

# HOUSE BILL 1049

D3, E4

1lr1023

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By: **Delegate Wilkins**

Introduced and read first time: February 5, 2021

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Police Qualified Immunity and Accountability Act**

3 FOR the purpose of establishing, notwithstanding any other provision of law, that a law  
4 enforcement officer is not immune from civil or criminal liability for acts or omissions  
5 causing certain physical or mental injury that occur while the law enforcement  
6 officer is acting in an official capacity; prohibiting a person from bringing an action  
7 under this Act under certain circumstances; specifying that certain immunity does  
8 not apply to a claim brought under this Act; specifying that qualified immunity is  
9 not a defense to liability under this Act; requiring the Maryland Police Training and  
10 Standards Commission to review certain cases and make certain determinations;  
11 providing for certain damages under this Act; requiring a court to award reasonable  
12 attorney's fees and court costs to a prevailing plaintiff in certain actions brought  
13 under this Act; providing that, notwithstanding any other provision of law, if a claim  
14 is brought against a law enforcement officer's employer or the local jurisdiction  
15 where the law enforcement officer is employed under this Act, certain provisions of  
16 law apply; authorizing a law enforcement officer's employer or the local jurisdiction  
17 where the law enforcement officer is employed to seek certain reimbursement from  
18 a law enforcement officer under certain circumstances; authorizing a law  
19 enforcement officer's employer to revoke a law enforcement officer's pension under  
20 certain circumstances; defining certain terms; providing for the prospective  
21 application of this Act; and generally relating to civil and criminal liability for law  
22 enforcement officers, law enforcement officers' employers, and local jurisdictions.

23 BY adding to

24 Article – Courts and Judicial Proceedings

25 Section 5–1301 through 5–1304 to be under the new subtitle “Subtitle 13. Police  
26 Qualified Immunity and Accountability Act”

27 Annotated Code of Maryland

28 (2020 Replacement Volume)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Courts and Judicial Proceedings**

3 **SUBTITLE 13. POLICE QUALIFIED IMMUNITY AND ACCOUNTABILITY ACT.**

4 **5–1301.**

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
6 INDICATED.

7 (B) “LOCAL JURISDICTION” MEANS A COUNTY OR MUNICIPAL  
8 CORPORATION.

9 (C) “MARYLAND POLICE TRAINING AND STANDARDS COMMISSION” MEANS  
10 THE UNIT WITHIN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL  
11 SERVICES ESTABLISHED UNDER § 3–202 OF THE PUBLIC SAFETY ARTICLE.

12 (D) “MENTAL INJURY” MEANS THE OBSERVABLE, IDENTIFIABLE, AND  
13 SUBSTANTIAL IMPAIRMENT OF A PERSON’S MENTAL OR PSYCHOLOGICAL ABILITY TO  
14 FUNCTION.

15 (E) “OFFICER” MEANS A LAW ENFORCEMENT OFFICER AS DEFINED IN §  
16 3–101 OF THE PUBLIC SAFETY ARTICLE.

17 (F) (1) “PHYSICAL INJURY” MEANS THE IMPAIRMENT OF THE PHYSICAL  
18 CONDITION.

19 (2) “PHYSICAL INJURY” INCLUDES:

20 (I) SKIN BRUISING;

21 (II) PRESSURE SORES;

22 (III) BLEEDING;

23 (IV) BURNS;

24 (V) FRACTURE OF ANY BONE;

25 (VI) SUBDURAL HEMATOMA;

26 (VII) SOFT TISSUE SWELLING;

1 (VIII) INJURY TO ANY INTERNAL ORGAN; AND

2 (IX) ANY PHYSICAL CONDITION THAT IMPERILS HEALTH OR  
3 WELFARE.

4 5-1302.

5 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN OFFICER WHO  
6 CAUSES PHYSICAL OR MENTAL INJURY TO ANOTHER PERSON THROUGH AN ACT OR  
7 OMISSION COMMITTED WHILE THE OFFICER IS ACTING IN AN OFFICIAL CAPACITY IS:

8 (1) NOT IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR THE ACT  
9 OR OMISSION; AND

10 (2) LIABLE TO THE INJURED PERSON FOR LEGAL, EQUITABLE, AND  
11 ANY OTHER APPROPRIATE RELIEF.

12 (B) A PERSON MAY NOT BRING AN ACTION UNDER THIS SECTION TO  
13 RECOVER FOR PHYSICAL OR MENTAL INJURY IF THE ACT OR OMISSION COMMITTED  
14 BY THE OFFICER:

15 (1) DID NOT RISE ABOVE ORDINARY NEGLIGENCE;

16 (2) WAS NOT OUTSIDE THE SCOPE OF LAW ENFORCEMENT TRAINING  
17 AND STANDARDS; OR

18 (3) DID NOT CONSTITUTE MISCONDUCT.

19 (C) (1) STATUTORY IMMUNITY PROVIDED UNDER TITLE 5, SUBTITLE 5  
20 OF THIS ARTICLE, TITLE 12, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, OR  
21 COMMON LAW PUBLIC OFFICIAL IMMUNITY DOES NOT APPLY TO A CLAIM BROUGHT  
22 UNDER THIS SECTION.

23 (2) QUALIFIED IMMUNITY IS NOT A DEFENSE TO LIABILITY UNDER  
24 THIS SECTION.

25 (D) THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION  
26 SHALL:

27 (1) REVIEW ANY CASE BROUGHT UNDER THIS SECTION IN WHICH AN  
28 OFFICER WAS HELD LIABLE; AND

1           **(2) DETERMINE IF THE OFFICER'S CERTIFICATION TO WORK IN THE**  
2 **STATE SHOULD BE REVOKED.**

3           **(E) ANY DAMAGES AWARDED UNDER THIS SECTION MAY NOT EXCEED**  
4 **\$25,000.**

5           **(F) IN AN ACTION BROUGHT UNDER THIS SECTION, THE COURT SHALL**  
6 **AWARD REASONABLE ATTORNEY'S FEES AND COURT COSTS TO A PREVAILING**  
7 **PLAINTIFF.**

8 **5-1303.**

9           **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN ACTION IS**  
10 **BROUGHT AGAINST AN OFFICER'S EMPLOYER OR THE LOCAL JURISDICTION WHERE**  
11 **THE OFFICER IS EMPLOYED FOR AN ACT OR OMISSION THAT IS THE BASIS OF A CLAIM**  
12 **AGAINST THE OFFICER UNDER § 5-1302 OF THIS SUBTITLE, THE DAMAGES AWARDED**  
13 **SHALL BE SUBJECT TO THE FOLLOWING:**

14           **(1) THE NONECONOMIC DAMAGES AWARDED SHALL COMPLY WITH**  
15 **THE PROVISIONS OF § 11-108 OF THIS ARTICLE;**

16           **(2) THE ECONOMIC DAMAGES AWARDED SHALL COMPLY WITH THE**  
17 **PROVISIONS OF § 11-109 OF THIS ARTICLE;**

18           **(3) IN AN ACTION FOR WRONGFUL DEATH, THE DAMAGES AWARDED**  
19 **SHALL COMPLY WITH THE PROVISIONS OF § 3-904 OF THIS ARTICLE; AND**

20           **(4) IN AN ACTION FOR SURVIVORSHIP, THE DAMAGES AWARDED**  
21 **SHALL INCLUDE THE AMOUNT OF FUNERAL EXPENSES ALLOWED UNDER § 8-106 OF**  
22 **THE ESTATES AND TRUSTS ARTICLE IN ADDITION TO OTHER DAMAGES**  
23 **RECOVERABLE IN THE ACTION.**

24 **5-1304.**

25           **(A) THE OFFICER'S EMPLOYER OR THE LOCAL JURISDICTION WHERE THE**  
26 **OFFICER IS EMPLOYED MAY SEEK REIMBURSEMENT FROM THE OFFICER FOR ANY**  
27 **FINAL JUDGEMENT OR SETTLEMENT ENTERED AGAINST THE OFFICER'S EMPLOYER**  
28 **OR THE LOCAL JURISDICTION WHERE THE OFFICER IS EMPLOYED IF:**

29           **(1) THE OFFICER IS CONVICTED OF A CRIMINAL OFFENSE RELATED**  
30 **TO CONDUCT OF THE OFFICER THAT IS THE BASIS OF A CLAIM AGAINST THE OFFICER**  
31 **UNDER § 5-1302 OF THIS SUBTITLE; AND**

1           **(2) THE ACTION BROUGHT AGAINST THE OFFICER’S EMPLOYER OR**  
2 **THE LOCAL JURISDICTION WHERE THE OFFICER IS EMPLOYED IS RELATED TO THE**  
3 **OFFICER’S CONDUCT AND CONVICTION.**

4           **(B) THE OFFICER’S EMPLOYER MAY REVOKE AN OFFICER’S PENSION IF THE**  
5 **OFFICER IS CONVICTED OF A CRIMINAL OFFENSE RELATED TO THE CONDUCT OF**  
6 **THE OFFICER THAT IS THE BASIS OF A CLAIM AGAINST THE OFFICER UNDER § 5–1302**  
7 **OF THIS SUBTITLE.**

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
9 apply only prospectively and may not be applied or interpreted to have any effect on or  
10 application to any cause of action arising before the effective date of this Act.

11           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2021.