

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 528

(Senator Astle, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Hate Crimes Group Victim

This bill clarifies that under § 10-304 of the Criminal Law Article (Hate Crimes – Harassment or Destruction of Property) a person may not commit specified acts against *another person's or group's* race, color, religious beliefs, sexual orientation, gender, disability, or national origin, or because another person or group is homeless. The bill makes corresponding changes to other statutory provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures if the bill expands the number of individuals subject to existing penalties.

Local Effect: Potential minimal increase in local revenues and expenditures if the bill expands the number of individuals subject to existing penalties.

Small Business Effect: None.

Analysis

Current Law: The State's hate crime statutes are contained in Title 10, Subtitle 3 of the Criminal Law Article.

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.

Penalties

In general, an individual who violates the hate crimes statutes 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: 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 without admitting that the intent behind the act was to intimidate African Americans. 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 (NAACP).

John Havermann, the other defendant, pleaded not guilty. Mr. Havermann's attorney argued that, based on the language of the hate crimes statute, the alleged act must target a specific person, not a group. He further noted that prosecutors did not list specific individuals at the school as being the victims of the alleged hate crimes. According to news reports, the judge in the case commented that the statute is unclear and asked the General Assembly to make clarifying changes to the statute. 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 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: None.

Cross File: None designated. However, HB 700 (Delegate Sydnor, et al. – Judiciary) is identical.

Information Source(s): 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; Frederick County; *The Capital Gazette*; wbaltv.com; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2018
md/kdm Third Reader - March 14, 2018

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510