

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 793

(Senator West)

Judicial Proceedings

Judiciary

Maryland Tort Claims Act - Sheriffs and Deputy Sheriffs - County Responsibility

This bill clarifies the responsibilities of the State and local governments and establishes related procedures for claims filed in State court under the Maryland Tort Claims Act (MTCA) against a sheriff or deputy sheriff engaged in a “detention center function” or “law enforcement function.” The bill also expresses the intent of the General Assembly regarding various provisions of the bill and cooperation and collaboration between specified stakeholders regarding allocation of responsibility for these tort claims.

Fiscal Summary

State Effect: Special fund expenditures for the State Insurance Trust Fund (SITF) decrease by at least \$75,000 in FY 2025, as discussed below. Future years reflect annualization. Revenues are not directly affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	(75,000)	(100,000)	(100,000)	(100,000)	(100,000)
Net Effect	\$75,000	\$100,000	\$100,000	\$100,000	\$100,000

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

Local Effect: Local expenditures (collectively) increase by at least \$75,000 in FY 2025 and by \$100,000 annually thereafter to account for current SITF expenditures being transferred to counties. Future expenditures for counties may decrease because of insurance coverage, as discussed below. Revenues are not directly affected.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Detention center function” includes (1) operating and administering a detention center and (2) supervising personnel who perform those functions.

“Law enforcement function” includes conducting patrol, making stops and arrests, investigating criminal offenses, and supervising personnel who perform those functions.

Insurance and Assessments – § 9-108 of the State Finance and Procurement Article

The bill incorporates the definitions of “detention center function” and “law enforcement function” into § 9-108 of the State Finance and Procurement Article, which addresses insurance options for counties and assessments against counties for liability coverage and defense costs in MTCA claims involving a sheriff or deputy sheriff engaged in specified activities, including law enforcement functions and detention functions. The bill also clarifies that the insurance authorization under § 9-108 does not specifically apply to personnel covered under that statute.

Tort Claims – Procedures, Responsibilities, and Liability

The bill clarifies procedures, responsibilities, and liability for a tort claim filed in State court against a sheriff, a deputy sheriff, or the State claiming tortious conduct by a sheriff or a deputy sheriff arising out of activities related to the performance of a law enforcement function or a detention center function (“tort claim”).

A tort claim must be considered, defended, settled, and paid in the same manner as any other claim filed against a county. The State is the proper defendant in a tort claim, and the county may not be named as a defendant in a tort claim.

Liability for a tort claim may not exceed the State’s waiver of immunity under MTCA, and the State Treasurer is not liable for a tort claim under provisions that address property loss or damage. The duties, responsibilities, and liabilities of the State under MTCA for a tort claim must be assumed by the applicable county.

Intent of the General Assembly

The bill specifies that it is the intent of the General Assembly that:

- counties bear responsibility for all matters related to the performance by sheriffs and deputy sheriffs of a county or Baltimore City for “law enforcement functions” and “detention center functions” as defined under the bill;
- the list of activities included within the definitions of “law enforcement functions” and “detention center functions” in the bill are illustrative and not exhaustive; and
- the Office of the Attorney General (OAG) and the State Treasurer work cooperatively with the Maryland Association of Counties (MACo), the counties, and the counties’ respective insurers when disputes arise regarding the allocation of responsibility for tort claims under the bill.

Current Law:

Court Decision and Legislative History

Prior to 1989, the State Treasurer and the Board of Public Works were not asked to pay a settlement or judgment arising from a sheriff’s office; this was the responsibility of local governments. In *Rucker v. Harford County*, 316 Md. 275 (1989), the Maryland Court of Appeals (now the Supreme Court of Maryland) held that sheriffs and deputy sheriffs are State personnel for purposes of MTCA, and the State bears financial responsibility for judgments, settlements, and defense costs for their tort claims, in accordance with the terms, conditions, and limitations of MTCA.

Sheriffs have a variety of duties. In some counties, sheriffs only perform traditional State functions (*e.g.*, courthouse security); in other counties, sheriffs perform State and local functions (*e.g.*, detention center operations). Chapter 508 of 1990, which represented a compromise between stakeholders, specified that sheriffs and deputy sheriffs are State personnel under MTCA, but counties indemnify the State for liability arising out of law enforcement and detention center functions of sheriffs and deputy sheriffs. This indemnification occurs through insurance obtained by counties or the set off of tax funds if the insurance is insufficient. In addition to provisions under MTCA, the compromise included the initial version of the provisions of § 9-108 of the State Finance and Procurement Article discussed below.

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 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). Lawsuits filed under MTCA typically proceed against the State as the named defendant, not the State employee.

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. Sheriffs and deputy sheriffs are considered State personnel under MTCA. 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.

In general, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. However, for claims arising on or after July 1, 2022, if liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award.

The State does not waive its immunity for punitive damages. 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.

Local Governments – Insurance Coverage and Assessments

Section 9-108 of the State Finance and Procurement Article authorizes a county or Baltimore City to obtain insurance to provide the coverage and defense necessary under MTCA for personnel covered under statutory provisions addressing a sheriff or deputy sheriff engaged in specified activities, including law enforcement functions and detention center functions. If a county or Baltimore City does not obtain adequate insurance coverage to satisfy the coverage and defense necessary under MTCA, an assessment for coverage and for payment of any litigation expenses, other than for compensation for the time spent by any State employee working for the Attorney General, must be set off from (1) any tax that has been appropriated in the State budget to the county or Baltimore City or (2) the subdivision’s share of any income tax collected by the State Comptroller.

State Expenditures: Special fund expenditures for SITF decrease by at least \$75,000 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date, and by \$100,000 annually thereafter. According to the State Treasurer's Office, State out-of-pocket costs of litigation (including settlements) for law enforcement and detention center cases over the last five years have averaged approximately \$100,000 per year, excluding personnel costs associated with handling the coverage and defense of these cases. While the bill also reduces OAG workloads, that reduction is not associated with a reduction in SITF expenditures.

In the 34 years since the 1990 compromise discussed above, there has been a gradual breakdown in the distribution of liability and responsibility between the State and counties for tort claims involving sheriffs and deputy sheriffs. In recent years, OAG has been unsuccessful in rejecting the State's liability for sheriffs' local functions. While the State has (and has had) the authority to pursue indemnification through tax set offs, it did not do so for several years and only recently restarted the practice (one time).

Local Expenditures: Local expenditures for affected counties (collectively) increase by at least \$75,000 in fiscal 2025 and by \$100,000 annually thereafter to account for current SITF expenditures transferred to counties under the bill. Future expenditures for counties may decrease because of insurance coverage, as discussed below.

According to MACo, the bill's provisions allow counties to obtain insurance coverage for claims through the Local Government Insurance Trust (LGIT), which has not been possible under existing statute. Coverage through LGIT is often less expensive than other options. MACo further advises that paying for claims through LGIT coverage is less expensive than tax set offs under existing statute. As noted above, the State has not used tax set offs to recoup the costs of defense and liability in applicable tort claims for several years. However, MACo advises that should the State resume regular use of tax set offs, future expenditures for affected counties are reduced if counties can pay for those settlements directly through LGIT coverage, which is made possible under the bill. According to MACo, potential settlements in pending cases range from thousands to millions.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 895 (Delegate Embry) - Judiciary.

Information Source(s): Prince George’s County; Office of the Attorney General; State Treasurer’s Office; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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