



House Bill 416

Workers' Compensation – Occupational Disease Presumption – Duty Belt Worn by Law Enforcement

MACo Position: **OPPOSE**

To: Economic Matters Committee

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From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** HB 416. The bill would expand an already generous presumption system for law enforcement officers and impose a potentially significant new unfunded mandate on counties.

HB 416 would create a new workers' compensation public safety occupational disease presumption for State and local law enforcement officers who are required to wear a duty belt and suffer a lower back impairment resulting in partial or total disability. A law enforcement officer must have been a full-time employee for at least 5 years in order for the presumption to apply. The presumption applies for 5 years after the officer's retirement.

Law enforcement officers already receive a life-time presumption for hypertension and heart disease. Firefighters, natural resources police, and some correctional officers are also subject to presumptions and the majority of expense for these presumptions is borne by the counties. Dependents of public safety employees subject to a presumption are not subject to an offset on retirement benefits and death benefits that affect all other dependents. A 2001 Maryland Court of Appeals decision made presumptions practically impossible to rebut by setting an extremely low burden of proof on employees.¹ In short, the existing presumption system is already very generous to public safety employees.

Back injuries are also an extremely common form of workers' compensation claim. According to the Injured Workers' Insurance Fund (IWIF), which insures many counties who are not self-insured, 32% of its open claims (both State and private) are related to back injuries. In the bill's fiscal note, the American Academy of Orthopaedic Surgeons (AAOS) advises "almost everyone will at some point experience lower back pain as a result of the normal wear and tear on the spine that is due to aging."

¹ *City of Frederick vs. Shankle*, 367 Md. 5 (2001).

The fiscal note also indicates that subjecting this common ailment to a presumption would impose a significant fiscal cost on both the State and county governments. Montgomery County estimates its annual costs to be \$6 million. Given significant reductions in direct State Aid to Local Governments and weak local property tax revenues, counties cannot afford another expensive unfunded mandate.

Finally, while some proponents may argue that the presumption is rebuttable, that is not the case in practice. Counties are rarely able to overcome a case subject to a presumption, regardless of the case's particular fact pattern. In fact, last year's prior introduction of this bill, HB 615 of 2012, unintentionally acknowledged that shortcoming by containing the following provision: "[t]he presumption under this subsection is disputable and may be controverted by other evidence." HB 615 was withdrawn by its sponsor and the provision is absent in HB 416.

The presumption system is already a significant benefit to law enforcement officers. HB 416 would greatly expand this system, creating a new and expensive entitlement at a time when the counties continue to struggle with budget challenges. Accordingly, MACo urges the Committee to give HB 416 an **UNFAVORABLE** report.