

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 246
Judiciary

(Delegate Rosenberg, *et al.*)

Hate Crimes - Threats and Penalties

This bill (1) prohibits a person from threatening to commit a violation of specified hate crimes; (2) alters penalties for violations of the State's prohibition on committing hate crimes; and (3) authorizes a court to require a person convicted of committing a hate crime, as a condition of supervised release, to attend educational classes and perform community service related to the person or group that was the subject of the person's hate crime.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from threatening to commit a violation of the hate crime prohibitions under §§ 10-302, 10-303, 10-304, or 10-305 of the Criminal Law Article.

The bill applies the existing misdemeanor penalty for committing a hate crime (*i.e.*, a maximum of imprisonment for three years and/or a \$5,000 fine) to an attempt or threat to commit a hate crime. Under the bill, a person who commits a hate crime is guilty of a misdemeanor, punishable by imprisonment for up to five years and/or a \$10,000 fine. The

bill retains the increased penalties applicable under existing statute for a violation of § 10-304 involving a separate felony or resulting in the death of the victim.

Current Law: The State's hate crime 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, HB 246/ Page 2

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 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 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.

State Revenues: General fund revenues increase minimally from fines imposed in District Court cases.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities, people being committed for longer periods of time, and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime

and the number of people likely to be incarcerated for longer periods are expected to be minimal. This analysis assumes that a prosecution for threatening to commit a hate crime under the bill consists of more than a mere utterance with little factual basis.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) advises that the bill increases OPD caseloads, requiring the hiring of additional attorney and support staff. However, OPD could not provide any information on the number of additional cases expected under the bill or any historical information on the number of hate crimes cases they have handled. The Department of Legislative Services advises that while the exact number of new OPD cases generated by the bill cannot be reliably determined at this time, it is unlikely that the bill will generate enough new cases to warrant additional staff. OPD's *2017 Annual Report* included the following District Court caseload standards: 705 cases per attorney (suburban districts), 630 cases per attorney (rural districts), and 728 cases per attorney (urban districts).

Local Revenues: Local revenues increase minimally from fines imposed in circuit court cases.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore and Montgomery counties; City of Frederick; 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 State Police; Federal Bureau of Investigation; *Baltimore Sun*; Department of Legislative Services

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