

117TH CONGRESS  
1ST SESSION

# H. R. 6327

To ensure that the United States, States, and local governments are liable for monetary damages for constitutional violations by law enforcement officers.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2021

Mr. CICILLINE (for himself, Mr. JOHNSON of Georgia, and Mr. RASKIN) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To ensure that the United States, States, and local governments are liable for monetary damages for constitutional violations by law enforcement officers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Constitutional Ac-  
5       countability Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) The 14th Amendment to the Constitution of  
9       the United States was passed by Congress and rati-

1       fied by the people of the United States against the  
2       backdrop of numerous State laws, policies, and prac-  
3       tices that denied African Americans and others their  
4       enjoyment of fundamental rights.

5           (2) Congress drafted the 14th Amendment to  
6       broadly protect fundamental rights and guarantee  
7       equality to all persons.

8           (3) To help realize the promise of equality pro-  
9       tected in the 14th Amendment, Congress passed sec-  
10      tion 1979 of the Revised Statutes (42 U.S.C. 1983)  
11      (referred to in this section as “section 1983”), cre-  
12      ating a statutory remedy for violations of the Con-  
13      stitution of the United States and Federal law. Ac-  
14      cording to *Mitchum v. Foster*, 407 U.S. 225, 242  
15      (1972), section 1983 was intended “to interpose the  
16      Federal courts between the States and the people, as  
17      guardians of the people’s Federal rights”.

18          (4) By creating this remedy, Congress recog-  
19      nized that civil suits are a necessary and powerful  
20      tool to protect individual rights. Suits under section  
21      1983 can not only make whole victims who are  
22      wronged. The suits can incentivize actors to take the  
23      steps necessary to avoid wrongdoing in the first  
24      place.

1           (5) Unfortunately, the Supreme Court’s current  
2           crabbed interpretation of section 1983 undermines  
3           its ability to accomplish these goals.

4           (6) Private employers are responsible for the  
5           torts of their employees under the doctrine of  
6           respondeat superior. The risk of liability incentivizes  
7           private employers to effectively hire, supervise, train,  
8           and discipline their employees.

9           (7) In contrast, under *Monell v. Department of*  
10          *Social Services of the City of New York*, 436 U.S.  
11          658 (1978), municipal defendants are not subject to  
12          respondeat superior liability for the constitutional  
13          torts of their officers. Cities may only be held liable  
14          for the constitutional torts of their officers only  
15          when the plaintiff can show that the violation was  
16          the result of a municipal policy or custom. Under  
17          *Will v. Michigan Department of State Police*, 491  
18          U.S. 58 (1989), States cannot be held liable at all.

19          (8) The Monell doctrine requires judges to re-  
20          solve difficult questions regarding which officials are  
21          policymakers, whether an official was acting in State  
22          or local capacity, and municipalities’ training and  
23          hiring processes.

24          (9) In *Board of County Commissioners v.*  
25          *Brown*, 520 U.S. 397, 430 (1997), Justice Breyer

1 criticized this “highly complex body of interpretive  
2 law” and called for a reexamination of “the legal  
3 soundness” of the Monell doctrine. Numerous schol-  
4 ars, as well as other jurists, have criticized the  
5 Monell doctrine as convoluted, inconsistent, arbi-  
6 trary, and unintelligible.

7 (10) There is no statutory cause of action for  
8 constitutional violations by Federal officials. Victims  
9 can only bring their claims if courts infer a cause of  
10 action, which they are increasingly unlikely to do.

11 (11) Police officers are regularly called upon to  
12 make split-second, life-or-death decisions. The cur-  
13 rent liability regime, however, is not sufficient to en-  
14 sure that police departments adequately hire, train,  
15 supervise, and discipline their officers so that they  
16 can respond to these situations in a constitutional  
17 manner.

18 (12) There are over 18,000 police departments  
19 in the United States and no uniform standard on  
20 how officers should be trained. Departments gen-  
21 erally require significantly more training on how to  
22 deploy force than when it is appropriate to do so. As  
23 recently as 2017, 34 States did not mandate de-es-  
24 calation training for all officers.

1           (13) A National Public Radio study of fatal po-  
2       lice shootings of unarmed Black people nationwide  
3       found that several officers were involved in multiple  
4       shootings without consequences. The same study  
5       found that departments hired officers with histories  
6       of domestic violence, as well as officers who were  
7       fired or forced out of other police departments due  
8       to prior misconduct.

9           (14) According to *United States v. Georgia*,  
10      546 U.S. 151, 158 (2006), Congress has the power  
11      under section 5 of the 14th Amendment to the Con-  
12      stitution of the United States to provide for direct  
13      enforcement of section 1 of the 14th Amendment  
14      “by creating private remedies”, including ones  
15      “against the States”.

16          (15) Eliminating restrictions on the liability of  
17      State and local governments is necessary to ensure  
18      that no “State [shall] deprive any person of life, lib-  
19      erty, or property, without due process of law; nor  
20      deny to any person within its jurisdiction the equal  
21      protection of the laws”.

22   **SEC. 3. CIVIL ACTIONS FOR DEPRIVATION OF RIGHTS.**

23      Section 1979 of the Revised Statutes (42 U.S.C.  
24   1983) is amended—

(1) in the first sentence, by striking “Every”  
and inserting the following:

“(a) In this section:

“(1) The term ‘person’ includes—

“(A) the United States;

“(B) a State or Territory or the District of  
Columbia;

“(C) a local government;

“(D) an agency, government body, or any  
subdivision of the United States, a State or  
Territory or the District of Columbia, or a local  
government, or an entity created by a combina-  
tion of any of the foregoing; and

“(E) an individual or private entity.

“(2) The term ‘law enforcement officer’ in-  
cludes any officer of a local government, or of a  
State or Territory or the District of Columbia, or of  
the United States, or an entity created by a com-  
bination of any of the foregoing who is empowered  
by law to execute searches, to seize evidence, or to  
make arrests for violations of law.

“(b) Every”;

(2) in subsection (b), as so designated, in the  
first sentence, by inserting “the United States,” be-  
fore “any State”; and

1           (3) by adding at the end the following:

2           “(c) A person is liable under this section for a viola-  
3   tion of rights, privileges, or immunities secured by the  
4   Constitution and laws committed by an individual who at  
5   the time of the violation is employed by the person as,  
6   or contracted by the person to do the work of, a law en-  
7   forcement officer. Liability under this subsection shall  
8   exist without regard to whether such employee or con-  
9   tractor would be immune from liability, and without re-  
10   gard to whether the employee or contractor was acting  
11   pursuant to a policy or custom of the person who is the  
12   employer.

13          “(d) Pursuant to section 5 of the 14th Amendment,  
14   no State shall be immune from suit, under the Eleventh  
15   Amendment or other doctrine of state sovereign immunity,  
16   for any claims on which subsection (c) subjects a person  
17   to liability.

18          “(e) For purposes of an action under subsection (c),  
19   the United States waives its sovereign immunity.

20          “(f) Except as expressly stated, no provision of this  
21   section shall be construed to abolish, repeal, or limit the  
22   scope of any right of action otherwise available under this  
23   section or any other source of law.”.

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