

Testimony Senate Bill 161-January 29, 2020

Anne Colt Leitess, State's Attorney for Anne Arundel County.

Good Afternoon Chairman Smith and Vice-Chair Waldstreicher and the honorable members of this committee.

My name is Anne Colt Leitess, and I am the State's Attorney for Anne Arundel County and a prosecutor for the past 31 years. I've dedicated my entire career to criminal law and I've had a few opportunities to testify before this body and in the house regarding areas where the laws on the books fall short for the reality of the acts that are committed in the community.

I'm here to provide my support for the passage of Senate Bill 161 which seeks to address a loophole that exists in our current Hate Crime laws. It would cover actions that we have seen occurring in our county as well as in our State.

As you well know, our Maryland Hate Crime Laws generally require proof of two elements: proof of the commission of an underlying crime, and proof that the crime was committed **because of** another person's or group's race, color, religious beliefs, sexual orientation, gender, disability, or national origin or homelessness.

The displaying of nooses and swastikas evokes fear and intimidation in our communities and these actions have ranged from instances where students inscribe their school books with such symbols, to the hanging of nooses on private or public property. Recently, I was prosecuting a case where in the middle of his trial, an inmate member of a violent gang drew swastikas on the wall of his holding cell to intimidate other inmates that were housed and awaiting trial themselves. Ironically, there had just been testimony during his trial that his gang intentionally displayed swastikas as a means to frighten and intimidate other inmates.

Under current Maryland Law, a person who hangs a noose or displays a placard with a swastika or other symbol of hate on the private property of another person—instills fear on the home owner, neighbors and the community, but can generally do so without being held accountable.

The reason is that the first element required for it to be a Hate Crime is missing—the proof of a separate underlying crime, such as trespassing, malicious destruction or harassment often falls short.

For the crime of trespassing, unless the property is clearly posted "No Trespassing" or there was prior notice given to that person to stay off the property, the crime of trespassing hasn't been committed. Without one of those pre-conditions existing, there is nothing to prevent a

person from littering another's yard with hate signs/symbols or by hanging nooses, or otherwise installing non-damaging, non-permanent items onto the land.

Without proof that a person's actions damaged or defaced property of another, the affixing of non-permanent and non-damaging items also doesn't meet the burden of proving malicious destruction or defacing of property. So the temporary use of hate symbols and non-damaging nooses fall into this category.

Lastly, in order for a charge of criminal harassment to apply, there must have been a pattern of harassing conduct, with a warning to stop being given, and then another act or behavior occurring after that for legally sufficient proof of the intent to harass another person.

So if there is no actual destruction or altering/destroying of property or there is no prior warning to stay off property, or to leave someone alone—then a person can enter onto either private or public land and hang nooses and display swastikas as they please, and face no criminal charges—all because they have not been warned in advance not to do such a thing. Our laws require notice that something is a crime.

With Senate Bill 161, the warning and notice is now made part of the law: you can do such acts as long as you have permission from the agent or owner of the property. The bill still requires proof that the acts were done with the intent to threaten or intimidate—a key component of all of our Hate Crimes bills in this State, and a protection from overreaching by law enforcement. Doing the act alone isn't proof a crime was committed—we must also prove the mens rea or mental state of the person doing the act.

I believe that this proposed law does not infringe upon the Constitution's right to Free Speech. It does not place an undue burden on a person who wishes to engage in such speech, but rather imposes a fair requirement to first get permission from an owner or agent of the property before doing do.

Thank you.