

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 351
Judiciary

(Delegate Moon, *et al.*)

Judicial Proceedings

Constitutional Rights - Violations and Digital Unmasking

This emergency bill authorizes an aggrieved party or the Office of the Attorney General (OAG) to bring an action against a “judicial officer” who, under color of law, deprives the aggrieved party or causes or allows the aggrieved party to be deprived of a right, a privilege, or an immunity secured under law. The bill specifies the types of relief available and authorizes a court to award reasonable attorney’s fees and costs. On receipt of a complaint of “judicial officer misconduct,” OAG, a State Prosecutor, or a State’s Attorney may direct the appropriate State or local law enforcement agency to gather and securely retain as much “identifying digital data” as possible about the judicial officer who is the subject of the misconduct complaint. A plaintiff may obtain access to the identifying digital data relevant to the plaintiff’s complaint only in accordance with a court order issued in an action under the bill’s provisions. The bill includes a severability provision.

Fiscal Summary

State Effect: No assumed effect in FY 2026. State expenditures (special funds and general funds) may increase, *perhaps* significantly, from increased State liability, as discussed below. General fund revenues may increase if OAG is awarded damages (or recovers reasonable fees and costs) in actions filed under the bill.

Local Effect: Potential increase in local expenditures for local governments to (1) pay judgment awards and attorney’s fees under the bill; (2) litigate claims filed under the bill; and (3) pay increased insurance premiums for liability coverage. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An aggrieved party or OAG may seek damages and declaratory and injunctive relief. The statute of limitations for a cause of action is five years after the cause of action accrues.

A defendant may assert any defense of immunity otherwise applicable at the time the cause of action accrues. The bill may not be construed to abrogate any local government liability under State or common law for the actions of local government or any statutory waiver of any defense, including immunity.

A court may award reasonable fees and costs, including attorney's fees and expert witness fees, to a prevailing plaintiff under the bill.

"Judicial officer" means an officer who may (1) make an arrest with or without a warrant for violations of the U.S. Code and (2) carry firearms in the performance of the officer's duties.

"Law" includes the U.S. Constitution and the laws of the United States.

"Judicial officer misconduct" means causing or allowing an aggrieved party to be deprived of a right, a privilege, or an immunity secured under law.

"Identifying digital data" means digital information that can help confirm the identity of a judicial officer who is the subject of a complaint of judicial officer misconduct, including:

- license plate data;
- cell tower data;
- cell phone data;
- location data;
- image search results data;
- GPS data;
- StingRay data;
- facial recognition data; and
- any other recoverable data that may help identify judicial officers.

Current Law:

Electronic Device Location Data: A court may issue an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device after determining from an application that there is probable cause to

believe that (1) a misdemeanor or felony has been, is being, or will be committed by the owner or user of the electronic device or by the individual about whom location information is being sought and (2) the information sought by the cell site simulator or the location information being sought is evidence of, or will lead to evidence of, the misdemeanor or felony being investigated or will lead to the apprehension of an individual for whom an arrest warrant has been previously issued. An application from law enforcement for a court order must be (1) in writing; (2) signed and sworn by the applicant; and (3) accompanied by an affidavit that sets forth the basis of the probable cause and contains facts within the personal knowledge of the affiant. A law enforcement officer may use a cell site simulator or obtain location information for a period not to exceed 48 hours in exigent circumstances or with the express consent of the user or owner of the electronic device. “Cell site simulator” means a device that mimics a cell tower and captures identifying information of electronic devices in the range of the device.

Facial Recognition Technology: Generally, a police officer or other employee or agent of a law enforcement agency, in the furtherance of a criminal investigation, may only use facial recognition technology (FRT) in limited circumstances, including to investigate specified crimes of violence, specified human trafficking offenses, specified child abuse offenses, a specified child pornography offense, specified hate crime offenses, specified weapon crimes, specified animal cruelty offenses, specified drug offenses, a specified stalking offense, a criminal act that presents a substantial and ongoing threat to public safety or national security, or a crime under the laws of another state substantially equivalent to one of the crimes listed that involves a fugitive from justice charged with a crime in that state and sought for extradition under Title 9 of the Criminal Procedure Article. These provisions may not be construed to restrict the use of FRT for the purpose of (1) identifying a missing, deceased, or incapacitated person; (2) redacting the image of an individual from an image or video for release to protect the individual’s privacy; (3) forensic analysis of electronic media seized by law enforcement if the person identified in the seized media is not the subject of the criminal charges resulting from the analysis; (4) enhancing security systems to prevent unauthorized access to information, goods, materials, areas, or other properties under the custody or care of a law enforcement agency; or (5) conducting other legitimate activity unrelated to a criminal investigation.

License Plate Data: A law enforcement agency may not use “captured plate data” unless the agency has a “legitimate law enforcement purpose.” An employee of a law enforcement agency who violates this prohibition is subject to a maximum penalty of imprisonment for one year and/or a fine of \$10,000. “Legitimate law enforcement purpose” means the investigation, detection, or analysis of a crime or a violation of the Maryland vehicle laws or the operation of terrorist or missing or endangered person searches or alerts. “Captured plate data” means the GPS coordinates, dates and times, photographs, license plate numbers, and any other data collected by or derived from an automatic license plate reader system. “Captured plate data” includes active data and historical data.

Maryland Tort Claims Act: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under the Maryland Tort Claims Act (MTCA), the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by State personnel performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” *Lee v. Cline*, 384 Md. 245, 262 (2004).

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

In general, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. However, for claims arising on or after July 1, 2022, if liability of the State or its units arises from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award. Separate provisions apply to claims involving child sexual abuse.

The State does not waive its immunity for punitive damages. Attorney’s fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment.

Local Government Tort Claims Act: The Local Government Tort Claims Act (LGTCA) defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

In general, LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). However, for claims arising on or after July 1, 2022, if the liability of a local government arises from intentional tortious acts or omissions or a violation of a constitutional right committed by

a law enforcement officer, the following limits on liability apply: (1) the combined award for both economic and noneconomic damages may not exceed a total of \$890,000 for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award; and (2) in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed \$1,335,000, regardless of the number of claimants or beneficiaries who share in the award. Separate provisions apply to claims involving child sexual abuse.

LGTCAs further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. Thus, LGTCAs prevent local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

A local government is not liable for punitive damages. However, a local government, subject to the liability limits, may indemnify an employee for a judgment for punitive damages entered against the employee. A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

Lawsuits Under 42 U.S.C. § 1983 and Federal Qualified Immunity: 42 U.S.C. § 1983 is a federal law that allows individuals to sue state or local government officials acting under color of law for constitutional rights violations. Plaintiffs can seek damages, injunctive relief, declaratory relief and attorney's fees. Section 1983 lawsuits are against a person (*e.g.*, the government employee). States and the federal government cannot be named as defendants in these lawsuits; however, local government units and municipalities can be named as defendants.

In general, judges, prosecutors, and legislators performing their legitimate functions are examples of individuals who have absolute immunity from § 1983 lawsuits. Qualified immunity, which dates back to 1871 when Congress adopted 42 U.S.C. § 1983, is a legal doctrine created by the U.S. Supreme Court under which a government official is shielded from civil liability if the official's actions do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Police Accountability and Discipline: Chapter 59 of 2021 established a statewide accountability and discipline process for police officers with procedural requirements for handling complaints of police misconduct that could lead to disciplinary action. The process includes requirements for the use of police accountability boards, administrative charging committees, and trial boards, as well as the authorization for a police officer who is the subject of a complaint of police misconduct to have the assistance of a representative.

It extends to police officers of specified State and local agencies *but does not extend to federal law enforcement agents*. For more information on the statewide accountability and discipline process, see the **Appendix – Police Accountability and Discipline Process**.

State Expenditures: The bill appears to create a cause of action similar to 42 U.S.C. § 1983 that can be filed in State court. Lawsuits filed under § 1983 are filed in federal court and cannot be filed against federal law enforcement officers. The bill’s cause of action appears to be aimed at the actions of federal law enforcement officers. However, because State and local law enforcement officers are assigned to several federal task forces which operate within the State, a number of State and local law enforcement officers likely meet the definition of a judicial officer under the bill.

While the State is the named defendant in a claim under MTCA, the bill authorizes an aggrieved party to bring a civil cause of action against a judicial officer. As discussed above, State constitutional torts are covered by MTCA; the bill appears to be aimed at violations of federal constitutional rights and rights under federal law.

It is unclear how the bill’s provisions interact with MTCA in situations where State law enforcement officers meet the definition of a judicial officer under the bill. The bill’s provisions “may not be construed to abrogate any statutory waiver of any defense, including immunity.” As discussed above, MTCA is a limited waiver of the State’s sovereign immunity, subject to specified requirements, liability limits, and limits on attorney’s fees.

Regardless, to the extent that the bill affects State liability, State expenditures (possibly special funds and general funds) increase to address and pay claims filed under the bill and awarded attorney’s fees. The magnitude of any potential impact cannot be reliably determined at this time but *may* be significant. Due to ambiguity regarding how the bill interacts with the MTCA, this estimate assumes that claims may be paid from the State Insurance Trust Fund (SITF) or general funds. If payments are made from SITF, general fund expenditures may increase for State agencies subject to higher SITF assessments if SITF incurs losses from payments of claims.

State Treasurer’s Office

The Insurance Division of the State Treasurer’s Office (STO) handles MTCA claims; STO administers SITF, from which MTCA claims are paid. STO anticipates additional claims under the bill, including suits against State law enforcement officers who are working on joint enforcement task forces. According to the office, even meritless claims require 40 to 50 hours of work to investigate, prepare motions, etc. STO therefore advises of the need for two adjusters, with associated expenditures of approximately \$240,000 annually.

However, based on the ambiguities discussed above, it is unclear if and to what extent STO receives additional claims under the bill (and the timing of such claims). Accordingly, the Department of Legislative Services is unable to verify the immediate need for staff without experience under the bill. Should additional resources be required, STO may request them through the annual budget process.

Office of the Attorney General

Based on a response to similar legislation, it is anticipated that OAG can use existing budgeted resources to initiate any lawsuits under the bill.

OAG represents the State in MTCA claims. It is unclear if OAG would represent State law enforcement officers named as defendants in these actions in State court. Any effect on overall OAG workloads can only be determined with actual experience; should OAG require additional personnel, the office can make a request through the annual budget process.

Maryland Department of Transportation

This estimate does not address any impact on the Transportation Trust Fund. The Maryland Transit Administration's (MTA) tort liability is governed by the Transportation Article. Unlike MTCA, the Transportation Article does not include a limit on liability. Information is not readily available on whether MTA police officers participate in federal task forces.

Local Expenditures: While local governments do not have Eleventh Amendment immunity in federal lawsuits, issues similar to the ones discussed above apply to local governments. Though information is not readily available on the extent to which local police officers participate in federal task forces, should the bill expand local liability, local expenditures increase for litigation and payment of claims and attorney's fees. As with the MTCA, it is unclear the extent to which the bill's provisions interact with the LGTCA.

Small Business Effect: The bill may have a meaningful effect on small business law firms that litigate these types of claims.

Additional Comments: This analysis assumes that all State and local law enforcement agencies follow all laws for obtaining information in criminal investigations. As described above, access to cell tower data, cell phone data, location data, and GPS data require a search warrant issued by a court, and that requirement is not altered by the bill. Search warrants are generally not available for civil cause of actions, as they are instruments of

criminal procedure requiring probable cause of a crime. Generally, civil litigants must use the discovery process (*i.e.*, subpoenas) to obtain evidence.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City; Montgomery and Worcester counties; Maryland Municipal League; Town of Bel Air; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Treasurer's Office; Department of State Police; Maryland Department of Transportation; Thomas Reuters; National Conference of State Legislatures; United States Court of Appeals for the Ninth Circuit; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2026
js/lgc Third Reader - April 2, 2026
Revised - Amendment(s) - April 2, 2026

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Appendix – Police Accountability and Discipline Process

Establishment of Accountability and Discipline Process for Police Officers

Chapter 59 of 2021 repealed the Law Enforcement Officers' Bill of Rights and established a statewide accountability and discipline process for police officers with procedural requirements for handling complaints of police misconduct that could lead to disciplinary action. The process includes requirements for the use of police accountability boards, administrative charging committees, and trial boards, as well as the authorization for a police officer who is the subject of a complaint of police misconduct to have the assistance of a representative. It extends to police officers of specified State and local agencies. More detail on the process is discussed below.

A law enforcement agency may not negate or alter any of the requirements relating to Title 3, Subtitle 1 of the Public Safety Article (which addresses police accountability and discipline) through collective bargaining, and collective bargaining may not be used to establish or alter any aspect of the process for disciplining a police officer.

Police Accountability Boards: Each county must have a police accountability board to:

- hold quarterly meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the county government to improve matters of policing;
- appoint civilian members to charging committees and trial boards;
- receive complaints of police misconduct filed by members of the public;
- on a quarterly basis, review outcomes of disciplinary matters considered by charging committees; and
- by December 31 each year, submit a report to the governing body of the county that identifies any trends in the disciplinary process of police officers in the county and makes recommendations on changes to policy that would improve police accountability in the county.

In addition, the local governing body must (1) establish the membership of and the budget and staff for a police accountability board; (2) appoint a chair for a police accountability board, as specified; and (3) establish the procedures for recordkeeping by a police accountability board. An active police officer may not be a member, and to the extent practicable, the membership must reflect the racial, gender, and cultural diversity of the county.

Administrative Charging Committees: Each county must have one administrative charging committee to serve countywide law enforcement agencies and local law enforcement agencies in the county, and there must be at least one statewide administrative charging committee to serve statewide and bi-county law enforcement agencies. An administrative charging committee must (1) review the findings of a law enforcement agency's investigation conducted and forwarded, as specified; (2) make a determination as to whether or not to administratively charge the police officer who is the subject of the investigation; (3) if the police officer is charged, recommend discipline in accordance with the law enforcement agency's disciplinary matrix, as specified; (4) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct; (5) authorize a police officer called to appear before an administrative charging committee to be accompanied by a representative; (6) issue a written opinion that describes in detail its findings, determinations, and recommendations; and (7) forward the written opinion to the chief of the law enforcement agency, the police officer, and the complainant. An administrative charging committee may request specified information and make specified determinations.

Chapter 59 also established requirements regarding the composition of a county and statewide administrative charging committee. An individual must receive training on matters relating to police procedures from the Maryland Police Training and Standards Commission (MPTSC) before serving as a member of an administrative charging committee.

Investigation of Complaints: An individual may file a complaint of police misconduct with a police accountability board or the law enforcement agency that employs the police officer who is the subject of the complaint. A complaint of police misconduct filed with a police accountability board or the law enforcement agency must include specified information but need not be notarized. If filed with a police accountability board, the complaint must be forwarded to the appropriate law enforcement agency within three days of receipt, and each such complaint by a member of the public must be immediately reviewed by the investigating unit of the law enforcement agency.

On completion of an investigation, regardless of whether the complaint originated from within the law enforcement agency or from an external source, the law enforcement agency must forward the investigatory files for the complaint to the appropriate administrative charging committee. For an incident involving a member of the public and a police officer, the process of review and investigation by the investigating unit through disposition by the administrative charging committee must be completed within 395 days after the filing of a complaint by a member of the public.

A law enforcement agency must file any administrative charges arising out of an investigation of alleged police officer misconduct that is not required to be reviewed by an

administrative charging committee within one year and one day after the date that the appropriate official employed by the law enforcement agency, as determined by written policy of the law enforcement agency, became aware of the incident that led to the investigation. However, if alleged police officer misconduct is the subject of a criminal investigation, an administrative charging committee or law enforcement agency must file any administrative charges within one year and one day after the date of (1) the investigating law enforcement agency's timely determination that the matter is not related to criminal activity; (2) the disposition of all criminal charges filed against the police officer; or (3) the administrative charging committee's or law enforcement agency's receipt of timely notice that the appropriate prosecutorial authority declined to file criminal charges.

Disciplinary Matrix: MPTSC must develop and adopt, by regulation, a model uniform disciplinary matrix for use by each law enforcement agency in the State, and each law enforcement agency must adopt the matrix for all matters that may result in discipline of a police officer.

Within 15 days after an administrative charging committee issues an administrative charge against a police officer, the chief of the law enforcement agency must offer discipline to the police officer who has been administratively charged in accordance with the disciplinary matrix. The chief may offer the same discipline that was recommended by the administrative charging committee or a higher degree of discipline within the applicable range of the disciplinary matrix but may not deviate below the discipline recommended by the administrative charging committee. If the police officer accepts the chief's offer of discipline, the offered discipline must be imposed. However, if the police officer does not accept the chief's offer of discipline, the matter must be referred to a trial board. At least 30 days before a trial board proceeding begins, the police officer must be provided a copy of the investigatory record and notified of the charges against the police officer and the recommended disciplinary action.

Trial Board Process: Each law enforcement agency must establish a trial board process to adjudicate matters for which a police officer is subject to discipline; however, a small law enforcement agency may use the trial board process of another law enforcement agency by mutual agreement. Chapter 59 also established requirements regarding the composition of a trial board and requires an individual, before serving as a member of a trial board, to receive training on matters relating to police procedures from MPTSC.

With specified exceptions, proceedings of a trial board must be open to the public. A trial board may administer oaths and issue subpoenas as necessary to complete its work. A complainant has the right to be notified of a trial board hearing and, with specified exceptions, the right to attend a trial board hearing. A police officer may be disciplined

only for cause; with specified exceptions, a law enforcement agency has the burden of proof by a preponderance of the evidence.

Within 45 days after the final hearing by a trial board, the trial board must issue a written decision reflecting the findings, conclusions, and recommendations of a majority of the trial board. Within 30 days after the date of issuance of a decision of a trial board, the decision may be appealed by the police officer, as specified. An appeal taken from a trial board decision must be on the record, and a trial board decision that is not appealed is final.

Suspensions and Terminations: Pending an investigatory, administrative charging committee, and trial board process, the chief may impose an emergency suspension with pay or, for at most 30 days, without pay if the chief determines that such a suspension is in the best interest of the public. If an administrative charging committee determines not to administratively charge a police officer in connection with the matter on which a suspension without pay is based, the police officer is entitled to receive back pay.

A chief or a chief's designee may suspend a police officer without pay and suspend the police officer's police powers on an emergency basis if the police officer is charged with specified crimes. A police officer who was suspended without pay is entitled to receive back pay if the criminal charge or charges against the police officer result in a finding of not guilty, an acquittal, a dismissal, or a *nolle prosequi*.

The chief must terminate the employment of a police officer who is convicted of a felony and may terminate the employment of a police officer who (1) receives a probation before judgment for a felony or (2) is convicted of a misdemeanor committed in the performance of duties as a police officer, misdemeanor second-degree assault, or a misdemeanor involving dishonesty, fraud, theft, or misrepresentation.

In connection with a disciplinary matter, a police officer may be required to submit to blood alcohol tests; blood, breath, or urine tests for controlled dangerous substances; polygraph examinations; or interrogations that specifically relate to the subject matter of the investigation. If a police officer is required to submit to a test, examination, or interrogation and the police officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal. However, if a police officer is required to submit to a test, examination, interrogation, or polygraph examination, the results are not admissible or discoverable in a criminal proceeding against the police officer and the results of the polygraph examination are also not admissible or discoverable in a civil proceeding against the police officer.

Victims' Rights Advocates: A law enforcement agency must designate an employee as a victims' rights advocate, with specified duties, to act as the contact for the public within the agency on matters related to police misconduct.

Database to Track Complaints: Each law enforcement agency must create a database that enables a complainant to enter the complainant's case number to follow the status of the case, as specified.

Police Officer Rights: Both a police officer who is the subject of a complaint of police misconduct and a complainant may have the assistance of a representative in connection with disciplinary proceedings.

A police officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against or threatened in regard to the police officer's employment because the police officer (1) disclosed information that evidences mismanagement, a waste of government resources, a danger to public health or safety, or a violation of law or policy committed by another police officer or (2) lawfully exercised constitutional rights. A police officer may not be denied the right to bring suit arising out of the police officer's official duties and has the same rights to engage in political activity as a State employee, except when on duty or acting in an official capacity. A law enforcement agency may not prohibit secondary employment by a police officer but may adopt reasonable regulations that relate to secondary employment by a police officer.

Expungement and Destruction of Records: A record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, may not be expunged or destroyed by a law enforcement agency.