

# **SB 793 Fav.pdf**

Uploaded by: Christopher West

Position: FAV

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Judicial Proceedings Committee



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 29<sup>th</sup>, 2024

The Maryland State Senate Judicial Proceedings Committee  
The Honorable William C. Smith, Jr.  
2 East Miller Senate Building  
Annapolis, Maryland 21401

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

Dear Chairman Smith and Members of the Committee,

Senate Bill 793 was brought to me by MACo in order to resolve a technical issue that has arisen relating to the liability of sheriffs in counties which are insured by the Local Governments Insurance Trust.

Sheriffs and their deputies are State employees and provide courthouse security, service of process, the transportation of incarcerated persons to and from court proceedings and administrative activities. If sued for incidents that occur in their performance of such State activities, the State is responsible for handling the lawsuits and dealing with any judgments.

But in some counties, sheriffs also perform local law enforcement functions, which generally consist of operating and administering county detention centers and engaging in general law enforcement activities such as conducting patrol, making stops and arrests and investigating criminal offenses. Due to their engaging in such local law enforcement work, the sheriffs occasionally are sued for incidents that occur. In such cases, the Local Governments Insurance Trust stands ready to handle the lawsuits and pay any judgments.

Here's the problem that this bill seeks to resolve: Sometimes lawsuits arising out of the local law enforcement work are filed against the State. Since the enabling statute for the Local Governments Insurance Trust and the operative Trust Agreement do not provide for indemnification of the State, the State frequently negotiates a settlement with the plaintiffs in these lawsuits against the State and then recoups the settlement amount from the county income tax. The settlement amounts are thus ultimately paid by the counties, not by the Local Governments Insurance Trust.

Working with the Attorney General, MACo has come up with a solution to this problem which is embodied in this bill. The bill defines “tort claim” as meaning a tort claim filed in State court against a sheriff or deputy sheriff or the State arising out of local law enforcement work performed by the sheriff or deputy sheriff.

The bill then provides that the State is the proper defendant in such a tort claim and that the county may not be named as a defendant in such a tort claim. In such a case, the liability for such a tort claim may not exceed the State’s waiver of liability under the State Tort Claims Act, which is currently \$400,000 to a single claimant for injuries arising from a single incident or occurrence. Finally, the bill provides that the liabilities of the State for such a tort claim shall be assumed by the applicable county. Of course, such liabilities would in turn be paid for by the Local Governments Insurance Trust.

So the bill establishes a circular route for judgements entered in lawsuits arising out of local law enforcement work performed by county sheriffs and deputy sheriffs to ultimately be paid by the Local Governments Insurance Trust. It’s a bit complicated to be sure, but it neatly solves the problem.

For the affected counties, this bill is extremely important. I urge the Committee to grant this bill a favorable report and would be pleased to answer questions about the bill.

# **SB 793 Sheriffs and Deputy Sheriffs**

Uploaded by: Darren Popkin

Position: FAV



# Maryland Chiefs of Police Association Maryland Sheriffs' Association



## MEMORANDUM

**TO:** The Honorable Will Smith, Chair and  
Members of the Judicial Proceedings Committee

**FROM:** Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee  
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

**DATE:** February 29, 2024

**RE:** **SB 793 Maryland Tort Claims Act – Sheriffs and Deputy Sheriffs – County Responsibility**

**POSITION: SUPPORT**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT SB 793. This bill is intended to provide clarity for which entity represents a sheriff or a deputy when charges are brought for duties related to county functions, such as performing a law enforcement function or managing a correctional facility.

The confusion results from the Sheriff being a constitutional officer and current statutory language that states the State is the sole employer of a sheriff and their deputies. This confusion sometimes results in cases being filed only against the State resulting in the State taking on unwarranted liability and defense costs outside of their purview.

When the Sheriff's Office is performing county functions such as those listed above, the Local Government Insurance Trust (LGIT), a statutorily enabled entity, defends the county. LGIT has the expressed authority granted by the law, but it currently does not clarify their ability to indemnify the State in these circumstances. SB 793 does three useful things for the counties whose deputies provide these services:

- identifies the State as the sole employer of sheriffs and their deputies;
- enumerates a specific list of functions triggering liability for counties;c and
- clarifies procedures for plaintiffs looking to bring cases in these instances.

These changes eliminate confusion, clarify responsibilities, and ensure liability coverage for county related functions. For these reasons, MCPA and MSA SUPPORT SB 793 and urge a FAVORABLE Committee report.

**CalvertCounty\_FAV\_SB0793.pdf**

Uploaded by: Earl Hance

Position: FAV



**CALVERT COUNTY  
BOARD OF COUNTY COMMISSIONERS**

175 Main Street  
Prince Frederick, Maryland 20678  
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www.calvertcountymd.gov

*Board of Commissioners*  
Mark C. Cox Sr.  
Catherine M. Grasso  
Earl F. Hance  
Mike Hart  
Todd Ireland

February 28, 2024

The Honorable Senator William C. Smith, Jr., Chair  
Judicial Proceedings Committee  
2 East Miller Senate Office Building  
Annapolis, MD 21401

Re: SB0793 – Maryland Tort Claims Act - Sheriffs and Deputy Sheriffs - County Responsibility

Chair Smith, Vice Chair Waldstreicher, and Committee Members:

The Board of County Commissioners for Calvert County writes to **SUPPORT SB0793** and ask the Committee for a **FAVORABLE REPORT**. We appreciate Senator West’s efforts to bring some certainty and clarity to obligations where today we find conflicting opinions and uncertainty.

Should you have any questions or require further information, please do not hesitate to contact County Administrator Julian M. Willis at 410-535-1600, extension 2201, or County Attorney John Norris at 410-535-1600, extension 2566. Thank you for your kind consideration of our position regarding this important Bill.

Sincerely,  
BOARD OF COUNTY COMMISSIONERS  
CALVERT COUNTY, MARYLAND

Handwritten signature of Earl F. Hance in blue ink.

Earl F. Hance, President

Handwritten signature of Catherine M. Grasso in blue ink.

Catherine M. Grasso, Vice President

Handwritten signature of Mark C. Cox Sr. in blue ink.

Mark C. Cox Sr.

Handwritten signature of Mike Hart in blue ink.

Mike Hart

Handwritten signature of Todd Ireland in blue ink.

Todd Ireland

cc: The Honorable Senator Michael Jackson  
The Honorable Senator Jack Bailey  
The Honorable Senator Chris West

**SB0793-JPR\_MACo\_SUP.pdf**

Uploaded by: Sarah Sample

Position: FAV





## **Senate Bill 793**

### *Maryland Tort Claims Act – Sheriffs and Deputy Sheriffs – County Responsibility*

MACo Position: **SUPPORT**

To: Judicial Proceedings Committee

Date: February 29, 2024

From: Sarah Sample

The Maryland Association of Counties (MACo) **SUPPORTS** SB 793. This bill ensures that the Local Government Insurance Trust (LGIT) will be able to effectively represent and defend insured counties when charges are brought against a sheriff or deputy, who is conducting county functions, consistent with a clarified delineation under current state law. This bill helpfully remedies confusion, currently arising in litigation, for all parties.

The effects of this bill only concern claims brought against a sheriff or deputy for actions taken while performing a law enforcement function, or managing a correctional facility. These functions are outside the “constitutional” functions of the Sheriff, engaged by the county government at their discretion. Additionally, it clarifies what constitutes a law enforcement function for the purpose of further illuminating the distinction between state and local obligations for this shared employee.

Counties have long been responsible for cases when a claim is brought against a sheriff or deputy sheriff for law enforcement and corrections-related actions. Often, trial attorneys bring the case directly against the county, the sheriff or deputy, and the State. Due to confusion in the existing statute, some plaintiffs file cases only against the State because of the specification in statute that the State is the sole employer of a sheriff and their deputies. These cases result in the State taking on unwarranted liability and defense costs for cases outside of their purview.

As a statutorily enabled entity, LGIT has the expressed authority granted by the law, which currently does not clarify their ability to indemnify the State in these circumstances. SB 793 does three useful things for the counties whose deputies provide these services:

- identifies the State as the sole employer of sheriffs and their deputies;
- enumerates a specific list of functions triggering liability for counties; and
- clarifies procedures for plaintiffs looking to bring cases in these instances.

Counties appreciate that this bill will remove confusion, clarify responsibility, and ensure appropriate liability coverage for existing responsibilities. For these reasons, MACo urges a **FAVORABLE** report for SB 793.

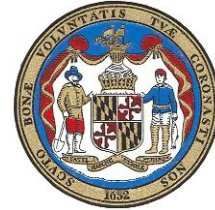
# **SB 793 - STO and OAG Written Testimony - Final.pdf**

Uploaded by: Kirstin Lustila

Position: FWA



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.<sup>1</sup> 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

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<sup>1</sup> 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](mailto:klustila@oag.state.md.us)) or Laura Atas, Deputy Treasurer for Public Policy ([latas@treasurer.state.md.us](mailto: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.