

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 898
Judiciary

(Delegate Bromwell, *et al.*)

Civil Actions - Immunity From Liability - Emergency Medical Care for Drug
Overdose

This bill extends civil immunity under the Good Samaritan Act for acts of ordinary negligence to specified rescue and emergency care personnel administering medications or treatment in response to an apparent drug overdose. The immunity is extended if the member is trained and certified under protocols established by the Secretary of Health and Mental Hygiene to administer medications and treatment approved for use in response to a drug overdose. The bill's provisions apply to a member of any State, county, municipal, or volunteer fire department, ambulance and rescue squad, or law enforcement agency, or a corporate fire department. This civil immunity also applies to a corporation when its fire department personnel are covered by the bill's provisions.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2015 effective date.

Fiscal Summary

State Effect: Minimal decrease in future special fund expenditures if the bill results in a decrease in future claims against the State Insurance Trust Fund (SITF). Minimal decrease in future general fund expenditures if State agencies affected by the bill avoid higher SITF assessments as a result of the bill's provisions.

Local Effect: Minimal decrease in local expenditures if the bill decreases future claims against local governments.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Under the Good Samaritan Act (Courts and Judicial Proceedings Article, § 5-603), various rescue and medical personnel are immune from civil liability for any act or omission in giving any assistance or medical care, if (1) the act or omission is not grossly negligent; (2) the assistance or medical care is provided without fee or other compensation; and (3) the assistance or medical care is provided at the scene of an emergency, in transit to a medical facility, or through communications with personnel providing emergency assistance.

The rescue and medical personnel covered by the Act's protections are:

- individuals licensed by this State to provide medical care;
- members of any State, county, municipal, or volunteer fire department, ambulance and rescue squad, or law enforcement agency, the National Ski Patrol System, or a corporate fire department responding to a call outside of its corporate premises, if the member has completed specified training or is certified or licensed by this State as an emergency medical services provider;
- a volunteer fire department or ambulance and rescue squad whose members have immunity; and
- a corporation when its fire department personnel are immune under the Act.

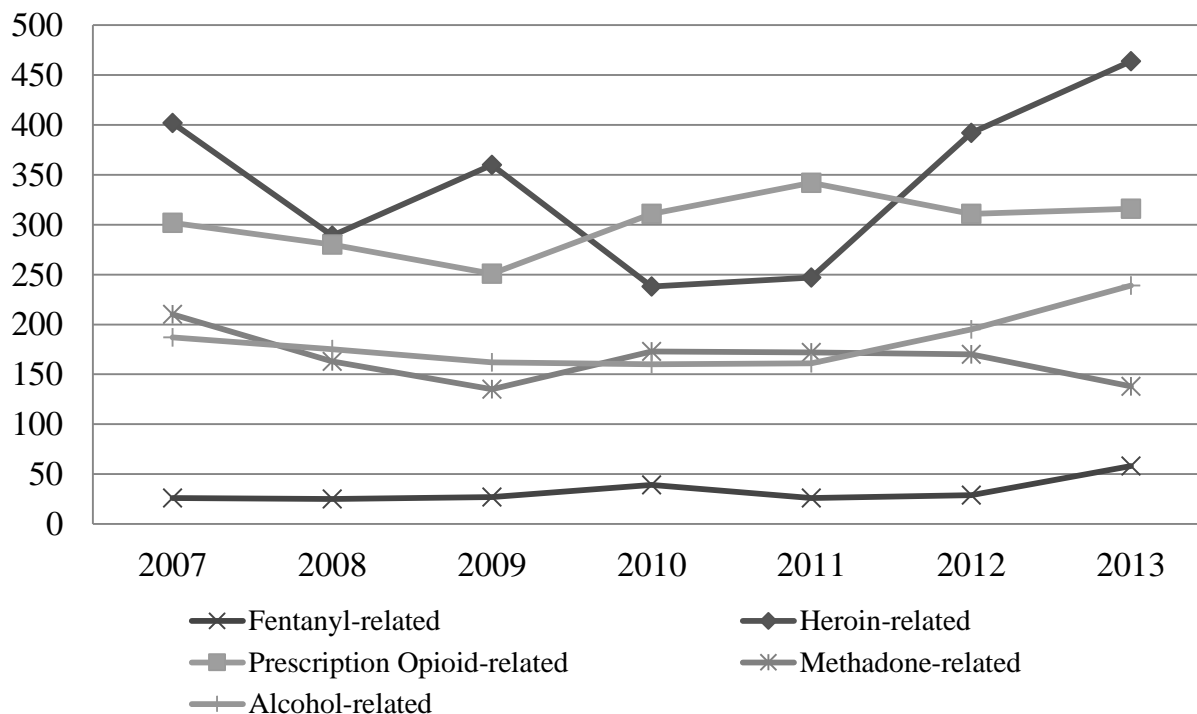
An individual who is not covered by the categories listed above is not civilly liable for any act or omission in providing assistance or medical aid to a victim at the scene of an emergency, if (1) the assistance or aid is provided in a reasonably prudent manner without fee or other compensation and (2) the individual relinquishes care of the victim when someone who is licensed or certified by the State to provide medical care or services becomes available to take responsibility.

The Fire and Rescue Company Act (Courts and Judicial Proceedings Article, § 5-604), provides civil immunity to a fire or rescue company and its personnel for any act or omission in the course of performing their duties.

Background: The 2013 report of the Department and Health and Mental Hygiene (DHMH), *Drug and Alcohol-Related Intoxication Deaths in Maryland*, indicated that drug- and alcohol-related intoxication deaths in Maryland totaled 858 in 2013, a 7% increase from 2012, and an 88% increase since 2011. Increases in the number of heroin-, fentanyl-, and alcohol-related deaths contributed to the overall increase. Heroin-related deaths increased from 392 in 2012 to 464 in 2013, an 18% increase. The number of fentanyl-related deaths also doubled between 2012 and 2013, increasing from 29 to 58. There has also been a dramatic increase in heroin-related emergency visits in Maryland,

and all but a small number were the result of heroin overdoses. **Exhibit 1** shows trends in drug- and alcohol-related intoxication deaths in Maryland from 2007-2013.

Exhibit 1
Unintentional Intoxication Deaths in Maryland
2007-2013



Source: Department of Health and Mental Hygiene

Heroin is a Schedule I opioid that quickly converts to morphine when it enters the body through either an injection, inhalation, or smoking. The purity of heroin varies greatly because it is cut with additives such as caffeine, sugar, chemicals, or other drugs, like fentanyl. Since late 2013, there has been a sharp rise in the number of fentanyl-related deaths. The majority of fentanyl-related deaths in 2013 have been attributed to nonpharmaceutical powdered fentanyl that was mixed with heroin. Fentanyl is a Schedule II narcotic pain reliever used to manage moderate to severe chronic pain and is significantly more potent than heroin. Between January and September 2014, there were 141 fentanyl-related deaths in Maryland, an average of almost 16 deaths per month compared with an average of 2 per month between 2007 and 2012.

In light of this alarming trend, there are several major statewide efforts underway to reduce heroin- and fentanyl-related overdoses. The Overdose Response Program, established in DHMH by Chapter 299 of 2013, is intended to expand access to Naloxone, a life-saving medication that can safely and effectively reverse overdoses related to heroin and pharmaceutical opioids, by training and certifying individuals to administer Naloxone. Chapter 299 allows family members, friends, and associates of opioid users to legally obtain a prescription for Naloxone in their own names. There is also statewide effort to train first responders to administer Naloxone. In 2013, all counties and Baltimore City submitted local overdose prevention plans at the request of DHMH. Chapter 650 of 2014 authorized the establishment of local fatality review teams to promote cooperation and coordination among agencies, develop plans, and recommend changes to prevent drug overdose deaths.

On June 27, 2014, Governor O'Malley issued Executive Order 01.01.2014.11, which created the Overdose Prevention Council to advise and assist agencies in a coordinated, statewide effort to reduce overdoses. Maryland StateStat was tasked with calculating progress toward the goal of reducing overdose deaths by 20% by the end of 2015. DHMH also launched an aggressive public awareness campaign in June 2014 to encourage Maryland residents to fight against opioid overdoses.

In March 2014, Anne Arundel County began to train its police officers on the proper administration of Naloxone, a drug designed to reverse heroin overdose symptoms. According to news reports, the county's paramedics have carried Naloxone since 1980 and its emergency medical technicians have carried it since January 2014. Baltimore City's paramedics have also administered Naloxone since 1980.

State Fiscal Effect: Special fund expenditures decrease to the extent that SITF does not have to pay future claims in applicable cases as a result of the bill's immunity provisions. General fund expenditures decrease for State agencies who avoid higher SITF assessments if SITF avoids losses from Maryland Tort Claims Act (MTCA) payments as a result of the bill's provisions. Information is not readily available as to whether any State agencies engage in the activities for which the bill provides immunity.

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 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 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.

The Treasurer's Office advises that it has never received a tort claim as it relates to State personnel and the administration of drugs for an overdose.

Local Fiscal Effect: Local government expenditures decrease to the extent that local governments avoid (1) payment of claims for damages as a result of the bill's immunity provisions and (2) higher Local Government Insurance Trust (LGIT) assessments.

The 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.

Several local governments covered by LGTCA are insured by LGIT, a self-insurer that operates similarly to SITF. Thus, future year expenditures for agencies affected by the bill decrease if LGIT does not incur losses as a result of the bill's provisions.

Small Business Effect: Information is not available as to whether any local governments covered under the Good Samaritan Act contract with small business ambulance services that are protected under the Good Samaritan Act, and provide the services covered under the bill. To the extent that this scenario exists, the bill meaningfully impacts small businesses which avoid liability as a result of the bill.

In Murray v. TransCare Maryland Inc., 431 Md. 225 (2013), the Maryland Court of Special Appeals held that private commercial ambulance companies are not immune under the Good Samaritan Act.

Additional Information

Prior Introductions: None.

Cross File: None designated. However, HB 368 (Delegate Beidle, *et al.* – By Request Anne Arundel County Administration – Judiciary)/SB 214 (Anne Arundel County Senators – Judicial Proceedings) and SB 546 (Senator Klausmeier, *et al.* – Judicial Proceedings) are identical.

Information Source(s): Dorchester, Garrett, and Montgomery counties; Department of Natural Resources; Emergency Medical Services Systems, Maryland Institute for Emergency Medical Services Systems; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; University System of Maryland; *The Baltimore Sun*; *Capital Gazette*; Department of Legislative Services

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