HB 487

Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 487 (Delegate Mireku-North)
Judiciary

Unhoused Individuals - Rights, Civil Action, and Affirmative Defense

This bill establishes that unhoused individuals have certain rights relating to engaging in "life-sustaining activities." The bill prohibits certain governmental entities, officials, or agents from imposing specified penalties for exercising a right established under the bill or for offering aid to unhoused individuals on or about public places. The bill also authorizes the Attorney General or an individual harmed by a violation of the bill's provisions to bring a civil action against governmental entities, officials, or agents. Furthermore, the bill establishes an affirmative defense of necessity for certain criminal prosecutions relating to trespass or disturbing the peace. Finally, the bill repeals the authority of a municipality to prohibit vagrancy. The provisions of the bill must supersede any local law or ordinance comparable in subject matter except to the extent that the local law or ordinance provides broader applicability or more protections for unhoused individuals than the bill. The bill has a severability clause.

Fiscal Summary

State Effect: Potential significant increase in State expenditures (multiple fund types), as discussed below. The bill may also have a significant operational impact on affected agencies, including the State Treasurer's Office (STO) and the Maryland Department of Transportation (MDOT). Revenues are not materially affected.

Local Effect: Potential significant increase in local government expenditures, as discussed below. Revenues are not materially affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Select Definitions

"Life-sustaining activity" means moving, resting, sitting, standing, lying down, sleeping, eating, drinking, or protecting oneself from the elements. "Life-sustaining activity" includes storing personal property, as needed, to safely shelter from the elements.

"Unhoused individual" means an individual who lacks a fixed, regular, and adequate nighttime residence. "Unhoused individual" includes an individual who (1) shares the housing of another individual due to loss of housing, economic hardship, or similar reason; (2) lives in a motel, a hotel, a trailer park, or camping grounds due to a lack of access to an adequate alternative indoor space; (3) lives in an emergency or transitional shelter; (4) lives in a place unfit for human habitation; (5) lives in a car, a park, an abandoned building, substandard housing, a transportation station, or similar setting; (6) is a minor abandoned in a hospital; or (7) is a minor awaiting a foster care placement.

Rights of Unhoused Individuals

The bill establishes that all unhoused individuals have the right to:

- be on or about "public places" within the State without being discriminated against on the basis of actual or perceived housing status;
- engage in life-sustaining activities on or about public places, provided that such activities do not obstruct the normal movement of pedestrian or vehicular traffic in such a manner that creates a hazard to others, unless an "adequate alternative indoor space" is available and has been offered to the individual, including transportation for the individual and the individual's belongings;
- use and move freely in public places without being discriminated against on the basis of actual or perceived housing status;
- privacy in personal property stored on or about public places to the same extent as personal property stored in a private dwelling;
- pray, meditate, worship, or practice religion on or about public places without being discriminated against on the basis of actual or perceived housing status;
- occupy a motor vehicle or recreational vehicle parked on or about a public place that is not obstructing the normal movement of traffic;
- relocate a motor vehicle or recreational vehicle being used for life-sustaining activities prior to receiving a parking ticket or the vehicle being towed;
- retrieve items from a towed motor vehicle or recreational vehicle; and

- reclaim a towed motor vehicle or recreational vehicle from storage free of charge or at a reduced rate upon consideration of the individual's ability to pay any costs.

Restrictions on Civil and Criminal Penalties

The State, an agency of the State, a political subdivision of the State, or an official or agent of the State, an agency of the State, or a political subdivision of the State acting under color of law may not (1) impose a civil or criminal penalty against an unhoused individual for exercising a right described above or (2) impose a civil or criminal penalty against any individual for soliciting, sharing, accepting, or offering food, water, money, or other donations to unhoused individuals on or about public places.

Civil Actions and Authorized Relief

An individual harmed by a violation of the provisions described above may bring a civil action against the State, an agency of the State, a political subdivision of the State, or an official or agent of the State or a political subdivision of the State acting under color of law that implements or enforces a limitation or requirement in violation of the bill. The Attorney General may bring a civil action on behalf of the residents of the State against a governmental unit that implements or enforces a limitation or requirement in violation of the bill.

A court may award appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief. A court may award the costs of litigation, including reasonable attorney's fees, to a prevailing plaintiff.

If the court finds that a claim is frivolous, the court may award damages to a prevailing defendant. These remedies are in addition to any other remedies available at law or in equity.

Defense of Necessity

In a prosecution for criminal trespass § 6-402, § 6-409, or § 6-410 of the Criminal Law Article or disturbing the peace or disorderly conduct under § 10-201 of the Criminal Law Article (or any similar local law or ordinance), a defendant may assert an affirmative defense of necessity if (1) the defendant committed the alleged criminal act while engaging in a life-sustaining activity and (2) the defendant, at the time of committing the criminal act, did not have access to an adequate alternative indoor space. A defense of necessity creates a rebuttable presumption that an adequate alternative indoor space was not available to the defendant.

Declaration and Expressed Intent of the General Assembly

Under the bill, the General Assembly declares that threatening or imposing civil or criminal punishments on unhoused individuals for undertaking life-sustaining activities, including sleeping or taking shelter in an unobtrusive manner on public land in the absence of adequate alternative indoor places, violates the protection against cruel and unusual punishment and excessive fines guaranteed by Article 25 of the Declaration of Rights.

The bill also expresses the intent of the General Assembly that the courts must liberally construe the bill's provisions to maximize the protections afforded by it to unhoused individuals in the State.

Current Law:

Article 25 of the Maryland Declaration of Rights and the Eighth Amendment to the U.S. Constitution

Article 25 of the Maryland Declaration of Rights prohibits State courts from requiring excessive bail, imposing excessive fines, and inflicting cruel or unusual punishment. Under the Eighth Amendment to the U.S. Constitution, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

U.S. Supreme Court Decision

In *City of Grants Pass v. Johnson*, No. 23-175 (decided June 28, 2024), the U.S. Supreme Court held that a local ordinance that prohibits homeless individuals from using blankets, pillows, or cardboard boxes for protection from the elements while sleeping within the city limits is a generally applicable prohibition on camping on public property and does not violate the ban on cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution.

Municipalities – Authorized Prohibitions

Section 5-207 of the Local Government Article authorizes a municipality to prohibit vagrancy, vice, gambling, and houses of prostitution within the municipality.

Trespass

Statute includes multiple prohibitions against trespassing on property. For example, under § 6-402 of the Criminal Law Article, a person may not enter or trespass on property that is posted conspicuously against trespass by (1) signs placed where they reasonably may be seen or (2) paint marks that meet specified requirements. Under § 6-403 of the Criminal

Law Article, a person may not wantonly enter or cross over private property after having been notified by the owner or the owner's agent not to do so, unless entering under a good faith claim of right or ownership. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a $500 maximum fine. For a second violation occurring within two years of the first violation, violators are subject to imprisonment for up to six months and/or a fine up to $1,000. For each subsequent violation occurring within two years after the preceding violation, violators are subject to imprisonment for up to one year and/or a fine up to $2,500.

Section 6-409 of the Criminal Law Article applies to refusals to leave public buildings or grounds during regular business hours or during the time the location is regularly closed to the public, subject to specified conditions. Violators are guilty of a misdemeanor punishable by imprisonment for up to six months and/or a $1,000 maximum fine. The same penalty applies to violations § 6-410, which prohibits a person from committing wanton trespass on the property of Government House.

Disturbing the Peace and Disorderly Conduct – § 10-201 of the Criminal Law Article

Section 10-201 of the Criminal Law Article contains a variety of prohibitions that constitute disturbing the peace and disorderly conduct.

Generally, a person may not (1) willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance; (2) willfully act in a disorderly manner that disturbs the public peace; or (3) willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.

A person who enters the land or premises of another or a beach, as specified, may not willfully act in a disorderly manner or disturb the peace of persons on the land, premises, or beach by making an unreasonably loud noise. Additionally, a person from any location may not, by making an unreasonably loud noise, willfully disturb the peace of another on the other's land or premises, in a public place, or on a public conveyance.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 60 days and/or a maximum fine of $500.

"Public place" means a place to which the public or a portion of the public has access and a right to resort for business, dwelling, entertainment, or other lawful purpose. Airport terminals, bus stations, subway stations, public buildings, public parking lots, and public streets, sidewalks, and rights of way are specifically included as public places under § 10-201.

"Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation, including specified modes of transportation. For purposes of a prosecution, a public conveyance or a public place need not be devoted solely to public use.

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).

MTCA covers a multitude of personnel, including some local officials 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.

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. If the liability of the State or the State's units arises under a claim of child sexual abuse, the liability may not exceed $890,000 to a single claimant for injuries arising from an incident or occurrence.

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 Government Tort Claims Act

The Local Government Tort Claims Act (LGTCA) 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.

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). However, for claims arising on or after July 1, 2022, if the liability of a local government 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. If the liability of a local government arises under a claim of child sexual abuse, the liability may not exceed $890,000 to a single claimant for injuries arising from an incident or occurrence.

A local government must provide its employees a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government. LGTCA further establishes that the 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. A person may not execute against an employee on a judgment rendered for tortious acts or omissions committed by the employee within the scope of employment with a local government. However, an employee is fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice. In circumstances involving actual malice, the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under LGTCA.

A local government is not liable for punitive damages. However, a local government, subject to the liability limits, may indemnify an employee for a judgment for punitive damages entered against the employee. A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

State Expenditures: Special fund expenditures may increase significantly for the State Insurance Trust Fund (SITF) and the Transportation Trust Fund for payments of claims brought under the bill. General fund expenditure increase, likely significantly, for the

State Treasurer and agencies that require additional attorneys to address litigation under the bill and for SITF assessments for agencies that are the subject of MTCA claims brought under the bill.

State Treasurer's Office

STO advises that the bill may significantly increase SITF expenditures for MTCA claims, including claims for infringing on the rights of an unhoused individual secured by the Maryland Declaration of Rights or the Maryland Constitution pursuant to the bill. A State employee or State police officer may be liable for damages in a civil or law enforcement action for depriving an individual of or infringing on an individual right secured by the Maryland Declaration of Rights or the Maryland Constitution. STO further notes that the bill is unclear as to the type of damages to be awarded or which cap would apply (the general $400,000 cap or the $890,000 for intentional torts and constitutional violations involving law enforcement officers).

Furthermore, if the bill results in higher payments from SITF for claims filed under MTCA and/or increased litigation costs for MTCA, SITF expenditures may increase significantly and affected State agencies may incur increased general fund expenditures for SITF premiums and assessments.

STO advises that additional potential expenditures associated with the bill include additional attorneys and support staff for the Treasurer's Tort Litigation Unit and attorneys for affected State agencies.

Maryland Department of Transportation

MDOT advises that that bill results in fiscal and operational impacts, including increased legal risk to the Maryland Aviation Administration (MAA) if the airport does not properly accommodate unhoused individuals or violates their rights.

Airport staff, including security and janitorial teams, may need additional training on interactions with unhoused individuals, and new procedures may also need to be developed for handling issues such as trespassing or loitering. If the bill increases the number of unhoused individuals in public spaces, MAA staff needs to ensure their activities do not obstruct traffic or create safety hazards. Additional measures to manage public areas and maintain sanitation may be required, likely resulting in increased operational costs related to maintenance of facilities.

An increase in legal challenges and lawsuits related to events at the airport may result in increased legal costs and increased insurance premiums.

MDOT advises that for reasons similar to the ones stated above, the bill also has significant operational implications for the Maryland Transit Administration (MTA) Police department, including additional patrols in areas that are typically not designated for regular patrols.

It should also be noted that while most State agencies are covered by the liability limits of MTCA, MTA's tort liability is governed by the Transportation Article. Unlike MTCA, the Transportation Article does not include a limit on liability.

Local Expenditures: Local expenditures may increase significantly for payment and litigation of claims under LGTCA and increased operational expenditures for counties, as described below.

According to the Maryland Association of Counties (MACo), the bill has a significant impact on local government operations. MACo advises that in addition to altering how social workers, human service agencies, and public safety officials can interact with unhoused individuals, the bill's requirement to offer adequate shelter consistent with specified standards before taking any other diversion or enforcement measures presents a challenge. Counties may experience increased litigation costs and increased public health challenges. MACo advises that the magnitude of these increased costs is difficult to calculate but is considered to be significant.

The Maryland Municipal League advises that the bill increases costs for local governments to defend against alleged violations and potentially prepare their "public places" to comply with the bill to the extent possible and reasonable.

Prince George's County advises that the bill likely necessitates additional services around county buildings to address the increased population of unhoused individuals in those areas, such as landscaping, custodial services, and building security. Costs associated with these efforts range from $175,000 to $350,000 per year.

Calvert County advises that the bill leads to increased demand on government services and facilities. Should the county have to provide "adequate alternative indoor spaces," costs are estimated at $1.5 million in fiscal 2026. Additional implementation costs include responses by law enforcement and county staff to citizen and business complaints, litigation expenses, and costs for storing belongings/vehicles (or towing) abandoned vehicles in county parking lots.

Small Business Effect: The bill may have a meaningful effect, including increased operational expenditures, on small businesses located in areas that attract significant numbers of unhoused individuals as a result of the bill.

Additional Information

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

Designated Cross File: SB 484 (Senator Muse) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Calvert, Montgomery, and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; SCOTUSblog; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2025
js/jkb

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510