



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chairman and
Members of the Judiciary Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 10, 2021

RE: **HB 353 – Civil Actions – Violation of Rights – Governmental Liability**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 353**. This bill would substantially alter the law to the detriment of law enforcement officers by depriving them of the well-established and necessary limited immunity that protects them when making difficult, split-second discretionary decisions while performing their jobs. Under this proposal, a law enforcement officer who is sued for violating the Maryland Constitution would essentially be held to a strict liability standard – even if the law is unknown or the officer makes a reasonable mistake.

This bill takes away an officer's right to defend him/herself from suit even if (1) the officer's actions were objectively reasonable and did not violate the Fourth Amendment, (2) the law was not clearly established making it impossible for the officer to know the law or (3) the officer acted in good faith. And the bill further proposes that officers, for the most part, be held personally liable for damages, *for even good faith mistakes*.

It should be recognized that Maryland law already limits the protections that law enforcement officers have for violations of the State constitution. The Court of Appeals has determined that there is no immunity, either statutory or at common law, that can be asserted in such a claim against a municipal officer or a local government. State police and county deputy sheriffs (who are State employees) do have immunity against State constitutional torts because of sovereign immunity, which is not waived in this context. This means that only municipal officers will be deprived of established and legitimate defenses, and that small governments will bear the burden of defending these cases – in which they have essentially no protection.

This proposal represents bad public policy as it creates disparities between types of law enforcement officers, will lead to extensive litigation, be costly and damage the police profession and harm the ability of municipal and county governments to provide public safety.

For these reasons, MCPA and MSA **OPPOSE HB 353** and urge an **UNFAVORABLE** report.