

SENATE BILL 793

P3

4r1732
CF 4r2133

By: **Senator West**

Introduced and read first time: February 1, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Tort Claims Act – Sheriffs and Deputy Sheriffs – County**
3 **Responsibility**

4 FOR the purpose of clarifying that a county is responsible for a certain tort claim against a
5 sheriff or deputy sheriff under the Maryland Tort Claims Act; clarifying that, for
6 certain tort claims against a sheriff or deputy sheriff, the State is the proper
7 defendant; specifying that it is the intent of the General Assembly that the Office of
8 the Attorney General and the State Treasurer work with the Maryland Association
9 of Counties, the counties, and the counties' respective insurers when disputes arise
10 regarding the allocation of responsibility for tort claims under this Act; and generally
11 relating to the Maryland Tort Claims Act.

12 BY repealing and reenacting, with amendments,
13 Article – State Finance and Procurement
14 Section 9–108
15 Annotated Code of Maryland
16 (2021 Replacement Volume and 2023 Supplement)
17 (As enacted by Chapter 721 of the Acts of the General Assembly of 2023)

18 BY repealing and reenacting, without amendments,
19 Article – State Government
20 Section 12–101(a)(6) and 12–104(a)
21 Annotated Code of Maryland
22 (2021 Replacement Volume and 2023 Supplement)

23 BY adding to
24 Article – State Government
25 Section 12–103.3
26 Annotated Code of Maryland
27 (2021 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – State Finance and Procurement**

4 9–108.

5 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
6 **INDICATED.**

7 **(2) “DETENTION CENTER FUNCTION” INCLUDES:**

8 **(I) OPERATING AND ADMINISTERING A DETENTION CENTER;**
9 **AND**

10 **(II) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION**
11 **DESCRIBED IN ITEM (I) OF THIS PARAGRAPH.**

12 **(3) “LAW ENFORCEMENT FUNCTION” INCLUDES:**

13 **(I) CONDUCTING PATROL;**

14 **(II) MAKING STOPS AND ARRESTS;**

15 **(III) INVESTIGATING CRIMINAL OFFENSES; AND**

16 **(IV) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION**
17 **DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.**

18 **[(a)] (B)** This section applies to any sheriff or deputy sheriff engaged in any
19 activity other than those activities relating to:

20 (1) courthouse security;

21 (2) service of process;

22 (3) the transportation of incarcerated individuals to and from court
23 proceedings;

24 (4) personnel and other administrative activities;

25 (5) activities, including activities relating to performing law enforcement
26 functions, arising under a multijurisdictional agreement under the supervision and
27 direction of the Maryland State Police or other State agency; or

1 (6) any other activities, except activities relating to performing law
2 enforcement functions or detention center functions.

3 [(b)] (C) A county or Baltimore City may obtain insurance to provide the
4 coverage and defense necessary under the Maryland Tort Claims Act for personnel covered
5 by this section.

6 [(c)] (D) (1) If a county or Baltimore City does not obtain adequate insurance
7 coverage to satisfy the coverage and defense necessary under the Maryland Tort Claims
8 Act, an assessment for coverage and for payment of any litigation expenses, other than for
9 compensation for the time spent by any State employee working for the Attorney General,
10 shall be set off from:

11 (i) any tax which has been appropriated in the State budget to the
12 county or Baltimore City; or

13 (ii) the subdivision's share of any income tax collected by the State
14 Comptroller.

15 (2) Any amount due under this subsection shall be collected in the manner
16 provided by § 7-222 of this article.

17 Article – State Government

18 12-101.

19 (a) In this subtitle, unless the context clearly requires otherwise, “State
20 personnel” means:

21 (6) a sheriff or deputy sheriff of a county or Baltimore City;

22 **12-103.3.**

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (2) “DETENTION CENTER FUNCTION” INCLUDES:

26 (I) OPERATING AND ADMINISTERING A DETENTION CENTER;
27 AND

28 (II) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION
29 DESCRIBED IN ITEM (I) OF THIS PARAGRAPH.

30 (3) “LAW ENFORCEMENT FUNCTION” INCLUDES:

- 1 **(I) CONDUCTING PATROL;**
2 **(II) MAKING STOPS AND ARRESTS;**
3 **(III) INVESTIGATING CRIMINAL OFFENSES; AND**
4 **(IV) SUPERVISING PERSONNEL WHO PERFORM A FUNCTION**
5 **DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.**

6 **(4) “TORT CLAIM” MEANS A TORT CLAIM FILED IN STATE COURT**
7 **AGAINST A SHERIFF, A DEPUTY SHERIFF, OR THE STATE CLAIMING TORTIOUS**
8 **CONDUCT BY A SHERIFF OR A DEPUTY SHERIFF ARISING OUT OF ACTIVITIES**
9 **RELATED TO THE PERFORMANCE OF A LAW ENFORCEMENT FUNCTION OR A**
10 **DETENTION CENTER FUNCTION.**

11 **(B) (1) A TORT CLAIM SHALL BE CONSIDERED DEFENDED, SETTLED, AND**
12 **PAID IN THE SAME MANNER AS ANY OTHER CLAIM FILED AGAINST A COUNTY.**

13 **(2) (I) THE STATE IS THE PROPER DEFENDANT IN A TORT CLAIM.**

14 **(II) THE COUNTY MAY NOT BE NAMED AS A DEFENDANT IN A**
15 **TORT CLAIM.**

16 **(C) LIABILITY FOR A TORT CLAIM MAY NOT EXCEED THE STATE’S WAIVER**
17 **OF IMMUNITY UNDER § 12–104 OF THIS SUBTITLE.**

18 **(D) (1) THE STATE TREASURER IS NOT LIABLE UNDER § 9–107 OF THE**
19 **STATE FINANCE AND PROCUREMENT ARTICLE FOR A TORT CLAIM.**

20 **(2) THE DUTIES, RESPONSIBILITIES, AND LIABILITIES OF THE STATE**
21 **UNDER THIS SUBTITLE FOR A TORT CLAIM SHALL BE ASSUMED BY THE APPLICABLE**
22 **COUNTY.**

23 12–104.

24 (a) (1) Subject to the exclusions and limitations in this subtitle and
25 notwithstanding any other provision of law, the immunity of the State and of its units is
26 waived as to a tort action, in a court of the State, to the extent provided under paragraph
27 (2) of this subsection.

28 (2) (i) Except as provided in subparagraphs (ii) and (iii) of this
29 paragraph, the liability of the State and its units may not exceed \$400,000 to a single
30 claimant for injuries arising from a single incident or occurrence.

1 (ii) If liability of the State or its units arises from intentional tortious
2 acts or omissions or a violation of a constitutional right committed by a law enforcement
3 officer, the following limits on liability shall apply:

4 1. subject to item 2 of this subparagraph, the combined
5 award for both economic and noneconomic damages may not exceed a total of \$890,000 for
6 all claims arising out of the same incident or occurrence, regardless of the number of
7 claimants or beneficiaries who share in the award; and

8 2. in a wrongful death action in which there are two or more
9 claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the
10 limitation established under item 1 of this item, regardless of the number of claimants or
11 beneficiaries who share in the award.

12 (iii) If liability of the State or its units arises under a claim of sexual
13 abuse, as defined in § 5–117 of the Courts Article, the liability may not exceed \$890,000 to
14 a single claimant for injuries arising from an incident or occurrence.

15 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
16 Assembly that:

17 (1) counties bear responsibility for all matters related to the performance
18 by sheriffs and deputy sheriffs of a county or Baltimore City for “law enforcement functions”
19 and “detention center functions” as defined under Section 1 of this Act;

20 (2) the list of activities included within the definitions of “law enforcement
21 functions” and “detention center functions” under Section 1 of this Act are illustrative and
22 not exhaustive; and

23 (3) the Office of the Attorney General and the State Treasurer work
24 cooperatively with the Maryland Association of Counties, the counties, and the counties’
25 respective insurers when disputes arise regarding the allocation of responsibility for tort
26 claims under Section 1 of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2024.