a city or county, must defend and indemnify the officer unless the officer acted in bad faith. That means that the municipality is responsible for providing a defense and paying for any damages awarded. In addition, state law establishes a limit on the amount of damages a municipality can be required to pay and also creates

immunities for employees including immunity for claims based on a discretionary act. A peace officer's actions typically fall under this immunity when the officer exercises his or her judgment while performing official duties in good faith. In addition to the statutory immunity, state case law has created a similar immunity for government actors known as "official immunity." Like the statutory immunity, official immunity typically applies when a peace officer acts in good faith and exercises discretion in performing an official duty.

This bill creates a state cause of action that mirrors 42 U.S.C. § 1983. It establishes a statute of limitations of two years; provides that the doctrine of qualified immunity does not apply; states that the statutory limits on damages does not apply; and states that statutory immunities, including immunity for discretionary acts, does not apply. It further states that a peace officer who deprives another of that person's civil rights is not immune from criminal liability.

## Summary

Section	Description
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1	<b>Immunity prohibited.</b>
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Creates a new civil cause of action under state law that mirrors the cause of action under the federal law, 42 U.S.C. § 1983 and provides that statutory immunities and the doctrine of qualified immunity do not apply to those claims.

**Subd. 1. Civil liability.** Creates a civil cause of action under state law to permit a person to sue a peace officer by alleging that the officer deprived the person of constitutional rights. Permits the court to award attorney fees and costs to the person bringing the suit if that person prevails. Permits the court to award attorney fees and costs to the defendant officer if the court determines that the suit was frivolous. Provides that the statutory immunities and limitations on damages do not apply to claims brought under the subdivision. Also provides that the common law doctrine of qualified immunity does not apply to those claims. Establishes a statute of limitations of two years to bring the claims. Provides that a person can pursue any other legal relief that is available. The new cause of action is effective the day following final enactment and applies to claims arising on or after that date.

**Subd. 2. Criminal liability.** Provides that a peace officer who deprives another of that person's constitutional rights is not immune from criminal liability.

**Subd. 3. Definition.** Defines "peace officer" for purposes of this section.



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