

# FIX THE MASSACHUSETTS CIVIL RIGHTS ACT & END QUALIFIED IMMUNITY

The Massachusetts Civil Rights Act is the state law that is supposed to make it possible for individuals to hold police accountable for violations of civil rights, like police brutality or illegal searches. But the MCRA is broken. Three words in the law and a doctrine called “qualified immunity” make it nearly impossible for the people of Massachusetts to hold police liable for civil rights violations.

## **Problem #1 — “Threats, intimidation or coercion”**

Today, police officers can be held liable under the MCRA only if they use “threats, intimidation or coercion” to violate someone’s rights – and courts have interpreted this requirement to mean that officers cannot be held liable for a direct violation of rights alone, even one involving terrible physical abuse. As a result, in practice, the MCRA has provided no remedy when an officer uses excessive force or violence against the very people they are sworn to protect and defend. This disturbing anomaly does not exist in federal civil rights law, and it should be abolished in Massachusetts.

## ***Examples***

All of these claims were rejected because the officer did not threaten, intimidate, or coerce the victim when violating their rights:

- A Lawrence police officer shot a man in the back. The man later died in the hospital. Belcher v. Stone, No. 013083A, 2006 WL 696491 (Mass. Super. Ct. Mar. 3, 2006)
- A man died as the result of an encounter with state troopers and Lawrence police officers on the Essex County Drug Task Force. The officers attempted to forcibly remove a white object from his mouth and punched him in the face. Witnesses testified that the police kicked him, shoved him to the pavement, and pepper-sprayed and choked him. By the time they handcuffed him, he was no longer breathing. Farrah ex. rel. Estate of Santana v. Gondella, 725 F. Supp. 2d 238 (D. Mass. 2010)
- An officer reached into a woman’s car through the window, pulled her out by her arm, threw her to the ground, kneeled on her back and handcuffed her, and repeatedly pushed her head down whenever she attempted to lift it. He then placed the electrodes of his taser directly on her back and tased her. Taylor v. Moore, 383 F. Supp. 3d 91 (D. Mass. 2019)
- Prison guards forced incarcerated people to endure strip searches in front of visitors. Sabree v. Conley, 815 N.E.2d 280 (Mass. App. Ct. 2004)
- Prison officials relocated the library at MCI-Cedar Junction from the first floor to the basement, making it completely inaccessible to incarcerated people with disabilities.
- MCI-Shirley failed to provide incarcerated people with winter hats, gloves, and boots. Johnson v. Ryan, 49 N.E.3d 697 (Mass. App. Ct. 2016)

## Problem #2 — Qualified Immunity

Contemporary Massachusetts civil rights law is further undermined by the judicial doctrine known as “qualified immunity,” which shields police from liability if the right that was violated was not “clearly established.” This means that if you have been harmed by the police, but the exact same harm has not already been the subject of litigation or specifically prohibited by law, the officer will be let off the hook.

In some cases, courts have acknowledged that the police violated a constitutional right, but still fail to hold the officer liable because of qualified immunity. Police should be held accountable for serious misconduct. This legislature can, and must, restore civil rights accountability by ending qualified immunity under the MCRA.

### *Examples*

In all of these cases, the officer was not held liable because of qualified immunity:

- When a police officer’s search for drugs in a woman’s apartment turned up dry, he took her to the hospital and made a doctor *search her vagina*, where he also did not find drugs. Rodrigues v. Furtado, 575 N.E.2d 1124 (Mass. 1991)
- A state trooper responded to a call for help from a distressed driver. When the trooper arrived on scene, the driver was out of his car “yelling and jumping up and down.” The driver began walking towards the officer with a pen in his hand, the trooper yelled at him to stop, and when he didn’t, the trooper pepper-sprayed the man and shot him twice. The man died later at the hospital. Justiniano v. Walker, No. 15-cv-11587-DLC, 2018 WL 4696741 (D. Mass. Sept. 30, 2018), *appeal docketed*, No. 20-1063 (1st Cir. Jan. 15, 2020)
- A girl detained in a Brockton DYS facility was subjected to repeated, suspicionless strip searches. Doe ex rel. Doe v. Preston, 472 F. Supp. 2d 16 (D. Mass. 2007)
- A State Trooper with a history of inappropriate conduct, including a 6 month suspension, stopped and illegally strip-searched a woman on the side of the road while making suggestive comments. Clancy v. McCabe, 805 N.E.2d 484 (Mass. 2004)
- Male cadets at the Mass. Maritime Academy repeatedly sexually harassed and assaulted two female cadets. School officials knew about it and did nothing to stop it. White v. Gurnon, 855 N.E.2d 1124 (Mass. App. Ct. 2006)
- Boston police strip-searched a man in public because he was with people known to the police as drug users and had “bulges in his clothing.” The police found no drugs. Evariste v. City of Boston, No. 18-12597-FDS, 2020 WL 1332835 (D. Mass. Mar. 23, 2020)
- A police officer responding to a call from a woman experiencing a manic episode forced the woman to the ground and tased and handcuffed her. Gray v. Cummings, 917 F.3d 1 (1st Cir. 2019)
- Prison guards at MCI-Norfolk repeatedly assigned a man who could not climb stairs to a cell on the second or third floor. When he refused to go to his assigned cell because he could not climb the stairs, guards punished him by putting him in solitary confinement. Shedlock v. Department of Correction, 818 N.E.2d 1022 (Mass. 2004)