

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1649
 Judiciary

(Delegate A. Washington)

Public Safety – Police Misconduct and Civil Rights Actions – Settlement
 Database

This bill requires each local law enforcement agency to provide the Governor’s Office of Crime Control and Prevention (GOCCP), by March 1 each year, with the total dollar amount for the previous calendar year paid to plaintiffs and complainants to settle claims and pay judgments for police misconduct and civil rights actions. GOCCP must (1) adopt procedures for the collection and analysis of the information; (2) analyze and disseminate the information; and (3) by June 30 each year, make an annual report of the information and analysis to the General Assembly.

Fiscal Summary

State Effect: General fund expenditures increase by \$26,000 in FY 2019 to collect, analyze, and disseminate the required information. Future years are annualized. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	26,000	28,800	29,500	30,700	31,900
Net Effect	(\$26,000)	(\$28,800)	(\$29,500)	(\$30,700)	(\$31,900)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None. Local law enforcement agencies can provide the required information with existing resources.

Small Business Effect: None.

Analysis

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).

However, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. (Chapter 132 of 2015 increased the liability limit under MTCA from \$200,000 to \$400,000 for causes of action arising on or after October 1, 2015.)

MTCA covers a multitude of personnel, including some local officials (such as sheriffs and deputy sheriffs) 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.

Local Government Tort Claims Act

The Local Government Tort Claims Act (LGTC) 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. Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, LGTC 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). It further establishes that the local government is liable for the tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTC prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

Background: Claims under MTCA are paid out of the State Insurance Trust Fund, which is administered by the Treasurer’s Office. The Treasurer’s Office has previously advised

that it received and processed approximately 2,500 MTCA in fiscal 2017 and 2018 (to date), resulting in approximately \$8.3 million in total payments. Claim counts and payments have increased, partially due to the increase in MTCA's liability cap from \$200,000 to \$400,000 in October 2015. MTCA payments totaled \$3.3 million in fiscal 2016, \$5.6 million in fiscal 2017, and approximately \$3 million from July 2017 through December 2017. The Treasurer's Office does not expect this trend to change in the foreseeable future. The Governor's proposed fiscal 2019 budget includes an \$11.5 million appropriation for tort claims (including motor vehicle torts) under MTCA.

In addition to claims, approximately 125 to 150 litigation cases are filed each year under MTCA. One-third of these cases involve violations of the Maryland Constitution and/or Maryland Declaration of Rights, primarily arising out of law enforcement actions. The Treasurer's Office has noticed an increase in civil rights litigation in general, with lawyers and law firms who previously declined to pursue these cases choosing to litigate these claims, in part due to the increased damages cap.

State Expenditures: General fund expenditures for GOCCP increase by \$25,965 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring a part-time administrative clerk to collect, analyze, and disseminate the required information under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	0.5
Salary and Fringe Benefits	20,840
Operating Expenses	<u>5,125</u>
Total FY 2019 State Expenditures	\$25,965

Future year expenditures reflect a full part-time salary with annual increases and employee turnover and ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; cities of Bowie and Takoma Park; Governor's Office of Crime Control and Prevention; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

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