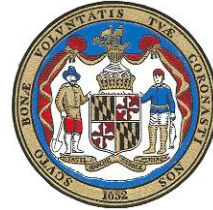




**STATE OF MARYLAND
OFFICE OF THE ATTORNEY
GENERAL**



**STATE OF MARYLAND
OFFICE OF THE STATE
TREASURER**

**Written Testimony on Behalf of
the Maryland Office of the Attorney General and
the Maryland State Treasurer's Office**

**Senate Bill 793: Maryland Tort Claims Act – Sheriffs and Deputy Sheriffs –
County Responsibility**

Position: Favorable with Amendments

Senate Judicial Proceedings Committee

February 29, 2024

The Office of Attorney General (OAG) and the State Treasurer's Office (STO) have come together today to advocate in favor of Senate Bill 793 with amendments. The legislation is the result of a collaborative effort with the Maryland Association of Counties to clarify the intent of the 1990 compromise reached between the State and counties. Passage of Senate Bill 793 would allocate responsibility for the law enforcement and detention center activities of the Maryland Sheriffs and their deputies to the counties and responsibility for all other activities to the State.

Background

The problems sought to be remedied with Senate Bill 793 have their roots in how the sheriffs and their deputies fit into the Maryland Tort Claims Act (MTCA) statutory scheme. The MTCA insulates State employees from tort liability if their actions are within the scope of employment and without malice or gross negligence. If State personnel are negligent, the MTCA generally waives the State's immunity and substitutes the liability of the State for any tort liability of the State employee. Sheriffs and their deputies are "State personnel" for purposes of the MTCA.

In *Rucker v. Harford County*, 316 Md. 275 (1989), the then-Court of Appeals held that counties are not liable for the torts of sheriffs and their deputies because they are State employees under

the MTCA. The Court drew no distinction between “local” functions performed by sheriffs and their deputies as the principal law enforcement entities in some counties and “State” functions expressly assigned to the sheriffs in the Maryland common law as well as by statute. Immediately following *Rucker*, the State was liable for all tortious acts and omissions of sheriffs and their deputies regardless of the nature of the function from which the tort arose.

In response to the *Rucker* decision, the General Assembly passed legislation that enacted State Finance and Procurement Article (SFP) § 9-108 and a number of other accompanying statutory provisions regarding liabilities for sheriffs.¹ The legislative history leaves no doubt that the intent behind it was a compromise between the State and the counties in response to the *Rucker* decision where the counties would be liable for the sheriffs’ law enforcement and detention center activities, and the State would remain liable for all other sheriff functions (*e.g.*, courthouse security, service of process, personnel and administrative functions).

The General Assembly’s chosen vehicle for accomplishing this objective was to give counties the option to obtain insurance for these liabilities or have the costs taken from their appropriation in the State budget using the set-off provisions of SFP § 9-108. The General Assembly opted for this approach over defining sheriffs and deputy sheriffs as local government employees when engaged in law enforcement or correctional activities, perhaps to preserve the individual immunity available to sheriffs and their deputies under the MTCA.

The Current Problem

OAG and STO have repeatedly seen the legislative compromise used against the State in court. In law enforcement cases, attorneys for a county or its insurer will move to dismiss their clients (the county or the individual deputy) by arguing that the deputies are State employees and not county employees. From there, these attorneys argue that there is no legal theory upon which the county can be held liable in a law enforcement case. If the deputy is sued individually, the attorneys assert the MTCA immunity on behalf of the individual deputy. Courts will often grant these motions, leaving the Plaintiff with one option: to sue the State. The State cannot escape liability because the deputies are State personnel. Yet when the State tries to tender coverage or defense to the County, the tender requests are denied.

The tenders are denied, we are told, because of the language in SFP § 9-108(b), which states as follows:

A county or Baltimore City may obtain insurance to provide the coverage and defense necessary under the Maryland Tort Claims Act *for personnel* covered by this section. (Emphasis added.)

Counties have argued that words “for personnel” mean that the statute merely requires the local government to provide coverage and a defense for individual State personnel and not the State itself. Because State personnel are already immune under the MTCA, we think to read

¹ See 1990 Md. Laws ch. 508, § 1.

subsection (b) in that way, in effect, renders the statute meaningless. Nonetheless, that is what the State is told.

The natural result of that response under the current statutory framework would be for the State to take advantage of the provisions in SFP § 9-108(c) that require an assessment for coverage and for payment of any litigation expenses be set off from certain taxes due to the applicable county. Following years of trying to resolve these issues without using the set-off, in 2022, the State utilized the provisions of SFP § 9-108(c) for the first time.

Since that time, OAG and STO have been working with representatives of the Maryland Association of Counties and, more recently, the Local Government Insurance Trust to craft a legislative solution to the problem. The product of that work is Senate Bill 793.

Senate Bill 793

Senate Bill 793 amends the statutory language that has been relied on by the counties or their insurers to leave the State with liability that, under the 1990 compromise, rightfully belongs with the counties.

In addition, Senate Bill 793 seeks to clarify the meanings of the terms “law enforcement function” and “detention center function” while also setting up a framework for resolving any future disputes regarding the meaning of those terms. In particular, Senate Bill 793 plainly divides responsibility for the various sheriff functions while also preserving the MTCA coverage that protects sheriffs and deputy sheriffs from individual liability.

Amendment

The crossfile, House Bill 895, contains a substantive difference in that the “for personnel covered by this section” language in the existing SFP § 9-108(b) is repealed. OAG and STO urge that this language be repealed in both House Bill 895 and Senate Bill 793 as they advance to ensure no conflict. In addition, OAG and STO note for consideration a minor technical correction: inserting a comma after “considered” on page 4 in line 11. Draft amendment language is included on page 4 for the Committee’s consideration.

For the foregoing reasons, the Office of the Attorney General and the State Treasurer’s Office request that the Committee give Senate Bill 793 a favorable with amendments report. Please contact Kirstin Lustila, Assistant Attorney General for the State Treasurer’s Office and Maryland Sheriffs (klustila@oag.state.md.us) or Laura Atas, Deputy Treasurer for Public Policy (latas@treasurer.state.md.us), with any questions.

PROPOSED AMENDMENT

BY: Chair, Senate Judicial Proceedings Committee
(To be offered in the Senate Judicial Proceedings Committee)

AMENDMENT TO SENATE BILL 793
(First Reading File Bill)

On page 3, in line 4, after “Act” insert a bracket; and in line 5, after “section” insert a bracket.

On page 4, in line 11, after “CONSIDERED” insert a comma.