

To: The Honorable Members of the House Judiciary Committee and Members of the Denver Delegation of the Colorado General Assembly

RE: HB20-1287 Concerning Enforcement of Colorado Constitutional Rights in Colorado State Courts

From: Kirsten Crawford, Assistant City Attorney

The City and County of Denver *strongly oppose* HB20-1287 for the following reasons:

Elimination of statutory (and common law) limitations already placed on limits for indemnification of damage awards.

This proposed bill attempts to eliminate existing and long-standing statutory limitations imposed upon suing governmental entities and officials/employees, including the Peace Officers Liability Act and the Colorado Governmental Immunity Act. Currently, cities and counties are not required to indemnify law enforcement officers in excess of a specific amount as set forth in the POLA and are not required under the CGIA (for all officers/employees) or common law to indemnify from punitive damage awards. This bill attempts to remove this limitation unless the employee “was convicted of a criminal violation for the conduct from which the claim arises.” This language is not only in conflict with, but also undermines the purpose of POLA and the CGIA, as well as the reasons for not holding a city/county responsible for intentional/malicious conduct committed by an official or employee.

- Notably, even if the underlying violation could result in criminal charges being filed, the mere fact that there is no resulting criminal conviction (which could result from non-merit based issues such as witnesses not being found/evidence being destroyed, bad rulings from the bench, etc.), would necessarily result in city and counties being required to pay not just compensatory damage awards (including large attorney fee awards), but also punitive damage awards
- Finally, punitive damages are meant to punish the individual—not the employer—and to deter specific individuals from engaging in willful/wanton conduct in the future.

Elimination of qualified immunity and “good faith but erroneous belief in the lawfulness of conduct”

Federal law (and even general tort concepts) understandably provide protection for governmental employees and officials who reasonably believe that they are acting within constitutional boundaries. This bill attempts to impose liability upon those who act in good faith but make a reasonable mistake under the circumstances. This is troublesome in many respects.

- It would not be just to impose liability on those who are acting in good faith, but simply make a reasonable mistake. Everyone makes mistakes and governmental employees who make reasonable mistakes should not be penalized, nor should the taxpayers, who will ultimately bear the responsibility for compensating a plaintiff.
- Certainly, if the mistake is unreasonable, liability can (even under the law as it currently stands) and should result. However, constitutional liability is supposed to be more than mere negligent conduct or to punish those who make a mistake in good faith.
- When the law is not clear, how can officials/employees be expected to know might be required of them? Certainly, no citizen is held to such standard and it seems nonsensical to impose such an unenviable standard upon governmental officials. Further, why should a City be required to pay for reasonable mistakes when the law and required conduct has not yet been defined?

Increase in budget and insurance coverages.

The law will inevitably lead to more claims and more liability. Self-insurers, like Denver, will likely have to increase the amount set aside in their self-insurance/risk funds. Others, who have excess coverage policies, will be facing both an increase in the amount of their self-insurance retention and insurance premiums. CIRSA coverage, for those governments who have it, will also likely be more expensive.

Sincerely,



Kirsten Crawford, Assistant City Attorney