

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 299 (Montgomery County Senators)

Judicial Proceedings

Judiciary

Montgomery County - Maryland Tort Claims Act - Human Services Torts

This bill clarifies that for purposes of the Maryland Tort Claims Act (MTCA), (1) Montgomery County acts as a unit of the State whenever the county administers a State human services program under Title 3, Subtitle 4 of the Human Services Article and (2) a tort claim filed in State court arising out of the administration of a State human services program by the Montgomery County government must name the State as the proper defendant.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that damages in these tort claims are limited to the insurance granted to units of State government under Title 9 of the State Finance and Procurement Article (State Insurance Program/State Insurance Trust Fund).

Current Law: Under Title 3, Subtitle 4 of the Human Services Article, the Montgomery County government must administer State social service and public assistance programs (“social services programs”). In Montgomery County, this function is performed by the Montgomery County Department of Health and Human Services (MCDHHS). In other counties, these programs are administered by a local department of social services. Local departments of social services are created and administered by the Department of Human Resources (DHR).

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 the State Insurance Trust Fund, which is administered by the State Treasurer.

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 covers a multitude of personnel, including “an employee of a county who is assigned to a local department of social services, including a Montgomery County employee who carries out State programs administered under Title 3, Subtitle 4 of the Human Services Article.” *See* State Government Article, § 12-101(a)(7).

MTCA also 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 liability for an MTCA tort claim may not exceed the insurance coverage granted to units of State government under the State Insurance Program/State Insurance Trust Fund. As previously mentioned, MTCA claims are typically paid out of the State Insurance Trust Fund; however, tort claims under MTCA filed in State court against the

Montgomery County government relating to Montgomery County's administration of State social services programs must be considered, defended, settled, and paid in the same manner as any other claim covered by the Montgomery County Self-Insurance Fund, and the State Treasurer is not liable for such tort claims. For these tort claims, the duties, responsibilities, and liabilities of the Treasurer under MTCA must be assumed by the Montgomery County Self-Insurance Fund.

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 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, LGTCGA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

LGTCGA also requires that an action for unliquidated damages may not be brought unless notice of the claim is given within 180 days after the injury. However, this notice requirement does not apply to actions against specified nonprofit corporations covered under LGTCGA.

Background: This bill amends MTCA to reflect the ruling by the Maryland Court of Appeals in *Menefee v. State*, 417 Md. 740 (2011).

In March 2004, John Menefee and his ex-wife Sheila Menefee met to exchange custody of their young son. Mr. Menefee alerted police when he noticed several bruises on his son while changing the child's diaper. Following an investigation, MCDHHS could not determine the source of the abuse or the appropriate way to protect the child in the future and closed the case by May 2004. According to Mr. Menefee, MCDHHS did not investigate several subsequent reports he made about his suspicions that his son and ex-wife were being abused by his ex-wife's boyfriend. On September 6, 2004, Sheila Menefee was murdered by her boyfriend in the presence of the Menefees' then two-year-old son. The child was diagnosed with Post Traumatic Stress Disorder (PTSD) in October 2007 at the age of five years. In August 2008, Mr. Menefee filed a written claim to the State Treasurer pursuant to MTCA. The claim was denied. In March 2009, Mr. Menefee filed suit against the State in the Circuit Court for Montgomery County alleging negligence and negligence per se. According to the plaintiff, the failure of MCDHHS employees to reasonably investigate his claims of abuse was the proximate

and actual cause of his son's PTSD, which he developed as a result of the abuse and witnessing his mother's murder.

The Circuit Court for Montgomery County granted the State's motion to dismiss. According to the court, the legislative intent was for Montgomery County (not the State) to be named as the proper party defendant in these types of MTCA cases.

The Court of Appeals granted a *writ of certiorari* before the Court of Special Appeals could decide the plaintiff's appeal. The Court of Appeals vacated the circuit court's judgment and remanded the case to that court. The Court of Appeals held that even though Montgomery County is responsible for defending and paying judgments from MTCA lawsuits against the county or its employees in the administration of a State human services program under Title 3, Subtitle 4 of the Human Services Article, the State is a property party defendant in such a lawsuit. According to the court, Montgomery County and its employees are considered "a unit of State government" and "State personnel" under MTCA when the county is performing these administrative functions.

In reaching its decision, the court noted that when the legislature transferred administration of social services programming in Montgomery County from DHR to the county government in 1996, it also made corresponding changes to MTCA, including the inclusion of Montgomery County social services employees and Montgomery County government (acting as the administrator of State social services programs) under MTCA's definitions of "State personnel" and "a unit of State government," respectively. The court also noted that the State still maintains some control over social services in Montgomery County through funding and oversight.

State Fiscal Effect: Although the bill clarifies that the State must be named as the proper defendant in specified MTCA cases, it does not alter the financial responsibility for judgments in these cases, which remains with the Montgomery County Self-Insurance Fund. It is also unlikely that the bill materially affects the State's litigation caseloads or the workload of the Office of the Attorney General (OAG).

The Treasurer's Office advises that it receives very few of the types of claims affected by the bill. When the Treasurer's Office receives notice of these claims, it forwards the information to Montgomery County, and the county is responsible for investigating, defending, and paying the claims. According to the Treasurer's Office, while Montgomery County is responsible for defending these claims, OAG does assign an attorney to the case to sign pleadings, answer questions, and work with legal counsel in Montgomery County as needed.

Local Fiscal Effect: The bill's clarification of the State as the proper defendant in MTCA cases arising out of the administration of a State social services program by the Montgomery County government does not absolve Montgomery County of its

responsibility to defend these claims and pay judgments awarded in these cases. It is also unlikely that the bill materially affects Montgomery County's litigation caseloads. Montgomery County advises that it does not anticipate a measurable fiscal impact as a result of the bill.

The Office of the County Attorney for Montgomery County advises that it handles very few cases related to the types of claims covered under the bill, and that the bill's provisions do not alter the county's responsibility to investigate, review, defend, and indemnify any MTCA claims related to the county's administration of State human services programs. The office also advises that the bill's clarification of the State as the proper party defendant in these cases will clear up confusion in these cases.

Additional Information

Prior Introductions: None.

Cross File: HB 147 (Montgomery County Delegation) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Montgomery County, Treasurer's Office, Department of Legislative Services

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