

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 351
Judiciary

(Delegate Moon, *et al.*)

Judicial Proceedings

Civil Actions - Violation of Constitutional Rights (No Kings Act)

This bill authorizes an aggrieved party or the Office of the Attorney General (OAG) to bring an action against a “covered officer” who, under color of law, deprives the aggrieved party or causes or allows the aggrieved party to be deprived of a right, a privilege, or an immunity secured under the “law.” An aggrieved party or OAG may seek damages and declaratory and injunctive relief in an action brought under the bill, and a court may award reasonable fees and costs, including attorney’s fees and expert witness fees, to a prevailing plaintiff. The statute of limitations for a cause of action is five years after the cause of action accrues. The bill contains a severability provision.

Fiscal Summary

State Effect: As discussed below, the bill is not anticipated to affect State liability; thus, there is likely no impact on State expenditures. General fund revenues may increase if OAG is awarded damages (or recovers reasonable fees and costs) in actions filed under the bill.

Local Effect: Assuming that the bill does not affect local liability for actions involving local law enforcement, the bill is not expected to materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Covered officer” means an officer who may (1) make an arrest with or without a warrant for violations of the U. S. Code and (2) carry firearms in the performance of the officer’s duties. “Covered officer” does not include a law enforcement officer, as defined in §1-101 of the Public Safety Article, acting under the authority of a joint task force that primarily enforces the U.S. Code.

“Law” includes the U.S. Constitution and the laws of the United States.

Additional Provisions

A defendant in an action brought under the bill may assert any defense of immunity that was available at the time the cause of action accrued.

The bill may not be construed to abrogate (1) any local government liability under State or common law for the actions of State or local government employees or (2) any statutory waiver of any defense, including immunity.

Current Law:

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 the Maryland Tort Claims Act (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.

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. Separate provisions apply to claims involving child sexual abuse.

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

The Local Government Tort Claims Act (LGTCOA) 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.

LGTCOA establishes that a 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, LGTCOA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

In general, LGTCOA 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. Separate provisions apply to claims involving child sexual abuse.

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 enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

Lawsuits Under 42 USC § 1983 and Federal Qualified Immunity

42 USC § 1983 is a federal law that allows individuals to sue state or local government officials acting under color of law for constitutional rights violations. Plaintiffs can seek damages, injunctive relief, declaratory relief, and attorney's fees. Section 1983 lawsuits are against a person (*e.g.*, the government employee). States and the federal government cannot be named as defendants in these lawsuits; however, local government units and municipalities can be named as defendants. 42 USC § 1983 does not apply to federal agents and officials.

In general, judges, prosecutors, and legislators performing their legitimate functions are examples of individuals who have absolute immunity from § 1983 lawsuits. Qualified immunity, which dates back to 1871 when Congress adopted 42 USC § 1983, is a legal doctrine created by the U.S. Supreme Court under which a government official is shielded from civil liability if the official's actions do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

State Expenditures: According to information received by OAG in regard to similar legislation, based on the bill's definition of "covered officer," the bill does not affect State liability; this analysis reflects that interpretation. OAG can handle any additional workload under the bill using existing budgeted resources.

Conversely, the State Treasurer's Office (STO), in regard to similar legislation, advises that certain ambiguities make it difficult to assess any impact on State liability, specifically noting that (1) courts may interpret the bill to apply to State officers under some circumstances and (2) the fact-specific analysis could be complicated by federal-State law enforcement arrangements.

As discussed above, MTCA is a limited waiver of the State's sovereign immunity, subject to specified requirements, liability limits, and limits on attorney's fees. STO advises that these provisions appear to be designed to preserve sovereign immunity and the *status quo* under MTCA.

MTCA claims are filed against the State, not the State employee whose actions form the basis of the claim. The State is not typically named in 42 U.S.C. § 1983 lawsuits because

of its Eleventh Amendment immunity. As noted above, MTCA applies to State constitutional torts. Despite the concerns of STO discussed above, it appears that the bill intends to exclusively establish a State-level civil cause of action against *federal* law enforcement officers for their actions.

Regardless, STO advises that it anticipates receiving a high volume of claims under the bill. According to the office, even meritless claims require 40 to 50 hours of work to investigate, prepare motions, etc. STO therefore estimates that implementation of the bill requires two additional adjusters.

However, as noted above, the bill's definition of a covered officer appears to readily exclude many scenarios under which a State law enforcement officer could conceivably be implicated, and it is not clear how often individuals may attempt to bring an action against a State law enforcement officer under the bill. Accordingly, the Department of Legislative Services advises that any potential need for staff is speculative and therefore not accounted for in this analysis. To the extent that STO experiences increased caseloads as a result of the bill that cannot be handled by existing staff, additional resources can be requested through the annual budget process.

Local Expenditures: Based on information received from the Maryland Association of Counties regarding similar legislation, the bill does not appear to apply to actions involving local law enforcement; therefore, there is no anticipated impact on local government finances or operations.

Small Business Effect: The bill may have a meaningful effect on small business law firms that litigate these types of claims.

Additional Information

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

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Cecil, Frederick, Montgomery, and Somerset counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland State Treasurer's Office; Office of the Attorney General; Department of Natural Resources; Maryland Association of Counties; Maryland Municipal League; Thomas Reuters; National Conference of State Legislatures; United States Court of Appeals for the Ninth Circuit; Department of Legislative Services

Fiscal Note History:
caw/lgc

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