



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 15, 2021

RE: **HB 1049 Police Qualified Immunity and Accountability Act**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 1049**. 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 performing their jobs. Under this proposal, a law enforcement officer who is sued for civil damages could be held personally responsible for those damages, including expensive attorney's fees incurred by the other party – even if the law is unclear or he makes a reasonable mistake.

Immunity is provided to government officials to prevent them from being constantly embroiled in lawsuits such that they are distracted from their official duties, on which the public depends. Immunity also protects the government treasury from being exploited by the few to the detriment of many. The law wisely limits available damages to protect governments from being bankrupt by civil damages and thus being forced to curtail socially necessary functions such as schools, fire departments and health departments. Immunity laws such as the Local Government Torts Claims Act and the Maryland Tort Claims Act also limit the attorneys' fees that plaintiffs' counsel can claim.

The bill attempts to sweep away various long-standing forms of immunity – for police officers only -- with a broad brush and will lead to a flood of litigation. This “brush” is contrary to other law, including:

- It purports to eliminate “qualified immunity” -- Qualified immunity is a creation of federal case law; it cannot be abrogated by state law.
- Municipal and county officers already lack common law or statutory immunity against state constitutional claims or intentional torts.

- Maryland has never recognized “official capacity” suits, *see Ritchie v. Donnelly*, 324 Md. 344 (1991); such suits are a creation of federal law under Section 1983 and the reference to them has no relevance to this bill.
- There is no immunity protecting a police officer who is subjected to criminal liability and the reference in this bill is anomalous.
- The bill presents several weak defenses for which there is no procedure mechanism to realistically assert those defenses to prevent suit.
- The bill directs the Maryland Police Training and Standards Commission to review cases for certification revocation but provides no standard of review and no due process for an involved officer.
- A State statute cannot abrogate the terms of a pension plan in which an officer is vested – there can be no “revocation” of an earned pension unless the specific plan provides for that, and such action may be a violation of the U.S. Constitution’s commerce clause and/or contracts provisions.

These defects make the bill’s provisions impossible to implement and represent a misunderstanding of current law.

More importantly, this bill represents the worst in public policy. Its onerous terms will drive sensible people to leave the profession; those who remain will be afraid to take actions that could land them in court.

Judge Harvey Wilkinson of the Fourth Circuit Court of Appeals observed:

“Police work, like the calling of many a skilled tradesman, has often been handed down through the generations in America, but self-respect depends in part upon societal respect, and that for officers is sadly ebbing. Court decisions that devalue not only police work but the very safety of officers themselves risk severing those bonds of generational transmission that have so sustained the working classes of our country. It is a shame, because professional police work helps to bridge the gulf between the haves and have nots in a community and protects our most vulnerable and dispossessed populations. Law must sanction officers who would abuse their power or disregard controlling law; it should not scare off those who worry that no matter what they do or whom they protect, they cannot avoid suits for money damages.”

Harris v. Pittman, 927 F.3d 266 (4th Cir. 2019) (Wilkinson, J., dissenting)

For these reasons, MCPA and MSA OPPOSE HB 1049 urge an UNFAVORABLE report.