

HOUSE BILL 1012

D3, E4

2lr0510
CF 2lr2140

By: **Delegate Wilkins**

Introduced and read first time: February 10, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Police Immunity and Accountability Act**

3 FOR the purpose of specifying that a police officer who subjects or causes to be subjected
4 any individual to the deprivation of certain rights under the Maryland Constitution
5 or the U.S. Constitution is liable for certain damages; establishing that a police
6 officer is not immune from civil or criminal liability for violations of another
7 individual's constitutional rights; requiring the Maryland Police Training and
8 Standards Commission to review certain cases brought under this Act; requiring an
9 officer's employer or a local jurisdiction to satisfy certain judgments or settlements;
10 requiring an officer's employer or a local jurisdiction to seek certain reimbursement;
11 extending the notice to file claim deadlines under the Local Government Tort Claims
12 Act and the Maryland Tort Claims Act when the claim arises from certain acts,
13 omissions, or violations by a police officer; and generally relating to actions against
14 police officers and government liability.

15 BY repealing and reenacting, with amendments,
16 Article – Courts and Judicial Proceedings
17 Section 5–304
18 Annotated Code of Maryland
19 (2020 Replacement Volume and 2021 Supplement)

20 BY adding to
21 Article – Courts and Judicial Proceedings
22 Section 5–1301 and 5–1302 to be under the new subtitle “Subtitle 13. Police
23 Immunity and Accountability Act”
24 Annotated Code of Maryland
25 (2020 Replacement Volume and 2021 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – State Government
28 Section 12–106

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2021 Replacement Volume)

3 Preamble

4 WHEREAS, The Equal Protection Clause of the United States Constitution protects
5 individuals from biased and discriminatory policing; and

6 WHEREAS, Every Maryland resident has the right to fair, safe, and equitable
7 policing; and

8 WHEREAS, In order to hold police officers accountable and to promote proper
9 policing, an officer who violates another individual's constitutional rights under the State
10 or U.S. Constitution is not immune from civil or criminal liability for the violation; now,
11 therefore,

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

14 **Article – Courts and Judicial Proceedings**

15 5–304.

16 (a) This section does not apply to an action:

17 (1) Against a nonprofit corporation described in § 5–301(d)(23), (24), (25),
18 (26), (28), or (29) of this subtitle or its employees; or

19 (2) Brought under § 5–117 of this title.

20 (b) (1) Except as provided in **PARAGRAPH (2) OF THIS SUBSECTION AND**
21 **subsections (a) and (d) of this section**, an action for unliquidated damages may not be
22 brought against a local government or its employees unless the notice of the claim required
23 by this section is given within 1 year after the injury.

24 (2) **NOTICE OF A CLAIM ARISING FROM A TORTIOUS ACT OR OMISSION**
25 **OR A VIOLATION OF A CONSTITUTIONAL RIGHT COMMITTED BY A POLICE OFFICER**
26 **SHALL BE GIVEN WITHIN 3 YEARS AFTER THE INJURY.**

27 (3) The notice shall be in writing and shall state the time, place, and cause
28 of the injury.

29 (c) (1) The notice required under this section shall be given in person or by
30 certified mail, return receipt requested, bearing a postmark from the United States Postal
31 Service, by the claimant or the representative of the claimant.

1 (2) Except as otherwise provided, if the defendant local government is a
2 county, the notice required under this section shall be given to the county commissioners
3 or county council of the defendant local government.

4 (3) If the defendant local government is:

5 (i) Baltimore City, the notice shall be given to the City Solicitor;

6 (ii) Howard County or Montgomery County, the notice shall be given
7 to the County Executive; and

8 (iii) Anne Arundel County, Baltimore County, Frederick County,
9 Harford County, or Prince George's County, the notice shall be given to the county solicitor
10 or county attorney.

11 (4) For any other local government, the notice shall be given to the
12 corporate authorities of the defendant local government.

13 (d) Notwithstanding the other provisions of this section, unless the defendant can
14 affirmatively show that its defense has been prejudiced by lack of required notice, upon
15 motion and for good cause shown the court may entertain the suit even though the required
16 notice was not given.

17 (e) **(1) [This] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS**
18 **section does not apply if, within 1 year after the injury, the defendant local government has**
19 **actual or constructive notice of:**

20 **[(1)] (I) The claimant's injury; or**

21 **[(2)] (II) The defect or circumstances giving rise to the claimant's injury.**

22 **(2) FOR A CLAIM ARISING FROM A TORTIOUS ACT OR OMISSION OR A**
23 **VIOLATION OF A CONSTITUTIONAL RIGHT COMMITTED BY A POLICE OFFICER, THIS**
24 **SECTION DOES NOT APPLY IF, WITHIN 3 YEARS AFTER THE INJURY, THE DEFENDANT**
25 **LOCAL GOVERNMENT HAS ACTUAL OR CONSTRUCTIVE NOTICE OF:**

26 **(I) THE CLAIMANT'S INJURY; OR**

27 **(II) THE DEFECT OR CIRCUMSTANCES GIVING RISE TO THE**
28 **CLAIMANT'S INJURY.**

29 **SUBTITLE 13. POLICE IMMUNITY AND ACCOUNTABILITY ACT.**

30 **5-1301.**

1 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) "LOCAL JURISDICTION" MEANS A COUNTY OR MUNICIPAL
4 CORPORATION.

5 (C) "MARYLAND POLICE TRAINING AND STANDARDS COMMISSION" MEANS
6 THE UNIT WITHIN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
7 SERVICES ESTABLISHED UNDER § 3-202 OF THE PUBLIC SAFETY ARTICLE.

8 (D) "OFFICER" MEANS A POLICE OFFICER AS DEFINED IN § 3-201 OF THE
9 PUBLIC SAFETY ARTICLE.

10 5-1302.

11 (A) AN OFFICER WHO SUBJECTS OR CAUSES TO BE SUBJECTED ANY
12 INDIVIDUAL TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES
13 SECURED BY THE MARYLAND CONSTITUTION OR THE U.S. CONSTITUTION SHALL
14 BE LIABLE FOR DAMAGES BROUGHT IN AN ACTION AGAINST THE OFFICER.

15 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN OFFICER WHO
16 VIOLATES ANOTHER INDIVIDUAL'S CONSTITUTIONAL RIGHTS UNDER THE
17 MARYLAND CONSTITUTION OR THE U.S. CONSTITUTION IS NOT IMMUNE FROM
18 CIVIL OR CRIMINAL LIABILITY FOR THE VIOLATION.

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

23 (2) QUALIFIED IMMUNITY IS NOT A DEFENSE TO LIABILITY OR AN
24 IMMUNITY FROM SUIT UNDER 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 OR OFFICER'S EMPLOYER:

29 (I) WAS HELD LIABLE; OR

30 (II) ENTERED INTO A SETTLEMENT AGREEMENT; AND

1 [(2)] (II) the Treasurer or designee denies the claim finally; and

2 [(3)] (III) the action is filed within 3 years after the cause of action arises.

3 **(2) A CLAIM ARISING FROM A TORTIOUS ACT OR OMISSION OR A**
4 **VIOLATION OF A CONSTITUTIONAL RIGHT COMMITTED BY A POLICE OFFICER SHALL**
5 **BE SUBMITTED WITHIN 3 YEARS AFTER THE INJURY.**

6 (c) (1) If a claimant fails to submit a written claim in accordance with
7 subsection [(b)(1)] **(B)(1)(I) OR (2)** of this section, on motion by a claimant and for good
8 cause shown, the court may entertain an action under this subtitle unless the State can
9 affirmatively show that its defense has been prejudiced by the claimant's failure to submit
10 the claim.

11 (2) **[Subsection (b)(1) and (2)] EXCEPT AS PROVIDED IN PARAGRAPH (3)**
12 **OF THIS SECTION, SUBSECTION (B)(1)(I) AND (II)** of this section does not apply if, within
13 1 year after the injury to person or property that is the basis of the claim, the State has
14 actual or constructive notice of:

15 (i) the claimant's injury; or

16 (ii) the defect or circumstances giving rise to the claimant's injury.

17 **(3) FOR A CLAIM ARISING FROM A TORTIOUS ACT OR OMISSION OR A**
18 **VIOLATION OF A CONSTITUTIONAL RIGHT COMMITTED BY A POLICE OFFICER,**
19 **SUBSECTION (B)(1)(II) AND (2) OF THIS SECTION DOES NOT APPLY IF, WITHIN 3**
20 **YEARS AFTER THE INJURY TO PERSON OR PROPERTY THAT IS THE BASIS OF THE**
21 **CLAIM, THE STATE HAS ACTUAL OR CONSTRUCTIVE NOTICE OF:**

22 **(I) THE CLAIMANT'S INJURY; OR**

23 **(II) THE DEFECT OR CIRCUMSTANCES GIVING RISE TO THE**
24 **CLAIMANT'S INJURY.**

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

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2022.