



# Maryland Chiefs of Police Association

## Maryland Sheriffs' Association



### MEMORANDUM

TO: The Honorable Luke Clippinger, Chair and  
Members of the Judicial Proceedings Committee

FROM: Chief of Staff 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: March 1, 2022

RE: **HB 1012 – Police Immunity and Accountability Act**

POSITION: OPPOSE

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 1012**. 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 the 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.

This 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:

- The bill purports to eliminate “qualified immunity” -- Qualified immunity is a creation of federal case law; it cannot be abrogated by state law. Fundamentally, qualified immunity asks two questions: did the officer actually violate a right, and, if so, should she have

known better? No person, including a police officer, should be held liable if the answer to either question is “no.”

- Municipal and county officers already lack common law or statutory immunity against state constitutional claims or intentional torts.
- There is no immunity protecting a police officer who is subjected to criminal liability and the reference in this bill is anomalous.
- 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.
- The bill essentially creates a mandatory “deductible” of up to \$25,000 that a police officer (and *only* a police officer) must pay, notwithstanding any insurance or other financial protection offered by the employer or jurisdiction to all other government employees.

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 (4<sup>th</sup> Cir. 2019) (Wilkinson, J., dissenting)

For these reasons, MCPA and MSA **OPPOSE HB 1012** and urge an **UNFAVORABLE** Committee report.