

**Law Enforcement & Public Safety Committee
Regular Meeting Minutes**

DATE & TIME: May 4, 2023 – 5:30 PM
LOCATION: KL Binder Library, 6th Floor, County Office Building, Kingston
PRESIDING OFFICER: Chair Gina Hansut
LEGISLATIVE STAFF: Chelsea Villalba, Legislative Employee
PRESENT: Deputy Chair Chris Hewitt (arrived 5:34 PM) and Legislators Dean Fabiano, Chris Hewitt, and Abe Uchitelle
ABSENT: None
QUORUM PRESENT: Yes

OTHER ATTENDEES: Legislators Phil Erner and Laura Petit, Sheriff Juan Figueroa, Deputy Sheriff Joseph Sciutto, Deputy Sheriff/SRO Thomas Sharon, and Deputy Sheriff – Lieutenant Chad Storey – UC Sheriff’s Office; Chief Robert Lucchesi – New Paltz Police Department; Director Everett Erichsen – UC Emergency Services; Director Valerie Naccarato – UC Probation Department; UC District Attorney Dave Clegg; UC Public Defender Elizabeth Corrado; Tricia Bowen; Margaux Sanchez; Cheryl Schneider

Chair Hansut called the meeting to order at 5:33 PM.

Motion No. 1: **MOTION to APPROVE the Minutes of the April 6, 2023 Meeting of the Law Enforcement & Public Safety Committee**

Motion by: Legislator Fabiano
Motion Seconded by: Legislator Uchitelle

Discussion: None. Hearing none, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle
Voting Against: None.
Votes in Favor: 4
Votes Against: 0
Disposition: **Minutes APPROVED**

Resolutions for the May 16, 2023 Session of the Legislature

Resolution No. 133 – Supporting New York State Senate Bill S182 and Assembly Bill A710 To End Qualified Immunity For Certain Defendants

Resolution Summary: The Ulster County Legislature urges the New York State Legislature to pass, and the Governor to sign S.182/A.710 which would End Qualified Immunity for certain defendants.

Motion No. 2: **MOTION TO DISCUSS Resolution No. 133**
Motion By: Legislator Uchitelle
Motion Seconded By: Legislator Fabiano

Discussion: Chair Hansut recognized Legislator Erner to provide background information on the Resolution. Legislator Uchitelle expressed his support for the Resolution. Chair Hansut recognized Sheriff Figueroa and Chief Lucchesi to provide background information and to express their opposition to and concerns about the Resolution. Chair Hansut recognized District Attorney Clegg to express that qualified immunity only addresses civil liabilities and not criminal liabilities. Legislator Uchitelle requested the Committee postpone the Resolution to gather more information about the subject.

Motion No. 3: **MOTION to POSTPONE Resolution No. 133**
Motion By: Legislator Uchitelle
Motion Seconded By: Legislator Hewitt

Discussion: None. Hearing none, the Committee postponed the Resolution.

Voting In Favor: Legislators Hansut, Hewitt & Uchitelle
Voting Against: Legislator Fabiano
Votes In Favor: 3
Votes Against: 1
Disposition: **RESOLUTION POSTPONED**

Resolution No. 290 – Confirming The Appointment Of Valerie Naccarato As Director Of Probation

Resolution Summary: Confirms the appointment of Valerie Naccarato to the position of Ulster County Director of Probation.

Motion No. 4: **MOTION TO DISCUSS Resolution No. 290**
Motion By: Legislator Uchitelle
Seconded By: Legislator Hewitt

Discussion: Legislator Uchitelle expressed his support for the Resolution appointment. Chair Hansut recognized Ms. Naccarato to share background with the Committee. Hearing no further discussion, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle

Voting Against: None

Votes in Favor: 4

Votes Against: 0

Disposition: **RESOLUTION ADOPTED**

Resolution No. 291 – Authorizing The Chair Of The Ulster County Legislature To Execute A Contract With The New York State Division Of Criminal Services - Department Of Probation

Resolution Summary: Authorizes the Chair of the Ulster County Legislature to execute a contract with the NYS Division of Criminal Justice Services for the Raise The Age grant in the amount of \$728,641.00 for the term of April 1, 2022 – March 31, 2023.

Motion No. 5: **MOTION TO DISCUSS Resolution No. 291**

Motion By: Legislator Uchitelle

Seconded By: Legislator Hewitt

Discussion: Chair Hansut recognized Director Naccarato to provide the Committee with background information on the Resolution. Hearing no further discussion, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle

Voting Against: None

Votes in Favor: 4

Votes Against: 0

Disposition: **RESOLUTION ADOPTED**

Resolution No. 292 – Amending The 2023 County Budget To Create A Full-Time Mental Health Specialist (Social Worker), A Full-Time Paralegal, And Establish A Full-Time Family Court Bureau Chief With A Salary Increase – Public Defender’s Office

Resolution Summary: Amends the 2023 County Budget to create a full-time Mental Health Specialist (Social Worker) position, a full-time Paralegal for the Public Defender’s Family Court

Resolution. Hearing no further discussion, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle
Voting Against: None
Votes in Favor: 4
Votes Against: 0
Disposition: **RESOLUTION ADOPTED**

Resolution No. 295 – Authorizing The Chair Of The Ulster County Legislature And The Ulster County Sheriff To Execute An Application For DOJ FY 2023 Implementing Crisis Intervention Teams - Community Policing Development Solicitation Grant - Ulster County Sheriff

Resolution Summary: Authorizes the Chair of the Ulster County Legislature and the Ulster County Sheriff to execute an application for the Department of Office of Community Policing Services FY 23 Implementing Crisis Intervention Teams – Community Policing Development Solicitation Grant.

Motion No. 8: **MOTION TO DISCUSS Resolution No. 295**

Motion By: Legislator Uchitelle
Motion Seconded By: Legislator Fabiano

Discussion: Chair Hansut recognized Sheriff Figueroa to express his support for this program based on previous success. Deputy Chair Hewitt expressed his support for the Resolution. Hearing no further discussion, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle
Voting Against: None
Votes in Favor: 4
Votes Against: 0
Disposition: **RESOLUTION ADOPTED**

Resolution No. 296 – Authorizing The Chair Of The Ulster County Legislature To Execute An Agreement With The Rondout Valley Central School District To Provide A Deputy Sheriff As School Resource Officer – Ulster County Sheriff

Resolution Summary: Authorizes the Chair of the Ulster County Legislature to sign an agreement

Resolution No. 297 – Authorizing The Chair Of The Ulster County Legislature To Execute An Agreement With The Onteora Central School District To Provide A Deputy Sheriff As School Resource Officer – Ulster County Sheriff

Resolution Summary: Authorizes the Chair of the Ulster County Legislature to sign an agreement with the Onteora Central School District to provide a Deputy Sheriff to serve as a School Resource Officer for the term September 1, 2023 through June 30, 2024.

Motion No. 10: **MOTION TO DISCUSS Resolution No. 297**

Motion By: Legislator Hewitt
Motion Seconded By: Legislator Fabiano

Discussion: None. Hearing none, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle

Voting Against: None

Votes in Favor: 4

Votes Against: 0

Disposition: **RESOLUTION ADOPTED AS AMENDED AS PRESENTED**

Resolution No. 298 – Authorizing The Chair Of The Ulster County Legislature To Execute An MOU Between The Onteora Central School District And The Sheriff’s Office For Access To Onteora’s Closed Circuit TV – Ulster County Sheriff

Resolution Summary: Authorizes the Chair of the Ulster County Legislature to sign an agreement with the Onteora School District to provide the Sheriff’s Office access to the Closed Circuit TV files in possession of the School District during the term September 1, 2023 through June 30, 2025.

Motion No. 11: **MOTION TO DISCUSS Resolution No. 298**

Motion By: Legislator Uchitelle
Motion Seconded By: Legislator Hewitt

Discussion: Chair Hansut recognized Sheriff Figueroa who stated that the school district requested that the Sheriff’s Department have access to the files in the event of an incident. Hearing no further discussion, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle

Voting Against: None
Votes in Favor: 4
Votes Against: 0
Disposition: **RESOLUTION ADOPTED**

Resolution No. 299 – Amending The 2023 Ulster County Budget - Authorizing Payment Of Retroactive COVID Pay – Ulster County

Resolution Summary: Authorizes the total payment, not to exceed \$50,000.00 to pay 33 eligible employees retroactively for work done during the peak of the COVID pandemic.

Disposition: **NO ACTION TAKEN**

Resolution No. 300 – Authorizing The Chair Of The Ulster County Legislature To Execute An Agreement With The New York State Division Of Criminal Justice Services For Participation In The Crimes Against Revenue Program – District Attorney

Resolution Summary: Authorizes the Chair of the Ulster County Legislature to execute an agreement with the New York State Division of Criminal Justice Services in the amount of \$143,600.00 for the term January 1, 2023 through December 31, 2023.

Motion No. 12: **MOTION TO DISCUSS Resolution No. 300**

Motion By: Legislator Uchitelle
Motion Seconded By: Legislator Fabiano

Discussion: Chair Hansut recognized District Attorney Clegg to explain that this program addresses financial crimes and supports crime investigators. Hearing no further discussion, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle
Voting Against: None
Votes in Favor: 4
Votes Against: 0
Disposition: **RESOLUTION ADOPTED**

Resolution No. 301 – Authorizing The Chair Of The Ulster County Legislature To Execute An Agreement With The New York State Division Of Criminal Justice Services For Participation In The Criminal Justice Discovery Reform Grant – District Attorney, Department Of Probation, Sheriff

Resolution Summary: Authorizes the Chair of the Ulster County Legislature to enter into an agreement with the Division of Criminal Justice Services for participation in the Criminal Justice Discovery Reform Grant for the term April 1, 2022 through March 31, 2023.

Motion No. 13: **MOTION TO DISCUSS Resolution No. 301**

Motion By: Legislator Hewitt
Motion Seconded By: Legislator Uchitelle

Discussion: Chair Hansut recognized District Attorney Clegg and Director Naccarato to explain that this grant would reimburse the named departments for the cost of comprehensive discovery in a timely fashion and develop a discovery unit in the District Attorney’s office. Hearing no further discussion, Chair Hansut called the question.

Voting in Favor: Legislators Hansut, Hewitt, Fabiano & Uchitelle
Voting Against: None
Votes in Favor: 4
Votes Against: 0
Disposition: **RESOLUTION ADOPTED**

Resolution No. 305 – Approving The Execution Of A Contract Amendment For \$37,509.50, Causing The Aggregate Contract Plus Amendment Amount To Be In Excess Of \$50,000.00, Entered Into By The County – C & S Engineers, Inc. – Department of Public Works

Resolution Summary: Approves a contract amendment to expand the scope of services to include additional site visits, new topographic survey at a new site, additional geotechnical investigations additional balloon floats, additional visual stimulation additional project meetings (County), meeting additional permitting requirements, additional boundary surveying, and expanded site concept drawings and increase the not-to-exceed amount for the Ulster County Public Safety Radio Tower at Tonche Mountain, for a total amount of \$122,451.00.

Motion No. 14: **MOTION TO DISCUSS Resolution No. 305**

Motion By: Legislator Uchitelle
Motion Seconded By: Legislator Fabiano

Discussion: Chair Hansut recognized Director Erichsen, who stated that the Resolution required further amendments. Hearing no further discussion, Chair Hansut called the question.

Disposition: **NO ACTION TAKEN**

Chair Hansut recognized forthcoming Resolution No. 309 – Placing A Spending Cap Of \$XX,XXX,XXX.00 On All Costs Related To The Proposed Government Operations Center At Paradies Lane In New Paltz

Under new business, Chair Hansut recognized Sheriff Figueroa to discuss a recent open house event to increase law enforcement recruitment and Director Erichsen to discuss the rolling out of the emergency 911 text line and updates on the countywide threat assessment team.

The Committee recognized that no action was taken on Resolution No. 299 due to pending litigation.

Chair Hansut asked the members if there was any other business. Hearing none:

Adjournment

Motion Made By: Legislator Hewitt
Motion Seconded By: Legislator Uchitelle
No. of Votes in Favor: 4
No. of Votes Against: 0

TIME: 6:47 PM

Respectfully Submitted: Chelsea Villalba, Legislative Employee
Approved: June 1, 2023



QUALIFIED IMMUNITY

Myth vs Fact

Myth

- Qualified immunity makes officers immune to state or federal criminal charges for a wrongful act.

Fact

- Qualified immunity does not make officers immune to state or federal criminal charges for a wrongful act.
- Qualified immunity only protects officers from liability for acts that have never been determined to violate constitutional rights.
- To retroactively punish a peace officer for conduct that he or she had no way of knowing at the time that such conduct would later be found to violate the Constitution would be wrong.

Myth

- Qualified immunity prevents individuals from recovering damages from law enforcement officers who knowingly violate an individual's constitutional rights.

Fact

- Qualified immunity only prevents lawsuits in federal court where the constitutional validity of a particular action was not known at the time. Claimants are free to sue in state court under state law for the same incident, both for negligence as well as intentional torts.

Myth

- Qualified immunity protects law enforcement agencies from unconstitutional policies and practices.

Fact

- Qualified Immunity does not protect law enforcement agencies from unconstitutional practices.
- Eliminating qualified immunity will only benefit trial lawyers in obtaining substantial fee awards for lawsuits that would have been dismissed under qualified immunity.

Myth

- Eliminating qualified immunity financially affects the officer and will deter him from unconstitutional actions.

Fact

- Eliminating qualified immunity does not financially affect the officer because most judgments are paid by the agency's insurance company whose premiums are paid with public funds.

More Facts:

- Eliminating qualified immunity will keep officers from making crucial, split-second, life or death decisions to stop a lethal threat. Innocent victims and officers will be hurt or killed as a result. *Mullenix v. Luna*, 136 S. Ct. 305 (2015).
- Qualified immunity not only protects officers from liability for unknowingly violating constitutional rights, it protects all government actors from liability to allow them to function in uncertain situations where immediate action is needed for the public good. *Pearson v. Callahan*, 555 U.S. 223 (2009).
- The qualified immunity rule seeks a proper balance between two competing interests. On one hand, damages suits may offer the only realistic avenue for vindication of constitutional guarantees. On the other hand, permitting damages suits against government officials, not just peace officers, can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties. As one means to accommodate these two objectives, judicial precedent holds that government officials are entitled to qualified immunity with respect to discretionary functions performed in their official capacities.

The doctrine of qualified immunity gives officials, peace officers or otherwise, breathing room to make reasonable but mistaken judgments about open legal questions. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).

- As to peace officers, qualified immunity applies to jail operations including medical decisions, failure to protect, suicides in jails, and many other situations not involving use of force. *Taylor v. Barkes*, 135 S. Ct. 2042 (2015); *Berry v. Sherman*, 365 F.3d 631 (8th Cir. 2004).
- It is not necessary that the very action in question has previously been held unlawful. That is, an officer might lose qualified immunity even if there is no reported case directly on point. But in the light of pre-existing law, the unlawfulness of the officer's conduct must be apparent. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).
- Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. To determine whether a given officer falls into either of those two categories, a court must ask whether it would have been clear to a reasonable officer that the alleged conduct was unlawful in the situation he confronted. If so, then the defendant officer must have been either incompetent or else a knowing violator of the law, and thus not entitled to qualified immunity. If a reasonable officer might not have known for certain that the conduct was unlawful, then the officer is immune from liability. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).
- Eliminating qualified immunity for cases where the peace officer didn't know they were violating constitutional rights will open the flood gates for additional litigation and have a substantial negative impact on the budgets of communities that will have to pay for increasing judgments and attorneys' fees.