

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 332
Judiciary

(Delegate Charkoudian)

Civil Actions - Violation of Constitutional Rights (No Kings Act)

This bill authorizes an aggrieved party to bring an action against an individual who, under color of law, deprives the aggrieved party or causes or allows the aggrieved party to be deprived of a right, a privilege, or an immunity secured by the U.S. Constitution. The bill specifies the types of relief available and authorizes a court to award reasonable attorney's fees and costs. The statute of limitations for a cause of action is three years after the cause of action accrues. The bill applies to any civil action pending on the bill's October 1, 2026 effective date.

Fiscal Summary

State Effect: Potential significant increase in special fund expenditures if the bill results in higher payments from the State Insurance Trust Fund (SITF) for claims filed under the bill or increased litigation of cases. General fund expenditures increase for State agencies subject to higher SITF assessments if SITF incurs losses from payments of claims. Personnel expenditures (reimbursable funds and general funds) increase by \$206,800 in FY 2027, as discussed below. Future years reflect annualization and inflation. Revenues are not affected.

Local Effect: Potential significant increase in expenditures for local governments to (1) pay judgment awards and fees under the bill; (2) litigate claims filed under the bill; and (3) pay increased insurance premiums for liability coverage. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An aggrieved party may seek damages and declaratory and injunctive relief. However, in an action against a judicial officer, injunctive relief is available only if a declaratory judgment is violated or declaratory relief is unavailable. A defendant may assert a defense of absolute or qualified immunity to the same extent as a person sued under 42 U.S.C. § 1983 under like circumstances. The bill may not be construed to waive or abrogate any defense of sovereign immunity otherwise available.

A court may award reasonable fees and costs, including attorney's fees and expert witness fees, to a prevailing plaintiff under the bill, but may not award fees or costs against a judicial officer unless the judicial officer acted clearly in excess of the judicial officer's jurisdiction.

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. 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. Separate provisions apply to claims involving child sexual abuse.

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. Separate provisions apply to claims involving child sexual abuse.

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 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.

Lawsuits Under 42 USC § 1983 and Federal Qualified Immunity

42 USC § 1983 is a federal law that allows individuals to sue state or local government officials acting under color of law for constitutional rights violations. Plaintiffs can seek damages, injunctive relief, declaratory relief and attorney's fees. Section 1983 lawsuits are against a person (e.g., the government employee). States and the federal government cannot be named as defendants in these lawsuits; however, local government units and municipalities can be named as defendants.

In general, judges, prosecutors, and legislators performing their legitimate functions are examples of individuals who have absolute immunity from § 1983 lawsuits. Qualified immunity, which dates back to 1871 when Congress adopted 42 USC § 1983, is a legal doctrine created by the U.S. Supreme Court under which a government official is shielded from civil liability if the official's actions do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

State Expenditures: Special fund expenditures increase, perhaps significantly, for litigation and payment of claims. General fund expenditures may increase significantly for SITF assessments against affected State agencies. Transportation Trust Fund (TTF) expenditures may also increase for payment of claims. Fiscal 2027 personnel expenditures increase by \$90,008 for the State Treasurer's Office (STO) and \$116,835 for the Office of the Attorney General (OAG).

It is not clear the extent to which the bill's provisions interact with the MTCA. The bill does not mention the MTCA and is not drafted to those provisions. However, the bill's provisions "may not be construed to waive or abrogate any defense of sovereign immunity otherwise available." As discussed above, the MTCA is a limited waiver of the State's sovereign immunity, subject to specified requirements, liability limits, and limits on attorney's fees.

MTCA claims are filed against the State, not the State employee whose actions form the basis of the claim. The State is not typically named in 42 U.S.C. § 1983 lawsuits because of its Eleventh Amendment immunity. As noted above, the MTCA applies to State constitutional torts. *While there are available avenues to pursue these claims under existing statutes*, the bill essentially establishes a State level 42 U.S.C. § 1983 claim. Attorney's fees and costs are already recoverable by statute in federal court. The extent to which the bill increases claims against the State and related expenses, while potentially significant, cannot be reliably determined at this time. However, it is assumed that the authority under the bill to pursue claims in State courts increases the overall volume of cases.

State Treasurer's Office

STO advises that the bill may significantly increase claims and lawsuits filed under MTCA and SITF and the amount of damages claimed. STO anticipates increased litigation expenses, increased cost of settlements, and higher verdicts. In addition, the potential for attorney's fees and litigation costs exceeding the value of the claim may force the State to settle cases that would otherwise be litigated. Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. 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. Thus, general fund expenditures increase, potentially significantly, for State agencies that are subject to higher SITF premiums/assessments as a result of the bill.

Given current workload, the Insurance Division of STO requires additional personnel to implement the bill. Thus, reimbursable fund expenditures increase by \$90,008 in fiscal 2027, which accounts for the bill's October 1, 2026 effective date. This estimate reflects the cost of hiring one adjuster to investigate claims filed under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.0
Salary and Fringe Benefits	\$80,867
Operating Expenses	<u>9,141</u>
FY 2027 STO Personnel Expenditures	\$90,008

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Although STO advises of the need for two investigators, this analysis reflects the assumption that the volume of additional work necessitates one additional investigator. Should additional resources be required, STO may request them through the annual budget process.

Office of the Attorney General

OAG advises that the bill increases litigation against the State and the State's liability for attorney's fees, which cannot be estimated at this time. OAG advises that it needs two attorneys to assist with these efforts. OAG did not provide data on anticipated claims under the bill or additional information regarding how it developed this estimate. Regardless, the Department of Legislative Services estimates that at least one additional assistant Attorney General is required under the bill. Should OAG require additional staff after actual experience under the bill, OAG can request those positions through the annual budget process.

Thus, general fund expenditures increase by \$116,835 in fiscal 2027, which accounts for the bill's October 1, 2026 effective date. This estimate reflects the cost of hiring one assistant Attorney General to litigate expected claims filed under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$107,694
Operating Expenses	<u>9,141</u>
FY 2027 OAG Personnel Expenditures	\$116,835

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Department of Transportation

The Maryland Transit Administration's (MTA) tort liability is governed by the Transportation Article. Unlike MTCA, the Transportation Article does not include a limit on liability. TTF expenditures for MTA may increase if the bill results in additional litigation and payments for claims involving MTA police officers.

Department of Natural Resources

The Department of Natural Resources (DNR) advises that while it cannot calculate a precise cost, the bill may increase the volume of civil litigation against individual Maryland Natural Resources Police (NRP) officers under MTCA and SITF. DNR cites additional operational effects, including recruitment and retention issues; increased staff time spent in depositions and court proceedings; complications for NRP multi-jurisdictional task forces due to disparate liability standards between State officers and their local/federal counterparts.

Local Expenditures: While local governments do not have Eleventh Amendment immunity in federal lawsuits, issues similar to the ones discussed above apply to local governments. Thus, local expenditures under the bill may increase significantly for litigation, payments of claims, attorney's fees, and insurance costs. As with the MTCA, it is unclear the extent to which the bill's provisions interact with the LGTCA.

The Maryland Association of Counties (MACo) advises that the bill significantly increases the costs of litigation, settlements, judgments, and insurance premiums. MACo also noted an increased overall volume of cases, increased payment of claims and attorney's fees, and the need for additional legal personnel for local jurisdictions. According to MACo, attorney's fees in these cases can significantly exceed the value of awarded damages. Unlike MTCA, LGTCA does not address or limit attorney's fees. MACo has historically

advised that attorney's fees in LGTCA cases are subject to the liability limit under that statute.

The Maryland Municipal League anticipates increased financial exposure for municipalities, especially through expanded claims and the bill's fee-shifting provisions. Frederick County advises that while the bill may increase litigation costs, the bill's actual impact can only be clarified in the future after court interpretation and actual lawsuit volume. Anne Arundel County advises that the bill keeps applicable cases in State court and requires the county to pay attorney's fees and expert witness fees. The availability of attorney's fees, according to the county, is a significant part of the relief available under the federal statute. Accordingly, the county advises that the bill may lead to additional lawsuits against the county.

Small Business Effect: The bill may have a meaningful effect on small business law firms that litigate these types of claims.

Additional Information

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

Designated Cross File: SB 346 (Senators Waldstreicher and Smith) - Judicial Proceedings.

Information Source(s): Anne Arundel, Baltimore, Cecil, Frederick, Montgomery, and Somerset counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland State Treasurer's Office; Office of the Attorney General; Department of Natural Resources; Maryland Association of Counties; Maryland Municipal League; Thomas Reuters; National Conference of State Legislatures; United States Court of Appeals for the Ninth Circuit; Department of Legislative Services

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sj/jkb

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