

HOUSE BILL 895

P3

4r2133
CF SB 793

By: **Delegate Embry**

Introduced and read first time: February 2, 2024

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: March 7, 2024

CHAPTER _____

1 AN ACT concerning

2 **Maryland Tort Claims Act – Sheriffs and Deputy Sheriffs – County**
3 **Responsibility**

4 FOR the purpose of clarifying that a county is responsible for a certain tort claim against a
5 sheriff or deputy sheriff under the Maryland Tort Claims Act; clarifying that, for
6 certain tort claims against a sheriff or deputy sheriff, the State is the proper
7 defendant; specifying that it is the intent of the General Assembly that the Office of
8 the Attorney General and the State Treasurer work with the Maryland Association
9 of Counties, the counties, and the counties' respective insurers when disputes arise
10 regarding the allocation of responsibility for tort claims under this Act; and generally
11 relating to the Maryland Tort Claims Act.

12 BY repealing and reenacting, with amendments,
13 Article – State Finance and Procurement
14 Section 9–108
15 Annotated Code of Maryland
16 (2021 Replacement Volume and 2023 Supplement)
17 (As enacted by Chapter 721 of the Acts of the General Assembly of 2023)

18 BY repealing and reenacting, without amendments,
19 Article – State Government
20 Section 12–101(a)(6) and 12–104(a)
21 Annotated Code of Maryland
22 (2021 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
2 Article – State Government
3 Section 12–103.3
4 Annotated Code of Maryland
5 (2021 Replacement Volume and 2023 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
7 That the Laws of Maryland read as follows:

8 **Article – State Finance and Procurement**

9 9–108.

10 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
11 **INDICATED.**

12 **(2) “DETENTION CENTER FUNCTION” INCLUDES:**

13 **(I) OPERATING AND ADMINISTERING A DETENTION CENTER;**
14 **AND**

15 **(II) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION**
16 **DESCRIBED IN ITEM (I) OF THIS PARAGRAPH.**

17 **(3) “LAW ENFORCEMENT FUNCTION” INCLUDES:**

18 **(I) CONDUCTING PATROL;**

19 **(II) MAKING STOPS AND ARRESTS;**

20 **(III) INVESTIGATING CRIMINAL OFFENSES; AND**

21 **(IV) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION**
22 **DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.**

23 **[(a)] (B)** This section applies to any sheriff or deputy sheriff engaged in any
24 activity other than those activities relating to:

25 (1) courthouse security;

26 (2) service of process;

27 (3) the transportation of incarcerated individuals to and from court
28 proceedings;

1 (4) personnel and other administrative activities;

2 (5) activities, including activities relating to performing law enforcement
3 functions, arising under a multijurisdictional agreement under the supervision and
4 direction of the Maryland State Police or other State agency; or

5 (6) any other activities, except activities relating to performing law
6 enforcement functions or detention center functions.

7 **[(b)] (C)** A county or Baltimore City may obtain insurance to provide the
8 coverage and defense necessary under the Maryland Tort Claims Act [for personnel covered
9 by this section].

10 **[(c)] (D)** (1) If a county or Baltimore City does not obtain adequate insurance
11 coverage to satisfy the coverage and defense necessary under the Maryland Tort Claims
12 Act, an assessment for coverage and for payment of any litigation expenses, other than for
13 compensation for the time spent by any State employee working for the Attorney General,
14 shall be set off from:

15 (i) any tax which has been appropriated in the State budget to the
16 county or Baltimore City; or

17 (ii) the subdivision's share of any income tax collected by the State
18 Comptroller.

19 (2) Any amount due under this subsection shall be collected in the manner
20 provided by § 7-222 of this article.

21 Article – State Government

22 12-101.

23 (a) In this subtitle, unless the context clearly requires otherwise, “State
24 personnel” means:

25 (6) a sheriff or deputy sheriff of a county or Baltimore City;

26 **12-103.3.**

27 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
28 **INDICATED.**

29 **(2) “DETENTION CENTER FUNCTION” INCLUDES:**

30 **(I) OPERATING AND ADMINISTERING A DETENTION CENTER;**
31 **AND**

1 (II) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION
2 DESCRIBED IN ITEM (I) OF THIS PARAGRAPH.

3 (3) "LAW ENFORCEMENT FUNCTION" INCLUDES:

4 (I) CONDUCTING PATROL;

5 (II) MAKING STOPS AND ARRESTS;

6 (III) INVESTIGATING CRIMINAL OFFENSES; AND

7 (IV) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION
8 DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

9 (4) "TORT CLAIM" MEANS A TORT CLAIM FILED IN STATE COURT
10 AGAINST A SHERIFF, A DEPUTY SHERIFF, OR THE STATE CLAIMING TORTIOUS
11 CONDUCT BY A SHERIFF OR A DEPUTY SHERIFF ARISING OUT OF ACTIVITIES
12 RELATED TO THE PERFORMANCE OF A LAW ENFORCEMENT FUNCTION OR A
13 DETENTION CENTER FUNCTION.

14 (B) (1) A TORT CLAIM SHALL BE CONSIDERED DEFENDED, SETTLED, AND
15 PAID IN THE SAME MANNER AS ANY OTHER CLAIM FILED AGAINST A COUNTY.

16 (2) (I) THE STATE IS THE PROPER DEFENDANT IN A TORT CLAIM.

17 (II) THE COUNTY MAY NOT BE NAMED AS A DEFENDANT IN A
18 TORT CLAIM.

19 (C) LIABILITY FOR A TORT CLAIM MAY NOT EXCEED THE STATE'S WAIVER
20 OF IMMUNITY UNDER § 12-104 OF THIS SUBTITLE.

21 (D) (1) THE STATE TREASURER IS NOT LIABLE UNDER § 9-107 OF THE
22 STATE FINANCE AND PROCUREMENT ARTICLE FOR A TORT CLAIM.

23 (2) THE DUTIES, RESPONSIBILITIES, AND LIABILITIES OF THE STATE
24 UNDER THIS SUBTITLE FOR A TORT CLAIM SHALL BE ASSUMED BY THE APPLICABLE
25 COUNTY.

26 12-104.

27 (a) (1) Subject to the exclusions and limitations in this subtitle and
28 notwithstanding any other provision of law, the immunity of the State and of its units is

1 waived as to a tort action, in a court of the State, to the extent provided under paragraph
2 (2) of this subsection.

3 (2) (i) Except as provided in subparagraphs (ii) and (iii) of this
4 paragraph, the liability of the State and its units may not exceed \$400,000 to a single
5 claimant for injuries arising from a single incident or occurrence.

6 (ii) If liability of the State or its units arises from intentional tortious
7 acts or omissions or a violation of a constitutional right committed by a law enforcement
8 officer, the following limits on liability shall apply:

9 1. subject to item 2 of this subparagraph, the combined
10 award for both economic and noneconomic damages may not exceed a total of \$890,000 for
11 all claims arising out of the same incident or occurrence, regardless of the number of
12 claimants or beneficiaries who share in the award; and

13 2. in a wrongful death action in which there are two or more
14 claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the
15 limitation established under item 1 of this item, regardless of the number of claimants or
16 beneficiaries who share in the award.

17 (iii) If liability of the State or its units arises under a claim of sexual
18 abuse, as defined in § 5-117 of the Courts Article, the liability may not exceed \$890,000 to
19 a single claimant for injuries arising from an incident or occurrence.

20 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
21 Assembly that:

22 (1) counties bear responsibility for all matters related to the performance
23 by sheriffs and deputy sheriffs of a county or Baltimore City for “law enforcement functions”
24 and “detention center functions” as defined under Section 1 of this Act;

25 (2) the list of activities included within the definitions of “law enforcement
26 functions” and “detention center functions” under Section 1 of this Act are illustrative and
27 not exhaustive; and

28 (3) the Office of the Attorney General and the State Treasurer work
29 cooperatively with the Maryland Association of Counties, the counties, and the counties’
30 respective insurers when disputes arise regarding the allocation of responsibility for tort
31 claims under Section 1 of this Act.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2024.