

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 430
Judiciary

(Delegate Wilkins, *et al.*)

Rules

Public Safety - Maryland Police Training and Standards Commission -
Notification of Action Filed Against Police Officer

This bill requires a court to notify the Maryland Police Training and Standards Commission (MPTSC) of the filing of a civil action against a police officer involving allegations that the police officer wrongfully caused death or serious bodily injury to an individual. The court must make the notification within 10 days after the filing of the civil action.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, MPTSC also reports various information to the Governor and the General Assembly relating to law enforcement duties in the State. In addition, MPTSC must hold law enforcement agencies accountable for failure to provide specified required information and violations of the “Use of Force Statute” and work with the Comptroller and the Governor’s Office of Crime Prevention, Youth, and Victim Services to ensure that State grant funding is withheld from a law enforcement agency that violates specified provisions and requirements.

There are no provisions in existing statute that directly address the bill's provisions. While the Maryland Tort Claims Act (MTCA) and Local Government Tort Claims Act (LGTCA) contain notice requirements and address liability in civil lawsuits involving police officers, neither of those Acts require a court to notify MPTSC or any other entity.

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).

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. 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.

MTCA contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer's designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises. The State Treasurer's Office previously advised that the one-year claim requirement under MTCA has been expanded to include the agency on notice of the incident.

In general, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. However, for claims arising on or after July 1, 2022, if liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

The State does not waive its immunity for punitive damages. 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.

Local Government Tort Claims Act

LGTCGA 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.

LGTCGA also specifies that an action for unliquidated damages may not be brought unless notice of the claim is given within one year after the injury. The notice must be in writing and must state the time, place, and cause of the injury. The notice must also meet other specified requirements regarding the type of delivery and to whom the notice must be given. This requirement does not apply if, within one year after the injury, the defendant local government has actual or constructive notice of the claimant's injury or the defect or circumstances giving rise to the claimant's injury.

A plaintiff who does not strictly comply with the notice requirement may substantially comply with LGTCGA's notice requirement by providing notice "in fact" which, while not strictly compliant with the statutory notice requirements, provides requisite and timely notice of the facts and circumstances giving rise to the plaintiff's claim and fulfills the purpose of the notice requirement – to apprise the local government of its potential liability at a time when it is still possible for the local government to conduct a proper investigation. *Faulk v. Ewing*, 371 Md. 284, at 298-99 (2002). Unless the defendant (the local government) in an LGTCGA suit can affirmatively show that its defense has been prejudiced by lack of required notice, the court, upon motion and for good cause shown, may entertain the suit even though the notice was not given.

In general, LGTCGA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). However, for claims arising on or after July 1, 2022, if the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not

exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

LGTCAs further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. Thus, LGTCAs prevent local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

A local government is not liable for punitive damages. However, a local government, subject to the liability limits, may indemnify an employee for a judgment for punitive damages entered against the employee. A local government may not indemnify a law enforcement officer for a judgment for punitive damages if the law enforcement officer has been found guilty under § 3-108 of the Public Safety Article (as a disposition in an administrative action pursuant to the Law Enforcement Officers' Bill of Rights) as a result of the act or omission giving rise to the judgment, if the act or omission would constitute a felony under State law. A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

State Expenditures: The Judiciary advises that the bill's requirements increase clerical responsibilities and may necessitate additional staffing or additional training of employees to satisfy the notification requirement. The Judiciary further advises that staff in clerks' offices are typically not lawyers and therefore may not be accustomed to reading and understanding the substance in civil pleadings. The Department of Legislative Services advises that while the bill has an operational effect on the Judiciary and requires clerks to review case filings for eligibility for the required notification to MPTSC, implementation of the bill by the Judiciary, including the development of procedures to incorporate a notification process into existing clerical procedures and any associated training, can be accomplished with existing budgeted resources. The Department of Public Safety and Correctional Services advises that the bill does not have a fiscal or operational effect on MPTSC.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City; Prince George’s County; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Maryland State Treasurer’s Office; Judiciary (Administrative Office of the Courts); Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Local Government Insurance Trust; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510