

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 608
Judiciary

(Delegate Carter, *et al.*)

Courts - Civil Action for Law Enforcement Officer Misconduct - Nondisclosure
Agreements

This bill establishes that a plaintiff in a civil action against a law enforcement officer or law enforcement agency for injuries resulting from law enforcement officer misconduct may not be required, as a part of the settlement agreement to the lawsuit, to agree not to disclose information about the lawsuit to a third party. A plaintiff in this type of lawsuit is not liable for a breach of a settlement agreement that contains such a nondisclosure agreement.

The bill applies prospectively to settlement agreements entered into on or after the bill's October 1, 2015 effective date.

Fiscal Summary

State Effect: The bill is technical/procedural and does not materially affect State finances.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful effect on small business law firms who litigate these types of claims.

Analysis

Current Law: State law does not prohibit the use of nondisclosure agreements in settlements in a civil action against a law enforcement officer or law enforcement agency for injuries resulting from law enforcement officer misconduct. These cases are often filed

under the Maryland Tort Claims Act (MTCA) or the Local Government Tort Claims Act (LGTCA), as described below.

Local Government Tort Claims Act: LGTCA defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

LGTCA limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

Maryland Tort Claims Act: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by “State personnel” performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “...waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” (*Lee v. Cline*, 384 Md. 245, 262 (2004)).

However, MTCA limits State liability to \$200,000 to a single claimant for injuries arising from a single incident. Attorney’s fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment. MTCA claims are typically paid out of the State Insurance Trust Fund (SITF), which is administered by the State Treasurer. The liability for an MTCA tort claim may not exceed the insurance coverage granted to units of State government under the State Insurance Program/SITF.

In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

State Fiscal Effect: The Treasurer’s Office advises that it rarely includes nondisclosure agreements in MTCA settlements. The bill may have a minimal impact to the extent that cases subject to the bill’s provisions are filed as federal constitutional torts that are approved for settlement by the Board of Public Works (BPW). Settlements in those cases

are paid out of SITF or by the affected agency. Information is not readily available as to whether these types of BPW settlements contain nondisclosure agreements.

Local Fiscal Effect: Anne Arundel, Charles, Frederick, and Montgomery counties advise that the bill does not have a fiscal impact on their jurisdictions. Montgomery County advises that it typically does not include nondisclosure agreements in police-related settlements. However, to the extent that the county does include these agreements in settlements, the county believes that the amount paid by the county would be subject to a public information request. The Montgomery County Police Department does not foresee a fiscal impact from the bill.

Baltimore County advises that while the county does have nondisclosure agreements in its settlements, they do not involve fiscally substantial amounts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Department of Natural Resources; Judiciary (Administrative Office of the Courts); Department of General Services; Department of State Police; Maryland Department of Transportation; State's Attorneys' Association; Office of the Public Defender; Department of Legislative Services

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md/kdm

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