

117TH CONGRESS  
1ST SESSION

# H. R. 288

To amend the Revised Statute to codify the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2021

Mr. BANKS (for himself and Mr. STEUBE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Revised Statute to codify the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

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 “Qualified Immunity  
5        Act of 2021”.

6        **SEC. 2. FINDINGS.**

7        Congress finds the following:

8            (1) Qualified immunity is intended for all but  
9        the plainly incompetent or those who knowingly vio-  
10       late the law and is meant to give government offi-

1        cials breathing room to make reasonable mistakes of  
2        fact and law.

3            (2) The Supreme Court has observed that  
4        qualified immunity balances two important interests,  
5        the need to hold law enforcement officers account-  
6        able when they exercise power irresponsibly and the  
7        need to shield officers from harassment, distraction,  
8        and liability when they perform their duties reason-  
9        ably.

10 **SEC. 3. CODIFICATION OF QUALIFIED IMMUNITY.**

11        (a) IN GENERAL.—Section 1979 of the Revised Stat-  
12        utes (42 U.S.C. 1983) is amended—

13            (1) by inserting “(a) IN GENERAL—” before  
14        “Every person”; and

15            (2) by adding at the end the following new sub-  
16        section:

17        “(b) APPLICABILITY TO LAW ENFORCEMENT OFFI-  
18        CERS.—

19            “(1) A law enforcement officer subject to an ac-  
20        tion under this section in their individual capacity  
21        shall not be found liable if such law enforcement of-  
22        ficer establishes that—

23            “(A) the right, privilege, or immunity se-  
24        cured by the Constitution or Federal law was  
25        not clearly established at the time of their dep-

1 rivation by the law enforcement officer, or that  
2 at this time, the state of the law was not suffi-  
3 ciently clear that every reasonable law enforce-  
4 ment officer would have understood that the  
5 conduct alleged constituted a violation of the  
6 Constitution or Federal law; or

7 “(B) a court of competent jurisdiction had  
8 issued a final decision on the merits holding,  
9 without reversal, vacatur, or preemption, that  
10 the specific conduct alleged to be unlawful was  
11 consistent with the Constitution and Federal  
12 laws.

13 “(2) A law enforcement agency or unit of local  
14 government who employed a law enforcement officer  
15 subject to an action under subsection (a), shall not  
16 be liable for such action if the law enforcement offi-  
17 cer is found not liable under paragraph (1) and was  
18 acting within the scope of their employment.

19 “(c) DEFINITIONS.—In this section:

20 “(1) LAW ENFORCEMENT OFFICER.—The term  
21 ‘law enforcement officer’ means any Federal, State,  
22 Tribal, or local official who is authorized by law to  
23 engage in or supervise the prevention, detection, in-  
24 vestigation, or the incarceration of any person for  
25 any violation of law, and has statutory powers of ar-

1 rest or apprehension, including police officers and  
2 other agents of a law enforcement agency.

3 “(2) LAW ENFORCEMENT AGENCY.—The term  
4 ‘law enforcement agency’ means any Federal, State,  
5 Tribal, or local public agency engaged in supervision,  
6 prevention, detection, investigation, or the incarceration  
7 of any person for any violation of law, and has  
8 statutory powers of arrest or apprehension.”.

9 (b) EFFECTIVE DATE.—The amendments made  
10 under subsection (a) shall take effect on the date that is  
11 180 days after the date of the enactment of this Act.

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