

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1695
Judiciary

(Delegate Chang)

Judicial Proceedings

Crimes – Hate Crimes – Defacement

This bill specifies that, for purposes of the hate crimes laws, the term “deface” includes to affix, erect, or place a noose or swastika on.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s effect on the application of existing penalties if the bill results in additional prosecutions.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill’s effect on the application of existing penalties if the bill results in additional prosecutions.

Small Business Effect: None.

Analysis

Current Law: The State’s hate crimes statutes are contained in Title 10, Subtitle 3 of the Criminal Law Article, specifically §§ 10-302 (damaging property of a religious entity), 10-303 (obstructing exercise of religious beliefs), 10-304 (harassment or destruction of property), and 10-305 (damage to an associated building).

Section 10-302 (Damaging Property of a Religious Entity)

A person may not deface, damage, destroy, or attempt to deface, damage, or destroy real or personal property that is owned, leased, or used by a religious entity or for any religious purpose.

Section 10-303 (Obstructing Exercise of Religious Beliefs)

A person may not, by force or the threat of force, obstruct or attempt to obstruct the free exercise of religious beliefs.

Section 10-304 (Harassment or Destruction of Property)

Because of another's race, color, religious beliefs, sexual orientation, gender, or national origin, or because another person is homeless, a person may not:

- commit a crime or attempt to commit a crime against another person;
- damage the real or personal property of another person;
- deface, damage, or destroy, or attempt to deface, damage, or destroy the real or personal property of another person;
- burn or attempt to burn an object on the real or personal property of another person; or
- commit a hate crime that involves a separate crime that is a felony or that results in the death of the victim.

Section 10-305 (Damage to an Associated Building)

A person may not deface, damage, or destroy; attempt to deface, damage, or destroy; burn or attempt to burn an object on; or damage the real or personal property connected to a building that is publicly or privately owned, leased, or used (1) because a person of a particular race, color, religious belief, sexual orientation, gender, or national origin, or because a person or group that is homeless, has contacts or is associated with the building or (2) if there is evidence that exhibits animosity against a person or group due to the race, color, religious beliefs, sexual orientation, gender, or national origin of that group or because that person or group is homeless.

Penalties

In general, an individual who violates these provisions is guilty of a misdemeanor, punishable by imprisonment for up to 3 years and/or a maximum fine of \$5,000. However, if a violation of § 10-304 involves a separate felony, the violator is guilty of a felony and is subject to imprisonment for up to 10 years and/or a fine of up to \$10,000. If a violation of § 10-304 results in the death of the victim, the violator is subject to imprisonment for up to 20 years and/or a fine of up to \$20,000.

First Amendment Rights

Nothing in the hate crimes statutes may be construed to infringe on the speech of a religious leader or other individual during peaceable activity intended to express the leader's or individual's religious beliefs or convictions.

Background: According to news reports, there were multiple reports of nooses being placed near schools in the State, including an incident in Anne Arundel County and an incident at a fraternity house at the University of Maryland, College Park Campus.

Connor Prout and John Havermann, both age 19, were charged with hate crimes, trespassing, and disorderly conduct for allegedly hanging a noose on the grounds of Crofton Middle School in May 2017. Mr. Prout pleaded guilty to a misdemeanor hate crime violation. In October 2017, as part of his plea agreement, he was ordered to complete 18 months of probation, including 120 hours of community service with the Anne Arundel County chapter of the National Association for the Advancement of Colored People.

John Havermann, the other defendant, pleaded not guilty. Mr. Havermann was found not guilty of the hate crimes charges but was found guilty of trespassing and disrupting school operations. In January 2018, he was sentenced to one year of supervised probation, \$400 in fines, and 80 hours of community service.

According to statistics published by the Federal Bureau of Investigation (FBI) in November 2017, jurisdictions in Maryland reported 37 hate crime incidents in 2016. However, in subsequent news reports, the Department of State Police (DSP) clarified that the number reported by the FBI did not include late submissions by 9 of the 19 reporting agencies. Including those statistics, there were 93 hate crime incidents reported in Maryland during 2016. According to DSP, the 2016 figures represent a 116% increase from 2015.

The Department of Public Safety and Correctional Services advises that it conducted intake on two inmates sentenced to State correctional facilities for convictions under § 10-304 of the Criminal Law Article and no intakes under § 10-305 of the Criminal Law Article during fiscal 2017. The Division of Parole and Probation advises that, based on the information available, no probation intakes were conducted during fiscal 2017 that identified "hate crime" as the underlying offense.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that a review of the Maryland State Sentencing Guidelines Database indicates that MSCCSP did not receive information for any individuals being sentenced for violations of the hate crimes statutes in the State's circuit courts during fiscal 2017.

MSCCSP receives its information through sentencing guidelines worksheets submitted by the courts. MSCCSP advises that it received sentencing worksheets for 89% of guidelines-eligible cases during fiscal 2017.

Additional Information

Prior Introductions: Similar bills have been introduced during previous legislative sessions. HB 41 of 2008 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill. Similar bills have been introduced during previous legislative sessions. HB 1218 of 2010 passed the House and passed second reading in the Senate with amendments. The bill was special ordered in the Senate, and no further action was taken on the bill prior to the conclusion of the legislative session. HB 1201 of 2009 passed the House and passed second reading in the Senate; however, no further action was taken on the bill.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; *The Capital Gazette*; wbaltv.com; WTOP; Department of Legislative Services

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