

HOUSE BILL 1117

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2001 Regular Session
11r2198
CF 11r2201

By: **Delegates Gladden, Vallario, Cole, Amedori, Getty, Hutchins, Dembrow,
Grosfeld, Petzold, Boschert, Barkley, Giannetti, Burns, K. Kelly,
Valderrama, Griffith, Menes, and Taylor**

Introduced and read first time: February 9, 2001

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 2001

CHAPTER _____

1 AN ACT concerning

2 **Sheriffs' Office Liability - Apportionment of State and County**
3 **Responsibility**

4 FOR the purpose of clarifying certain State and county financial responsibilities for
5 defense and indemnification of judgments against sheriffs ~~and~~ deputy sheriffs,
6 and employees of the sheriff's office performing certain functions; limiting the
7 authority of the Board of Public Works to collect certain payments for certain
8 judgments against sheriffs ~~and~~ deputies, and employees of the sheriff's office
9 from certain taxes; establishing State responsibility for defense and payments of
10 judgments arising from certain sheriff ~~and~~ deputy, and employee activities;
11 including employees of sheriffs' offices in the definition of State personnel as it
12 applies to the Maryland Tort Claims Act; and generally relating to clarifying the
13 apportionment of State and county responsibility for defense and
14 indemnification of judgments against sheriffs ~~and~~ deputies, and employees of
15 the sheriff's office.

16 BY repealing and reenacting, ~~without~~ with amendments,
17 Article - State Government
18 Section 12-101(a)(6)
19 Annotated Code of Maryland
20 (1999 Replacement Volume and 2000 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - State Government
23 Section 12-405 and 12-501

1 Annotated Code of Maryland
2 (1999 Replacement Volume and 2000 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - State Finance and Procurement
5 Section 9-108
6 Annotated Code of Maryland
7 (1995 Replacement Volume and 2000 Supplement)

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

10 **Article - State Government**

11 12-101.

12 (a) In this subtitle, unless the context clearly requires otherwise, "State
13 personnel" means:

14 (6) a sheriff ~~or~~ deputy sheriff, OR EMPLOYEE OF A SHERIFF'S OFFICE of
15 a county or Baltimore City;

16 12-405.

17 (A) THE APPLICATION REQUIREMENTS ENUMERATED IN SUBSECTION (B)(5)
18 OF THIS SECTION DO NOT APPLY TO CLAIMS RELATING TO:

19 (1) COURTHOUSE SECURITY;

20 (2) SERVICE OF PROCESS;

21 (3) THE TRANSPORTATION OF INMATES TO OR FROM COURT
22 PROCEEDINGS;

23 (4) PERSONNEL AND OTHER ADMINISTRATIVE ACTIVITIES;

24 (5) ACTIVITIES, INCLUDING ACTIVITIES RELATING TO LAW
25 ENFORCEMENT FUNCTIONS, ARISING UNDER A MULTI-JURISDICTIONAL
26 AGREEMENT UNDER THE SUPERVISION AND DIRECTION OF THE MARYLAND STATE
27 POLICE OR OTHER STATE AGENCY; OR

28 (6) ANY OTHER ACTIVITIES, EXCEPT FOR ACTIVITIES RELATING TO
29 PERFORMING LAW ENFORCEMENT FUNCTIONS OR DETENTION CENTER FUNCTIONS.

30 (B) The Board of Public Works may not pay a settlement or judgment against
31 State personnel unless:

1 (1) the State personnel submits to the Board a written application that
2 sets forth each reason of the State personnel for believing the settlement or judgment
3 is a responsibility of the State;

4 (2) the Board or a hearing officer that the Board appoints holds a
5 hearing on the application;

6 (3) as to a judgment, it was rendered by a court of competent
7 jurisdiction;

8 (4) as to an applicant for whom the Attorney General appeared under
9 Subtitle 3 of this title, the Attorney General files a written report and
10 recommendation;

11 (5) as to an application on behalf of a sheriff ~~or~~ deputy sheriff, OR
12 EMPLOYEE OF A SHERIFF'S OFFICE of a county or Baltimore City for any claim
13 [except those claims directly relating to courthouse security, service of process, or the
14 transportation of inmates to or from court proceedings]:

15 (i) with respect to any settlement, the county solicitor or county
16 attorney files a written report and recommendation and the Attorney General files a
17 written report and recommendation; or

18 (ii) with respect to any judgment, the Attorney General files a
19 written report and recommendation;

20 (6) on the bases of the hearing and any report and recommendation, the
21 Board finds that:

22 (i) when the act or omission was made, the applicant was
23 performing a duty within the scope of the employment of the applicant;

24 (ii) the act or omission was not malicious; and

25 (iii) the act or omission was not grossly negligent; and

26 (7) if there is any question whether the applicant is State personnel for
27 purposes of this subtitle, the Board finds that, regardless of the method, source, or
28 amount of compensation, the applicant is State personnel.

29 12-501.

30 (a) (1) The Board of Public Works may approve payment of a settlement, a
31 judgment, or counsel fees under Subtitles 3 and 4 of this title with or without a
32 hearing, and direct payment from:

33 (i) money appropriated for that purpose in the State budget;

34 (ii) money appropriated to the State Insurance Trust Fund for that
35 purpose; OR

(iii) the General Emergency Fund[; or].

[(iv)] (2) THE BOARD OF PUBLIC WORKS MAY APPROVE PAYMENT OF A SETTLEMENT, A JUDGMENT, OR COUNSEL FEES UNDER SUBTITLES 3 AND 4 OF THIS TITLE WITH OR WITHOUT A HEARING, AND DIRECT PAYMENT FROM ANY TAX WHICH HAS BEEN APPROPRIATED IN THE STATE BUDGET TO THE SUBDIVISION REPRESENTED BY THE SHERIFF ~~OR, DEPUTY SHERIFF, OR EMPLOYEE OF A SHERIFF'S OFFICE~~ ON WHOSE BEHALF THE PAYMENT IS TO BE MADE, OR DIRECT PAYMENT FROM THE SUBDIVISION'S SHARE OF ANY INCOME TAX COLLECTED BY THE STATE COMPTROLLER, in connection with any settlement or judgment paid on behalf of any sheriff ~~or, deputy sheriff, or employee of a sheriff's office~~ for any claim except those claims [directly] relating to [courthouse security, service of process, or the transportation of inmates to or from court proceedings]:

(I) COURTHOUSE SECURITY;

(II) TRANSPORTATION OF PRISONERS;

(III) SERVICE OF PROCESS;

(IV) PERSONNEL AND OTHER ADMINISTRATIVE ACTIVITIES;

(V) ACTIVITIES, INCLUDING ACTIVITIES RELATING TO PERFORMING LAW ENFORCEMENT FUNCTIONS, ARISING UNDER MULTI-JURISDICTIONAL AGREEMENTS UNDER THE SUPERVISION AND DIRECTION OF THE MARYLAND STATE POLICE OR OTHER STATE AGENCY; OR

(VI) ANY OTHER ACTIVITIES, EXCEPT ACTIVITIES RELATING TO PERFORMING LAW ENFORCEMENT FUNCTIONS OR DETENTION CENTER FUNCTIONS

[1. any tax which has been appropriated in the State budget to the subdivision represented by the sheriff or deputy sheriff on whose behalf the payment is to be made; or

2. the subdivision's share of any income tax collected by the State Comptroller].

[(2)] (3) The Board may direct that payment be made in lump sum or in installments.

[(3)] (4) If the Board disapproves payment in whole or in part, the Board shall state in writing its reasons for disapproval.

[(4)] (5) Decisions under this title are not subject to judicial review.

[(5)] (6) Nothing in this section shall be construed as a waiver of sovereign immunity of the State, any of its units, or State personnel.

1 [(6)] (7) If the Board directs payment under paragraph (1)(iv) of this
2 subsection, such payment shall be collected in the manner provided by § 7-222 of the
3 State Finance and Procurement Article.

4 (b) The Board of Public Works may delegate to affected units, in consultation
5 with the Attorney General, authority to pay, from the funds of that unit available for
6 the purpose, settlements, judgments, and counsel fees that do not exceed \$2,000 in a
7 particular case.

8 **Article - State Finance and Procurement**

9 9-108.

10 (a) This section applies to any sheriff ~~or~~ deputy sheriff, OR EMPLOYEE OF A
11 SHERIFF'S OFFICE engaged in any activity other than those activities [directly]
12 relating to:

13 (1) courthouse security[.];

14 (2) service of process[, or];

15 (3) the transportation of inmates to and from court proceedings;

16 (4) PERSONNEL AND OTHER ADMINISTRATIVE ACTIVITIES;

17 (5) ACTIVITIES, INCLUDING ACTIVITIES RELATING TO PERFORMING
18 LAW ENFORCEMENT FUNCTIONS, ARISING UNDER A MULTIJURISDICTIONAL
19 AGREEMENT UNDER THE SUPERVISION AND DIRECTION OF THE MARYLAND STATE
20 POLICE OR OTHER STATE AGENCY; OR

21 (6) ANY OTHER ACTIVITIES, EXCEPT ACTIVITIES RELATING TO
22 PERFORMING LAW ENFORCEMENT FUNCTIONS OR DETENTION CENTER FUNCTIONS.

23 (b) A county or Baltimore City may obtain insurance to provide the coverage
24 and defense necessary under the Maryland Tort Claims Act for personnel covered by
25 this section.

26 (c) (1) If a county or Baltimore City does not obtain adequate insurance
27 coverage to satisfy the coverage and defense necessary under the Maryland Tort
28 Claims Act, an assessment for coverage and for payment of any litigation expenses,
29 other than for compensation for the time spent by any State employee working for the
30 Attorney General, shall be set off from:

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

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

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

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2001.