

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 128
Judiciary

(Delegate Stewart)

Judicial Proceedings

Criminal Law - Hate Crimes - Protected Groups and Penalties

This bill alters the list of protected classes under existing hate crime statutes to include “gender identity,” as defined in § 20-101 of the State Government Article. The bill also (1) authorizes a sentencing court to order a person convicted of a hate crime to complete an antibias education program and (2) requires the University System of Maryland (USM) to manage the development of an antibias education program.

Fiscal Summary

State Effect: Potential minimal increase in higher education revenues and expenditures, as described below. The bill’s effect on the application of existing statutory penalties is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: The State’s hate crime statutes are contained in Title 10, Subtitle 3 of the Criminal Law Article. Offenses include § 10-302 (damaging property of religious entity), § 10-303 (obstructing exercise of religious belief), § 10-304 (harassment or destruction of property), § 10-305 (damage to associated building), and § 10-305.1 (use of item or symbol to threaten or intimidate). While the bill does not amend all of the prohibitions under the subtitle, it does authorize a court to order a person convicted of a hate crime to participate in an antibias education program, as described below.

Section 10-301 (Definitions)

Under current law, “sexual orientation” means the identification of an individual as to male or female homosexuality, heterosexuality, bisexuality, or gender-related identity.

The bill removes “gender-related identity” from the definition of “sexual orientation” and specifically adds “gender identity,” as defined under § 20-101 of the State Government Article, into the protected classes within the hate crimes statutes. Section 20-101 defines “gender identity” as the gender-related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth, which may be demonstrated by (1) consistent and uniform assertion of the person’s gender identity or (2) any other evidence that the gender identity is sincerely held as part of the person’s core identity.

Section 10-304 (Harassment or Destruction of Property)

Under current law, a person may not engage in the following acts motivated either in whole or in substantial part because another person or group is homeless or because of another person’s or group’s race, color, religious beliefs, sexual orientation, gender, disability, or national origin:

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

The bill specifies that gender identity is a protected class under this provision.

Section 10-305 (Damage to an Associated Building)

Under current law, a person may not deface, damage, or destroy; attempt or threaten to deface, damage, or destroy; burn or attempt or threaten 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 or group of a particular race, color, religious belief, sexual orientation, gender, disability, 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, disability, or national origin of that person or group or because that person or group is homeless.

The bill specifies that gender identity is a protected class under this provision.

Penalties and Antibias Education Program

In general, under current law, a person 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 guilty of a felony and is subject to imprisonment for up to 20 years and/or a fine of up to \$20,000.

The bill authorizes a court to require a person who violates the hate crimes statutes under Title 10, Subtitle 3 of the Criminal Law Article to complete an antibias education program in addition to any other applicable statutory penalties. By January 1, 2023, USM must manage the development of an antibias education program that provides antibias education relevant to the hate crimes statutes.

First Amendment Rights

Pursuant to current law, 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. The bill does not alter this provision.

State Fiscal Effect: While the bill alters the protected classes under the State's hate crimes statutes, given the current inclusion of "gender-related identity" under the existing protected class of "sexual orientation," this estimate assumes that any potential expanded application of existing statutory penalties as a result of the bill does not materially affect State finances or operations.

State Revenues: The bill requires USM to "manage the development" of an antibias education program; it is unclear if this responsibility also includes administering the antibias education program to court-ordered participants. However, to the extent that USM administers the program to court-ordered participants and charges a fee for participation in the program or charges a fee for other organizations to implement the USM program's curriculum, higher education revenues may increase minimally. Any increase in higher education revenues is unlikely to occur before fiscal 2023, which reflects the bill's deadline for development of the antibias education program. This estimate assumes that any program participation fees are collected by program administrators, not the courts. While

the bill takes effect October 1, 2021, this analysis assumes that defendants are not ordered to attend an antibias education program until the program has been developed and is ready for implementation.

State Expenditures: Higher education expenditures may increase minimally for USM to manage the development of an antibias education program in accordance with the bill.

Exhibit 1 contains information on fiscal 2019 and 2020 violations and convictions in the District Court and the circuit courts under provisions affected by the bill. A violation is a charge filed with the court; it is not a conviction, and one person may be associated with multiple violations.

Exhibit 1
Violations and Convictions in the District Court and Circuit Courts
§§ 10-304 and 10-305 of the Criminal Law Article
Fiscal 2019 and 2020

	District Court <u>FY 2019</u>	Circuit Courts <u>FY 2019</u>	District Court <u>FY 2020</u>	Circuit Courts <u>FY 2020</u>
CR, § 10-304	20 violations 2 convictions	18 violations 0 convictions	20 violations 0 convictions	12 violations 2 convictions
CR, § 10-305(1)	4 violations 1 conviction	0 violations 0 convictions	0 violations 0 convictions	2 violations 0 convictions
CR, § 10-305(2)	2 violations 0 convictions	8 violations 4 convictions	7 violations 1 conviction	9 violations 0 convictions

Source: Maryland Judiciary

Local Fiscal Effect: For the reasons stated above, this estimate assumes that any potential expanded application of existing statutory penalties as a result of the bill does not materially affect local finances or operations.

Additional Information

Prior Introductions: HB 485 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 989, passed the Senate with amendments and was referred to the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 220 (Senator Hettleman) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; 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; Department of Legislative Services

Fiscal Note History: First Reader - January 19, 2021
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