

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 50  
Judiciary

(Delegate Arentz)

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Hate Crimes - Prohibitions and Protected Classes - Expansion to Law  
Enforcement Officers and First Responders

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This bill adds law enforcement officers and first responders to the protected classes under State hate crime statutes. The bill defines a “first responder” as a person engaged in providing emergency medical care or rescue services, including a firefighter, an emergency medical technician, or a rescue squad member. The bill incorporates the definition of “law enforcement officer” contained in § 3-201 of the Criminal Law Article.

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Fiscal Summary

**State Effect:** Minimal increase in general fund revenues and expenditures from expanded application of existing penalties.

**Local Effect:** Minimal increase in local revenues and expenditures from expanded application of existing penalties.

**Small Business Effect:** None.

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Analysis

**Current Law:** 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.

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.

If a violation of these provisions 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 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. For violations that do not involve a separate felony or do not result in the death of the victim, the person is guilty of a misdemeanor and is subject to imprisonment for up to 3 years and/or a maximum fine of \$5,000.

Section 3-201 of the Criminal Law Article defines a “law enforcement officer” as an individual who, in an official capacity, is authorized by law to make arrests and is a member of specified law enforcement units. “Law enforcement officer” includes a correctional officer at a correctional facility and an officer employed by the Washington Metropolitan Area Transit Authority Metro Transit Police who is subject to specified jurisdictional limitations.

**Background:** In January 2015, citing recent violence against law enforcement officers, the National President of the Fraternal Order of Police (FOP) called for federal hate crime laws to include targeted attacks against law enforcement officers. According to FOP’s press release, FOP has advocated for more than 10 years for increased federal penalties against individuals who engage in targeted attacks against police officers.

**State Revenues:** General fund revenues increase minimally as a result of expanded application of an existing monetary penalty from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill’s expanded application of existing incarceration penalties due to people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

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 \$3,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in 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 Department of State Police can handle the bill's requirements with existing budgeted resources. Because individuals charged with hate crimes under the bill will likely be charged with additional crimes, many of which are serious offenses, the bill is not likely to materially affect the caseloads of the Office of the Public Defender.

The Department of Public Safety and Correctional Services advises that it does not have a code in its database for correctional intakes for individuals convicted of hate crimes. However, the Judiciary advises that there were 24 violations of hate crimes (harassment/destruction of property) and 3 violations of hate crimes (damage to an associated building) in the District Court during fiscal 2014 (the most recent complete fiscal year for which District Court statistics are available). There were four violations of hate crimes (harassment/destruction of property) and two violations of hate crimes (damage to an associated building) in the circuit courts during fiscal 2014. There were five violations of hate crimes (harassment/destruction of property) and two violations of hate crimes (damage to an associated building) in the circuit courts during fiscal 2015.

The Maryland State Sentencing Guidelines Database contains data ascertained from sentencing guidelines worksheets submitted by circuit court judges to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). According to MSCCSP, a review of the Maryland State Sentencing Guidelines Database indicates that no one was sentenced

for violations of the aforementioned hate crimes in the State's circuit courts during fiscal 2015 for which MSCCSP received sentencing information.

Because law enforcement officers are not a protected class under the hate crimes statute currently, the number of additional cases and convictions anticipated as a result of the bill cannot be reliably estimated at this time. However, the statistics for individuals convicted of felony second-degree assault may provide some illustration of the universe of potential offenders that may be expected under the bill.

A person commits a felony second-degree assault if he/she intentionally causes physical injury to another if the person knows or has reason to know that the other person is a "law enforcement officer" or parole or probation agent engaged in the performance of the officer/agent's official duties. The bill uses the same definition of "law enforcement officer" as the second-degree assault statute.

According to the Maryland State Sentencing Guidelines Database, there were 20 convictions for felony second-degree assault in the State's circuit courts during fiscal 2013 and 15 convictions in fiscal 2014. One offender in fiscal 2014 and 2015 represented two of the convictions in those respective years. The District Court shares concurrent jurisdiction with the circuit courts over felony second-degree assault cases. Information is not readily available on the number of District Court cases or convictions involving felony second-degree assault. It should be noted that the hate crimes statute does not require that a sentence imposed for a hate crime be served consecutively to any sentence imposed for an underlying crime.

**Local Revenues:** Revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Charles and Frederick counties advise that they do not anticipate a fiscal impact from the bill. The Montgomery County Sheriff's Office advises that the bill should not have a significant fiscal impact.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Institute for Emergency Medical Services Systems; Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Fraternal Order of Police; Department of Legislative Services

**Fiscal Note History:** First Reader - January 15, 2016  
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