

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 271

(Senator Jackson)

Judicial Proceedings

Judiciary

Maryland Tort Claims Act - Employees of an Office of a Sheriff

This bill expands the definition of “State personnel” under the Maryland Tort Claims Act (MTCA) to include an employee of the office of a sheriff of a county or Baltimore City.

Fiscal Summary

State Effect: Minimal increase in special fund expenditures for the State Insurance Trust Fund (SITF) for tort claims involving sheriffs’ employees, as discussed below. Revenues are not affected.

Local Effect: Minimal decrease in local expenditures for tort claims involving sheriffs’ employees, as discussed below. Revenues are not affected.

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. MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. While MTCA generally defines “State personnel” as a State employee or official who is paid in whole or in part by the Central Payroll Bureau in the Office of the Comptroller of the Treasury, *sheriffs and deputy sheriffs*

of a county or Baltimore City are specifically included as State personnel for purposes of the Act.

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.

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.

Chapters 610 and 611 of 2024 – Tort Claims Involving Sheriffs and Deputy Sheriffs (Not Amended by the Bill)

Sheriffs and deputy sheriffs perform local functions as the principal law enforcement entities in some counties and State functions expressly assigned to sheriffs in Maryland common law and statute. In general, counties are liable for the law enforcement and detention center activities of sheriffs and deputy sheriffs, and the State is liable for all other sheriff and deputy sheriff functions (e.g., courthouse security, service of process, and personnel and administrative functions).

Chapters 610 and 611 clarify the responsibilities of the State and local governments and establish related procedures for claims filed in State court under MTCA against a *sheriff or deputy sheriff* engaged in a “detention center function” or “law enforcement function.” “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.

Pursuant to Chapters 610 and 611, special provisions apply to 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. These types of tort claims 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 these tort claims, and the county may not be named as a defendant in these tort claims.

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

Chapters 610 and 611 also amended Section 9-108 of the State Finance and Procurement Article, which applies to a sheriff or deputy sheriff engaged in specified activities, including law enforcement functions and detention center functions. Section 9-108 authorizes a county or Baltimore City to obtain insurance to provide the coverage and defense necessary under MTCA. 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.

Chapters 610 and 611 also specify 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;
- the list of activities included within the definitions of law enforcement functions and detention center functions 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 these types of tort claims.

Local Government Tort Claims Act

The Local Government Tort Claims Act (LGTCA) establishes that a local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

In general, LGTCA 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). Higher liability limits apply to claims involving law enforcement officers that arise on or after July 1, 2022, and claims involving child sexual abuse.

State Expenditures: Claims under MTCA are paid out of SITF, which is administered by the State Treasurer's Office (STO). Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium.

The bill increases the pool of claims filed under MTCA and paid by SITF but does not identify a source to assess premiums for these MTCA claims. Thus, special fund expenditures increase minimally for SITF payments of tort claims involving sheriffs' employees. This estimate assumes that STO can investigate applicable tort claims with existing budgeted resources. OAG, which is involved in MTCA litigation, advises that the bill minimally impacts OAG.

Local Expenditures: Local government expenditures decrease minimally for litigation and payments of tort claims involving sheriffs' employees and potentially decreased insurance premiums. MACo advises that the bill may result in minimal savings for any jurisdiction that is currently assuming the liability and representation of civilian employees of a sheriff's office.

Baltimore City advises that its sheriff's office has 120 nonlaw enforcement employees, 68 of which are court security officers. The court security officers perform functions related to court security and judicial protection; the remaining employees are tasked with various responsibilities, including records management, process serving, fleet management, human resources, and finance.

Additional Information

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

Designated Cross File: HB 1507 (Delegate Toles) - Rules and Executive Nominations.

Information Source(s): Baltimore City; Washington County; Maryland State Treasurer's Office; Maryland Association of Counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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